



TREC Advisor

The agency exists to safeguard the public interest and protect consumers of real estate services. In accord with state and federal laws the agency oversees real estate brokerage, appraisal, inspection, home warranty and timeshare interest providers. Through education, licensing and regulation, the agency ensures the availability of qualified and ethical service providers, thereby facilitating economic growth and opportunity in Texas.

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New Experience Requirements Approved by the Commission

At its October 10th meeting the Commission adopted rules that change the requirements to get a broker license in the state of Texas. These provisions go into effect January 1st 2011.

Amendments to §535.56 add the rules required by SB 747 to establish active experience requirements to apply for a broker license.

An applicant is required to establish that the applicant has obtained 3600 points of active experience with documentary evidence and a statement from the applicant's sponsoring broker at the time the experience was earned. An applicant must demonstrate experience for four out of five years.

Certain types of transactions are worth a certain number of points and the applicant is required to use the forms adopted by reference in the rule to summarize the transactions. For example, a closed purchase or sale of a single family home (residential) is worth 300 points, while a closed purchase or sale of an apartment complex with five or more units (commercial) is worth 450 points.

An applicant may continue to gain experience after an application has been submitted until such time that the applicant meets the total number required but before the applicant may take the qualifying examination. The applicant has up to one year after an application is filed to complete all requirements,

and must meet experience and education requirements before the applicant can take the licensing examination. Experience earned after the application is submitted is to be reported on a different form adopted by reference in the rule.

If an applicant is unable to obtain sufficient documentation and/or the signature of the sponsoring broker, the applicant is required to use an affidavit adopted by reference in the rule to describe the applicant's efforts to obtain the documentation and/or signatures.

In addition, the applicant is required to provide two additional affidavits each signed by a different individual familiar with the applicant's circumstances and attesting to the applicant's efforts to obtain the appropriate documentation. Lastly, the rule gives the commission the discretion to request additional documentation, rely on the documentation provided under the new rule, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by the Act.

For questions or more information please email TREC General Counsel at general.counsel@trec.texas.gov.

From The TREC Administrator...

As the cooler fall temperatures and a little rain finally reached us, we are grateful. The scorching heat and recent fires in Central Texas touched all of us, some more drastically than others. The agency was fortunate that none of our team members lost homes, but many of us know someone who did and support community efforts to provide assistance.

The agency became self-directed and semi-independent as of September 1st. On October 4th, we provided a progress report to the Senate, with a copy reprinted in this newsletter. In an address to attendees at the TAR Convention in September, we offered our gratitude once again to the organizations which truly made this possible. Thanks to all of you!

This issue also includes reports of the results of the Commission meeting on October 10th. We continue to consider and adopt rules and policies recommended by our two Working Groups to implement SB 747 and SB 1000. Most immediately, license issue and renewal fees are up \$5 per year beginning November 1st. Fees related to education matters will be addressed at upcoming meetings. The next meeting is scheduled on December 5th to ensure we get all of the updates implemented timely. Please follow our progress as we work to guarantee a substantive consideration of the rule changes made necessary by the new laws. The two major transition deadlines are January 1, 2012 and September 1, 2012. Short reminder or explanatory articles of key matters are provided in this newsletter and will continue in future issues and on our agency website.

The new Ethics & Legal Update MCE Courses for 2012-13 are written and training of instructors will begin shortly. The Real Estate Center's schedule of statewide meetings is posted on their website and also included in this issue.

As always, many thanks for your continued support and for staying informed on the issues affecting our license holders and our agency. We honestly welcome your ideas and your feedback on all we do.



Douglas E. Oldmixon

Important Dates to Remember

TREC Commission Meeting—December 5

Agency Closed—November 11, 24 and 25

TREC Form Changes: A Users Guide

Senate Bill 747, the TREC 2011 housekeeping bill, made several changes to the requirements for filing salesperson and broker license applications, renewals (including late renewals), and reinstatements. This article will provide you with some step-by-step instructions for filing the various types of applications, which form to use depending on the time period which has elapsed since the license expired, and the relevant effective dates applicable to each change. Keep in mind that this article focuses on the individual salesperson and broker application forms, other rules apply to business entities and home inspectors.

There are three types of applications – an original application which should be used the first time an application is filed, a renewal (including late renewal) application which should be used to renew a license up to six months after a license has expired, and a reinstatement application which should be used to apply for a license from six months to two years after a license has expired. Original applications and renewals (up to six months after a license has expired) can be filed online; reinstatements can currently only be filed on paper.

As of September 1, 2011, an application for a sales or broker license is good for one year; before this change, an application expired after six months. This means that an applicant now has up to one year from the date an application is filed to pass the qualifying examination and otherwise meet any education or experience requirements that may apply. If the application was filed before September 1, the old law continues in effect and the application is only good for six months.

Also as of September 1, a person may late renew a license up to six months after the license has expired. As long as the applicant pays an additional fee, the late renewal is treated just like a renewal and the licensee is given a two year license running from the previous expiration date. This is a change from the old law. Before September 1, a license could be renewed late up to one year after the license expired. The effective date of the new law is based on the license expiration date. If the license expired prior to September 1, 2011, an applicant has up to one year to late renew the license under the old law. If the license expired after September 1, the applicant has only six months in which to late renew the license.

Between six months to two years after a license has expired, a person can file a reinstatement application using previous education and/or experience to meet current requirements as long as the applicant takes 15 hours of MCE. In addition, the applicant will not need to retake the licensing examination. Before the rule change, an applicant for a sales license had up to six years in which to reinstate a license as long as the applicant otherwise met education requirements in effect at the time the original license was obtained.

An applicant for reinstatement of a broker license had up to four years in which to reinstate the license and rely on the education and experience previously earned as long as the applicant had two years of active experience in the six-year period. If the reinstatement application was filed more than two years after the license expired, the applicant also had to retake the qualifying examination.

Under the new rules, a previously licensed individual has only two years to reinstate a license. If the reinstatement application is for a broker license, the applicant will need to have two years of active experience as a broker or salesperson in the four-year period before filing the reinstatement application. For both the sales and broker reinstatements, the applicant will need to take 15 hours of MCE. If more than two years have elapsed since the license expired, an applicant for a sales or broker license will need to meet all current education, experience and examination requirements to get a license.

The new rules apply to reinstatements of salesperson licenses filed on or after November 1, 2011. The new rules apply to broker reinstatements filed on or after January 1, 2012.

Check the TREC website or send us an email if your license has expired and you have questions about which form to use and whether you can apply on line.

How Does SB 747 Affect a Brokers Ability to Offer BPOs?

Senate Bill 747 will have no effect on a broker's ability to offer and perform Broker Price Opinions (BPOs) or Comparative Market Analyses (CMAs). The bill amended the definition of "broker" to clarify that a broker cannot, as part of a compensated service for another, provide an "appraisal" (defined in Occupations Code Chapter 1103 as an "opinion of value"). To provide an appraisal, a person must be licensed or certified as an appraiser under Chapter 1103. However, real estate brokers often regularly provide CMAs and BPOs as a routine service to clients, and SB 747 clarifies that this is still allowed.

If permitted by their broker, sponsored sales agents may complete a CMA or BPO for a client, but must submit the opinion or analysis in the name of the sponsoring broker. In addition, each CMA or BPO must be accompanied by the following required disclosure: "THIS IS A BROKER PRICE OPINION OR

COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."

Price and value are closely related, but are not interchangeable, concepts. If asked to provide an opinion as to "market value", or a "broker's opinion of value", Texas brokers must explain to their clients that Texas law allows brokers to formulate opinions as to "estimated sale or purchase price", but not as to "value". Giving a compensated "opinion of value" in Texas requires an appraiser license or certification.

Important Notice To All License Holders And Registrants At TREC & TALCB

As of September 15, 2011, the agency NO LONGER accepts cash in payment for fees or other services. The agency will continue to accept checks and money orders. This restriction is due to a policy of the Texas Treasury Safekeeping Trust, where the agency deposits all of its funds. For any mail postmarked OCTOBER 1, 2011 or LATER, the agency will return the entire package intact to the sender if the package contains any cash. Any late fees triggered by the rejection of the package will be the responsibility of the sender. PLEASE DO NOT SEND CASH IN THE MAIL.

For additional information please call the TREC Information line at 512-936-3000

Progress Report on October 4

Texas Senate's Business & Commerce Committee

On September 1, 2011, the Texas Real Estate Commission (TREC) and its independent subdivision, the Texas Appraiser Licensing & Certification Board (TALCB), together (the "agency") became a Self-Directed, Semi-Independent (SDSI) agency under the authority of SB 1000. This progress report outlines steps taken as of October 1 to accomplish this transition.

On July 18th, the agency completed its relocation to new and more efficient quarters on the 4th floor of the Stephen F. Austin State Office Building. In August, the governing bodies of TREC and TALCB approved FY 12 operating budgets for the agency, as well as provided input to agency staff to propose policy guidance for financial monitoring, management of seasonal cash flow fluctuations and contingencies, and guidelines for potential fee reductions in the preparation of future budgets. In addition, the governing bodies proposed rules to implement increases in initial license application and license renewal fees equal to \$5.00 per license per year, estimated to yield revenues of \$750,000 per year to fund the required annual contribution to the General Fund of Texas. This modest fee increase has been widely forecast and discussed with many large groups of license holders from the various professions the agency regulates.

In addition, the agency has executed interagency agreements with the following state agencies:

- Texas Facilities Commission – lease for office space and new furnishings cost recovery,
- Texas Treasury Safekeeping Trust – banking, cash management and investment services,
- Texas Office of Attorney General – legal representation of the agency with a retainer,
- Texas State Office of Administrative Hearings – administrative hearings services with a retainer,
- and the Texas State Auditor's Office – negotiations deferred to January 2012.

The agency has adopted new revenue codes and a revised chart of accounts to enhance tracking and provide staff with additional data for revenue forecasting . The agency will continue using the state's applicable position classification and salary guidelines for its staff. The quarterly measures and benchmarks that previously charted the agency's performance have been retained for the same purposes. No significant obstacles have been encountered by the agency in making the required transitions. The Comptroller's office and Texas Treasury Safekeeping Trust Company staff continue to be very valuable resources in making this transition effective.

Upcoming TREC Legal and Ethics Fall Course Offerings around Texas

November 2, 2011

Fort Worth Assoc of Realtors
2650 Parkview Drive
Fort Worth, TX 76102
817-336-5165

November 9, 2011

Permian Basin Board of Realtors
1001 W. Wall Street
Midland, TX 79701
432-682-9725

November 17, 2011

Austin Board of Realtors
Quarry Oaks Atrium Bldg.
10900 Stonelake Blvd., Suite 100
Austin, TX 78759

November 30, 2011

Metrotex Association of Realtors
8201 Stemmons Freeway
Dallas, TX 75247
214-637-6660

December 5, 2011

San Antonio Board of Realtors
9110 I-10 #1
San Antonio, TX 78230
210-593-1200

December 13, 2011

Norris Conference Center
803 Town and Country Ln, Suite
210
Houston, TX 77024
713-590-0950

Register: www.recenter.tamu.edu/register Time: 8:30 AM—5:00 PM, lunch provided Cost: \$150; \$190 after October 24, 2011

Q&A on the Issue of a Designated Broker for a Licensed Business Entity owned by a Sales Agent

QUESTION: There seems to be some confusion between the document titled "TREC HOUSEKEEPING BILL" which is a summary posted on the TREC website and the text of recent changes to the Texas Real Estate License Act by SB 747. This summary rephrases section 1101.453 to read "designated broker" instead of "designated agent" as the bill reads. The question arises as to how these changes to the Act are going to affect the way real estate professionals in the state of Texas structure their independent contractor businesses relationships. Specifically important is this question:

Can a licensed salesperson be the "designated agent" for a business entity owned by a salesperson?

ANSWER: While a salesperson may individually own a business entity, if the entity provides real estate brokerage services or receives compensation on behalf of the salesperson for any services requiring a license and performed by the salesperson, the business entity must hold a broker license pursuant to section 1101.351(a-1) even though the salesperson, or the business entity owned by the salesperson may be associated with another broker. In addition, under section 1101.355 (b), the business entity's designated agent must be

a licensed broker. The business entity owned by a salesperson would need to maintain E&O insurance if the designated agent does not own at least 10% of the business entity.

To put it another way, if a person provides real estate brokerage services as defined in the Act for another for compensation, then a license is required. If the person providing the real estate brokerage services is a business entity, then the entity would need to be licensed as a broker, and would need to designate an officer to act as its agent for purposes of the Act. Further, the agent for purposes of the act must be a licensed broker. This is where the phrase "designated broker" comes from. The Act does not allow for a business entity to hold a salesperson's license, only a broker's license. The designated broker for the business entity owned by the salesperson may be the same person as the designated broker for the brokerage firm that the salesperson is associated with.

If you take a look at section 1101.355(b) and 1101.453(b), to apply for or renew a business entity's broker license, the designated agent for the business entity licensed under Chapter 1101 must be a licensed broker. On its forms, the agency clarifies these statutory provisions by using the phrase "designated broker."

TREC Welcomes New Employees



Anna Amaro

Anna Amaro, is born and raised in Austin, and is the fourth out of six children. Anna was hired with Texas Real Estate Commission/ Texas Appraiser Licensing and Certification Board on October 3, 2011. Anna graduated from McCallum High School in 2007 and is taking classes at Austin Community College. The past three years she worked as an administrative assistant at an advertising company called Val-Pak and Morgan's Deals. Anna lives in North Austin with her best friend and dog Snoop.

Lucaya Riley was born and raised in Austin. She lived in Missouri for the past 6 years where she earned her Associate of Arts degree. Later Lucaya owned/ managed her own classic car dealership. Riley moved back home this summer with her 3 kids , Mason (boy, 9), Meadow (girl, 5) and Mickey (boy, 3) and dog, Liberty. She is very happy to be working here at the Texas Real Estate Commission.



Lucaya Riley

Rule Actions from the October 10, 2011 Meeting of the Commission

Subchapter B. General Provisions Relating to the Requirements of Licensure

22 TAC §535.17, relating to Broker Price Opinion or Comparative Market Analysis

The amendments implement the relevant provisions of Senate Bill 747 (SB 747), 82nd Texas Legislature, Regular Session (2011). The amendments to §535.17 clarify that a real estate licensee must be licensed under Texas Occupations Code, Chapter 1103 to conduct real estate appraisals. Further, the rule is amended to provide that if a broker or salesperson provides a broker price opinion under Chapter 1101, the opinion must provide a written disclosure as provided in the rule. *Effective 11-1-2011*

Subchapter C. Exemptions from Licensure

22 TAC §535.31. Attorneys at Law

The new section establishes a penalty matrix for the assessment of administrative penalties for different violations of the statute and rules governing real estate inspectors. The matrix was drafted in accordance with §1102.403 of the Texas Occupations Code (relating to administrative penalties imposed against inspectors) and Chapter 1101, Subchapter O (relating to administrative penalties assessed by the Commission). As such, the highest category of administrative penalties provides for a maximum penalty of \$5,000 per violation, and each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty. *Effective 11-1-2011*

Subchapter E. Requirements for Licensure

22 TAC §535.50, §535.51, §535.53, §535.55, §535.56

TREC adopts amendments to 22 TAC §535.50, regarding Definitions; §535.51, regarding General Requirements; §535.53, regarding Corporations and Limited Liability Companies; §535.55, regarding Education Requirements for a Salesperson License; and §535.56, regarding Education and Experience Requirements for a Broker License. Sections 535.50, 535.51, and 535.55 are adopted without changes to the proposed text as published in the August 19, 2011, issue of the Texas Register (36 TexReg 5185). Section 535.53 and §535.56 are adopted with changes to the proposed text.

The difference between §535.53 as proposed and as adopted is that subsection (b) is rewritten for additional clarification. In addition, a typographical error in Form BL-B, adopted by reference in §535.56, indicating "250 points" for

a closed purchase or sale of a farm and ranch property is changed to "300 points" to track the rule. The "Farm and Ranch, Unimproved Lot" section of Forms BL-A and BL-B, adopted by reference in §535.56, is changed to clarify that experience credit for closed sales of any unimproved lot, whether farm and ranch, commercial or residential, should be noted under "Farm and Ranch, Unimproved Lot." Finally, an effective date provision of January 1, 2012 was added to §535.56.

The amendments implement and further explain the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011).

- §535.50 - amend the list of definitions to define a designated broker of a business entity, to clarify that the designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership, and to incorporate the relevant provisions regarding the new broker responsibility continuing education course required under amendments to §1101.458.
- §535.51 - clarify that an applicant must meet education and experience requirements before the applicant may take a qualifying examination.
- §535.53 - change the title of the rule to apply to all business entities, not just corporations and limited liability companies, to add partnerships to the types of business entities that must be licensed, and to address the requirement that business entities must maintain errors and omissions insurance if the designated broker owns less than 10 percent of the entity.
- §535.55 - changes the period from six years to two years so that an applicant who was licensed as a salesperson or broker in the preceding two years and otherwise meets the requirements of the section regarding mandatory continuing education (MCE) could apply for a salesperson license.
- §535.56 - changes the period from four years to two years and delete the reference to a salesperson so that a broker who had an active license in two of the preceding four years and otherwise meets the requirements of the section regarding MCE could apply for a broker license without meeting the new experience requirements.
- §535.56 - add the rules required by amendments to §1101.356(b-1) of the Act to establish active experience requirements to apply for a broker license under §1101.356 and §1101.357 of the Act. An applicant is required to establish that the applicant has obtained 3,600 points of active experience with documentary evidence and a statement

Rule Actions continued...

from the applicant's sponsoring broker at the time the experience was earned. Certain types of transactions are worth a certain number of points and the applicant is required to use the forms adopted by reference in the rule to summarize the transactions. An applicant may continue to gain experience after an application has been submitted until such time that the applicant meets the total number required but before the applicant may take the qualifying examination. Experience earned after the application is submitted is to be reported on a different form adopted by reference in the rule. If an applicant is unable to obtain sufficient documentation and/or the signature of the sponsoring broker, the applicant is required to use an affidavit adopted by reference in the rule to describe the applicant's efforts to obtain the documentation and/or signatures. In addition, the applicant is required to provide two additional affidavits each signed by a different individual familiar with the applicant's circumstances and attesting to the applicant's efforts to obtain the appropriate documentation. The application forms and affidavits are adopted by reference in the rule. The rule gives the commission the discretion to request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by §1101.356 of the Act and §535.56. *Effective date: 11-1-2011.*

Subchapter F. Pre-License Education and Examination

22 TAC §535.63. Accreditation of Core Education Schools

The amendments implement and explain the relevant provisions of Senate Bill (SB) 747, 82nd Texas Legislature, Regular Session (2011). The amendment to §535.63 establishes the method in which the benchmark passage rate would be calculated for each license category and makes other conforming changes to be consistent with the amendments made by SB 747. *Effective 11-1-2011*

Subchapter I. Licenses

22 TAC §535.91, Renewal Notices, §535.93, Late Renewals, and §535.96, Mailing Address and Other Information

The amendments implement and explain the relevant provisions of SB 747, 82nd Texas Legislature, Regular Session (2011).

- §535.91 clarifies that a broker who sponsors salespersons, a designated broker of a business entity, and a license holder who is a

delegated supervisor of one or more licensees under §535.2 for six months or more during the course of the current license must take the six hour broker responsibility course to renew a license effective for renewals on or after September 1, 2012.

- §535.93 change to six months any references to the one year period for filing a late renewal.
- §535.96 clarifies that licensees must provide and maintain contact information with the commission, including an email address if available. *Effective 11-1-2011*

Subchapter J. Fees

22 TAC §535.101. Fees

The amendments increase the salesperson and broker application fees from \$105 to \$119; the annual renewal fees for brokers and salespersons from \$34 to \$39; the late renewal fee from \$51 to \$58.50 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from \$68 to \$78 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than six months effective November 1, 2011. The amendments also change the maximum late renewal period from six months to one year and remove a reference to an application in the fee for moral character determination.

Senate Bill 1000 makes the Texas Real Estate Commission self-directed and semi-independent. The bill removes the agency from the legislative budgeting process, and requires the commission to adopt and approve an annual budget. The bill requires that the commission collect sufficient fees to fund operations to carry out its function and to fund the budget. In relevant part, the bill also requires the agency to remit \$750,000 to the general revenue fund not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the State Auditor of \$10,000 per fiscal year, a nonrefundable retainer to the Attorney General of \$75,000 per fiscal year, and a nonrefundable retainer to the State Office of Administrative Hearings of \$75,000 per fiscal year. TREC will be required to reimburse each agency for all costs incurred in excess of the retainers for providing services to the commission. In addition, the bill requires the agency to pay rent in a reasonable amount to be determined by the Texas Facilities Commission with aggregate rent payments to be not less than \$550,000 per fiscal year for state fiscal years ending August 31, 2012 and August 31, 2013; and not less than \$425,000 per fiscal year for each year ending August 31, 2014, August 31, 2015, and August 31, 2016. *Effective 11-1-2011*

Rule Actions continued...

Subchapter L. Termination of Salesperson's Association with Sponsoring Broker

22 TAC §535.121, Inactive License, and §535.122, Reactivation of License

The amendments to §535.121 make conforming changes to be consistent with other rules that were simultaneously adopted to implement the requirements of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The amendments to §535.122 clarify that a salesperson on inactive status may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission as long as the salesperson otherwise meets MCE requirements. . . *Effective 11-1-2011*

Subchapter M. Nonresidents

22 TAC §535.132. Eligibility for Licensure

The amendments increase the salesperson and The amendments to §535.132 make conforming changes to be consistent with amendments to §535.55 and §535.56 regarding waiver of education or experience requirements for a salesperson or broker license, and change the references from individual business entity types to "business entity" to make conforming changes to

be consistent with the statutory text amended by SB 747 . *Effective 11-1-2011*

Subchapter N. Suspension and Revocation of Licensure

22 TAC §535.141. Initiation of Investigation

The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101, and make conforming changes to the rule to be consistent with other rules that were adopted on an emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747. *Effective 11-1-2011*

Subchapter R. Real Estate Inspectors

22 TAC §535.210. Inspector Fees

The amendments increase the professional inspector application fee from \$90 to \$104, the real estate inspector application fee from \$75 to \$89, the apprentice inspector application fee from \$35 to \$84, the annual renewal fees for professional and real estate inspectors from \$27 to \$32, and the annual renewal fee for an apprentice inspector from \$22 to \$27. *Effective 11-1-2011*

Proposed

Subchapter B. General Provisions Relating to the Requirements of Licensure

22 TAC §535.4. License Required

In relevant part, SB 747 amends the Texas Occupations Code Chapter 1101 to define a real estate broker to include a person who controls the acceptance or collection of rent from a resident of a single-family residential unit, and to require licensure as a broker for a business entity as defined in Section 1.002 of the Business Organizations Code which receives compensation on behalf of the licensee.

The amendment to §535.4(f) replaces an existing reference to a corporation or limited liability company to "business entity" to more closely track the text of the statute. The amendment to §535.4 (g) defines the meaning of "controls the acceptance or deposit of rent" and "single family residential property unit" for purposes of §1101.002(1)(A)(x) of the Act . *Earliest date of possible adoption: 12-05-2011*

Subchapter R. Real Estate Inspectors

22 TAC §535.211, Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102

The amendment updates the reference in subsection (c) to the current certificate of insurance form, REI COI-0. *Earliest date of possible adoption: 12-05-2011*

Chapter 537 Professional Agreements and Standard Contracts

22 TAC TAC §537.20. Standard Contract Form
TREC No. 9-9; §537.21. Standard Contract Form
TREC No. 10-5; §537.22. Standard Contract Form
TREC No. 11-6; §537.23. Standard Contract Form
TREC No. 12-2; §537.26 Standard Contract Form
TREC No. 15-4; §537.27 Standard Contract Form
TREC No. 16-4; §537.28 Standard Contract Form
TREC No. 20-10; §537.30 Standard Contract Form
TREC No. 23-11; §537.31 Standard Contract Form
TREC No. 24-11; §537.32 Standard Contract Form
TREC No. 25-8; §537.33 Standard Contract Form
TREC No. 26-5; §537.35 Standard Contract Form
TREC No. 28-1; §537.37 Standard Contract Form
TREC No. 30-9; §537.39 Standard Contract Form
TREC No. 32-2; §537.40 Standard Contract Form
TREC No. 33-1; §537.41 Standard Contract Form
TREC No. 34-3; §537.44 Standard Contract Form
TREC No. 37-3; §537.45 Standard Contract Form
TREC No. 38-3; §537.46 Standard Contract Form
TREC No. 39-6; §537.47 Standard Contract Form
TREC No. 40-4; §537.48 Standard Contract Form
TREC No. 41-1; §537.51 Standard Contract Form
TREC No. 44-0; and §537.52 Standard Contract Form TREC No. 45-0

Rule Actions continued...

The amendments propose to adopt by reference six revised contract forms and 17 assorted addenda for use by Texas real estate licensees.

Amendments to all of the forms adopted by reference change the main telephone number and website address for TREC located in the box on the penultimate and/or last page of each of the forms. Unless specifically referenced below, such changes are the only changes made to the forms adopted by reference.

- The amendment to §537.20 proposes to adopt by reference Standard Contract Form TREC No. 9-10, Unimproved Property Contract. The proposed revisions are the same as those proposed for TREC Form No. 20-11, except that the transfer fee notice is new subparagraph 6.E. (9).
- The amendments to §537.28 propose to adopt by reference Standard Contract Form TREC No. 20-11, One to Four Family Residential Contract (Resale). Paragraph 6.B. is amended to add a sentence regarding the buyer's ability to terminate the contract if the commitment and exception documents are not delivered within the time required, which was deleted from paragraph 15; paragraph 6.D. is amended to add the phrase "by Buyer" to the sentence regarding waiver of Buyer's right to object to defects, exceptions or encumbrances to title; paragraph 6.E.(2) is amended to add additional disclosures required by amendments to §207.003, Property Code; new subparagraph 6.E.(8) adds a new statutory disclosure regarding private transfer fee obligations; paragraph 7.A. is amended to require a seller to have utilities turned on and keep them on while the contract is in effect. Paragraph 7.F. is amended to change a phrase regarding the buyer's remedies if the seller fails to complete agreed repairs and treatments prior to the closing date; the new text provides that the buyer may exercise remedies under paragraph 15 or extend the closing date up to 15 days. Paragraph 15 is amended to delete the sentence regarding seller's failure to make non-casualty repairs or deliver the commitment or survey. The sentence was moved to paragraph 6.B.
- The amendment to §537.30 proposes to adopt by reference Standard Contract Form TREC No. 23-12, New Home Contract (Incomplete Construction). The proposed revisions are the same as those proposed for TREC Form No. 20-11, except that there are no amendments to paragraphs 7.A. or 7.F.
- The amendment to §537.31 proposes to adopt by reference Standard Contract Form TREC No. 24-12, New Home Contract (Completed Construction). The proposed revisions are the same as those proposed for TREC Form No. 20-11.
- The amendment to §537.32 proposes to adopt by reference Standard Contract Form TREC No. 25-9, Farm and Ranch Contract. The proposed revisions are the same as those proposed for TREC Form No. 20-11, except that paragraph 6.E.2 is not amended.
- The amendment to §537.37 proposes to adopt by reference Standard Contract Form TREC No. 30-10, Residential Condominium Contract. The proposed revisions are the same as those proposed for TREC Form No. 20-11, except that paragraph 6.E.(2) is not amended and the transfer fee notice is new subparagraph 6.D. (6).
- The amendment to §537.44 propose to adopt by Standard Contract Form TREC No. 37-4, Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in a Property Owners' Association. Paragraphs D, H, and I are amended to more closely track recent statutory changes to Chapter 207, Property Code.
- The amendment to §537.46 propose to adopt by Standard Contract Form TREC No. 39-7, Amendment to Contract. Paragraph (8) is changed to reference the correct title of the Third Party Financing Condition Addendum for Credit Approval. *Earliest date of possible adoption: 12-05-2011*

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Perez, Estela (San Antonio); License #386926 Agreed 6 month suspension of broker license fully probated for 1 year, effective September 28, 2011; Agreed administrative penalty of \$2,500, effective September 28, 2011 acting negligently or incompetently by failing to supervise the actions of a licensed salesperson, in violation of Tex. Occ. Code §1101.652 (b)(1).

Akbar, Shezad Tony (Lewisville); License #553894 Revocation of salesperson license, effective September 26, 2011; Assessment of an administrative penalty of \$20,000, effective September 26, 2011 multiple counts of failing to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission, in violation of Tex. Occ. Code §1101.652(a)(6); failing to report all subsequent changes within 10 days after a change of any of the listed contact information (mailing address, phone number, and email address), in violation of 22 Tex. Admin. Code §535.96(a) [formerly 22 Tex. Admin. Code §535.91(c)]; multiple counts of procuring or attempting to procure a license for the license holder or a salesperson by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license, in violation of Tex. Occ. Code §1101.652(a)(2); a licensed salesperson acting or representing that the salesperson is a broker, in violation of Tex. Occ. Code §1101.351(a) (1); establishing an association by employment or otherwise with a person other than a license holder if the person is expected or required to act as a license holder, in violation of Tex. Occ. Code §1101.652(b)(26); and aiding, abetting, or conspiring with another person to circumvent Chapter 1101 of the Texas Occupations Code, in violation of Tex. Occ. Code §1101.652(b)(27).

Emmons, Charles Clifford (Garland); License #564075 Revocation of salesperson license, effective September 23, 2011; Assessment of an administrative penalty of \$7,500, effective September 23, 2011 failing to comply with the terms and condition of his probationary license which constituted grounds for revocation of his probation when he: (1) failed to fully cooperate with the Commission in its investigation of a complaint filed against him, (2) established, maintained, operated and was responsible for a property management account, and (3) failed to deliver money received from tenants or property owners to his sponsoring broker for deposit into a trust or escrow account. Respondent performed property management and leasing services under his own company name without his sponsoring broker's knowledge and at times when he held an inactive license, in violation of Tex. Occ. Code §1101.351(a)&(c). As a property manager, Respondent received rents and security deposit on behalf of an owner and failed to timely and properly account for or remit the funds to his client, in violation of Tex. Occ. Code §1101.652(b)(9). Failing or refusing to produce on request, for inspection by the Commission, a document, book, or record, in violation of Tex. Occ. Code §1101.652(a)(5). Failing to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission, in violation of Tex. Occ. Code §1101.652(a)(6).

Romeo, Branda Lee (Pantego); License #380527 Revocation of broker license, effective September 23, 2011; Assessment of an administrative penalty of \$3,000, effective September 23, 2011 As a buyer's agent, Broker received \$500 from her client for earnest money and broker failed to properly account for or remit the funds back to her client after no sales contract was accepted in violation of Tex. Occ. Code §1101.652(b)(9); failing to report all subsequent changes within 10 days after a change of her mailing address or mail in violation of Tex. Occ. Code §1101.656 and 22 Tex. Admin. Code §535.96; failing or refusing to produce on request, for inspection by the Commission, a document, book, or record, in violation of Tex. Occ. Code §1101.652(a)(5); failing to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission, in violation of Tex. Occ. Code §1101.652(a)(6).

Evans, Grace J. (Lumberton); License #564266 Agreed administrative penalty of 1,000, entered September 21, 2011 acting negligently or incompetently, while acting as a broker or salesperson, in violation of Tex. Occ. Code §1101.652(b) (1) by failing to obtain written consent by each party to act as intermediary in the transaction, by acting as intermediary when the buyer was the spouse of Respondent and could not act fairly and impartially per the requirements under Tex. Occ. Code §§1101.558 and 1101.559, and by failing to deposit the earnest money deposit with the title insurance company.

Arriaga, Charles L. Jr. (San Antonio); License #537432 Revocation of salesperson license, effective September 16,

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2011; Assessment of an administrative penalty of \$5,000, effective September 16, 2011 failing to remit to an owner the balance of rent monies collected from a tenant, in violation of Tex. Occ. Code §§1101.652(b)(1) (2) and (9); utilizing an impermissible company name for a salesperson and holding himself out as an owner and responsible for the real estate brokerage activities of a company, in violation of Tex. Occ. Code §§1101.652(b)(1) and (2) and 22 Tex. Admin. Code §535.154(e) of the Rules of the Commission; and inserting the salesperson's own license number into documents where the document requested the license number of the salesperson's sponsoring broker, in violation of Tex. Occ. Code §§1101.652(b)(1) and (2).

Wheeler, Johnny Albert (Beeville); License #30275 Revocation of Easement of Right-Of-Way Agent, effective September 8, 2011 entering a plea of guilty or nolo contendere to or being convicted of a felony, in violation of Tex. Occ. Code §1101.652(a)(1), procuring a license under this chapter by making a material misstatement of fact in an application for a license, in violation of Tex Occ. Code§ 1101.652(a)(2); and failing to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint, in violation of Tex. Occ. Code §1101.652(a)(6).

Collier, Kevin James (Salesperson); License #541721 Agreed 38 month suspension of salesperson license fully probated for 38 months, effective September 2, 2011; Agreed administrative penalty of \$2,400, effective September 9, 2011 entering a plea of guilty or nolo contendere to or being convicted of a felony in violation of Tex. Occ. Code §1101.652(a) (1); and failing to notify the Commission, not later than the 30th day after the date of a final conviction or the entry of a plea of guilty or nolo contendere to a felony in violation of Tex. Occ. Code §1101.652(a)(9).

Vega, Jose Edwaurdo (Houston); License #584518 Suspension of salesperson license until payment in full of the replacement fee and \$500 administrative penalty, effective September 29, 2011; Assessment of an administrative penalty of \$500, effective September 29, 2011 failing within a reasonable time to make good a check issued to the Commission, in violation of Tex. Occ. Code §1101.652(a)(4); failing to pay a check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 Tex. Admin. Code 535.2(a).

Chalambaga, Michael S. (Odessa); License #555545 Agreed 6 year suspension of broker license fully probated for 6 years, effective January 7, 2011 entering a plea of guilty or nolo contendere to a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, in violation of Tex. Occ. Code §1101.652(a)(1).

Headrick, Debra Lynn (Lumberton); License #467768 Agreed reprimand of broker license, entered September 14, 2011; Agreed administrative penalty of \$500, entered September 14, 2011 acting negligently or incompetently in the oversight of a sponsored agent in carrying out the proper procedure for documenting and performing in an intermediary relationship, in violation of Tex. Occ. Code §1101.652(b)(1).

Ramos, Manuel (Laredo); License #305838 Revocation of broker license, effective September 12, 2011 failing to repay the Commission for payment of \$24,335.38 made from the real estate recovery trust account toward satisfaction of a judgment as authorized by Tex. Occ. Code §1101.655; and failure to repay the Commission for payment of \$25,664.62 made from the real estate recovery trust account toward satisfaction of a judgment as authorized by Tex. Occ. Code §1101.655

Slaugh, Lindy Layne (Austin); License #615739 Agreed 3 year probationary license issued, effective September 16, 2011 commission of an offense that directly relates to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).

AtlanticPacific REO Resolution Management, Inc. (Bryan); License #9000803 Agreed 1 year probationary broker license issued, effective September 9, 2011 commission of an offense that directly relates to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant pos-

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sesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate broker under Tex. Occ. Code §1101.354(2).

Ybarra, Steven (San Antonio); License #615578 Agreed 2 year probationary salesperson license issued, effective September 9, 2011 commission of an offense that directly relates to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).

Forrester, Jay Randall (Dallas); License #615553 Agreed 2 year probationary salesperson license issued, effective September 8, 2011 commission of an offense that directly relates to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).

Landman, Yanit (Dallas); License #590565 Agreed administrative penalty of \$1,500, entered August 31, 2011 acting in the capacity of, engaging in the business of, or advertising or holding herself out as engaging in or conducting the business of a real estate salesperson doing residential rental locating without first obtaining a real estate license, in violation of Tex. Occ. Code §1101.351(a).

Landman, Alexander (Fort Worth); License #601079 Agreed administrative penalty of \$1,000, entered August 31, 2011 acting in the capacity of, engaging in the business of, or advertising or holding himself out as engaging in or conducting the business of a real estate salesperson doing residential rental locating without first obtaining a real estate license, in violation of Tex. Occ. Code §1101.351(a).

Arthur Greenstein (Dallas); License #460251 Agreed reprimand of broker license, entered August 31, 2011; Agreed administrative penalty of \$3,500, entered August 31, 2011 acting as broker doing business as a residential rental locator brokerage establishing an association by employment or otherwise with persons other than license holders if those persons were expected or required to act as a license holder to perform residential rental locator services, in violation of Tex. Occ. Code §1101.652(b)(26); and, by publishing or causing to be published advertisements of rentals that mislead or are likely to deceive the public, creates a misleading impression, or failed to identify the person placing the advertisement as a licensed broker or agent, and by failing to notify the Commission within 30 days of beginning or ceasing usage of a name in business other than the name in which one is licensed, in violation of Tex. Occ. Code §1101.652(b)(23) applied to residential rental locators through 22 Tex. Admin. Code §535.300(e).

Arthur Greenstein, Inc. (Dallas); License #572143 Agreed reprimand of broker license, entered August 31, 2011; Agreed administrative penalty of \$5,000, entered August 31, 2011 acting as a real estate brokerage doing residential rental locating establishing an association by employment or otherwise with persons other than license holders if those persons were expected or required to act as a license holder to perform residential rental locator services, in violation of Tex. Occ. Code §1101.652(b)(26); and, by publishing or causing to be published advertisements of rentals that mislead or are likely to deceive the public, creates a misleading impression, or failed to identify the person placing the advertisement as a licensed broker or agent, and by failing to notify the Commission within 30 days of beginning or ceasing usage of a name in business other than the name in which one is licensed, in violation of Tex. Occ. Code §1101.652(b)(23) applied to residential rental locators through 22 Tex. Admin. Code §535.300(e).

Turner, Patricia S. (Dallas); License #426347 Agreed reprimand of salesperson license, entered August 30, 2011; Agreed administrative penalty of \$2,000, entered August 30, 2011 acting negligently or incompetently in failing to accurately and adequately notify a buyer of a future toll way to be constructed near the property during contracting, in violation of Tex. Occ. Code §1101.652(b)(1); failing to disclose to a potential buyer a significant defect (the future toll way) known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property, in violation of Tex. Occ. Code §1101.652(b)(4); and, advising a person regarding the validity or legal sufficiency of an instrument indemnifying the agents but not seller in connection with buyer notification of the toll

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way without providing information available when not a licensed attorney, in violation of Tex. Occ. Code §1101.654(a)(2).

Johnson, Nancy Williams (Weatherford); License #484321 Agreed reprimand of salesperson license, entered August 30, 2011; Agreed administrative penalty of \$2,000, entered August 30, 2011 engaging in misrepresentation, dishonesty, or fraud when selling real property in the name of the license holder or the license holder's spouse by failing to disclose known previous problems with roots in the drainage system, in violation of Tex. Occ. Code §1101.652(a)(3); and failing to disclose in writing to any person with whom the licensee deals that she is a licensed real estate broker or salesperson acting on her own behalf or on behalf of the licensee's spouse in any contract of sale or rental agreement, in violation of 22 Tex. Admin. Code §535.144(b).

Braswell, Daisy M. (Plano); License #371651 Agreed 1 year suspension of salesperson license fully probated for 1 year, effective August 30, 2011; Agreed administrative penalty of \$3,500, effective August 30, 2011 acting negligently or incompetently in failing to protect the mineral rights of a seller during contracting, in violation of Tex. Occ. Code §1101.652(b)(1); and, advising a person regarding the validity or legal sufficiency of an instrument to protect seller's mineral rights upon conveyance when not a licensed attorney, in violation of Tex. Occ. Code §1101.654(a)(2).

Davis, Steven Michael, II (Keller); License #550508 Agreed surrender of broker license, effective August 30, 2011; Agreed to not file an application to obtain any license or certificate issued by the Commission for a term of three years three counts of procuring or attempting to procure a license under The Real Estate License Act for the license holder or a salesperson by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license by failing to disclose a pending Commission investigation of himself, in violation of Tex. Occ. Code §1101.652(a)(2); two counts of failing to apply to the Commission for inactive broker status on a form approved by the Commission for that purpose or by a letter providing the broker's name, license number, and current mailing address after broker dissolved two licensed business entities, in violation of 22 Tex. Admin. Code E §§535.121(a)(3) and 535.123(b); and by failing to notify the Commission promptly after dissolving licensed broker entities and by providing notice of a new sponsor and address information subsequent to dissolution, broker inadvertently allowed unlicensed persons to operate a rental agency or rental agencies while in association with his brokerage operations, in violation of 22 Tex. Admin. Code §535.13(C) (June 1, 2008) [now 22 Tex. Admin. Code §535.4(h)].

Curtus, Barbara Gayle (Plano); License #249907 Agreed 1 year suspension of salesperson license fully probated for 1 year, effective August 30, 2011; Agreed administrative penalty of \$2,500, effective August 30, 2011 acting negligently or incompetently in failing to protect the mineral rights of a seller during contracting and closing, in violation of Tex. Occ. Code §1101.652(b)(1).

Empire Home Warranty License #N/A Assessment of an administrative penalty of \$20,000, entered August 29, 2011; Ordered to cease and desist all unlicensed residential service company activities in Texas issuing a residential service contract or performing or arranging to perform services under a residential service contract without first obtaining a residential service company license, in violation of Tex. Occ. Code §1303.101(a); failing to maintain a funded reserve against its liability to provide repair and replacement services under its outstanding residential service contracts in this state, in violation of Tex. Occ. Code §1303.151; failing to maintain with Petitioner a bond or other security accepted by Petitioner as a guarantee that Respondent will meet its obligations to its contract holders, in violation of Tex. Occ. Code §1303.153(a); failing to file no later than April 1 of each year a report covering the preceding year, in violation of Tex. Occ. Code §1303.202(a); issuing an evidence of coverage to a person in this state that was not filed and approved by Petitioner, in violation of Tex. Occ. Code §1303.251(b); and using in conjunction with its evidence of coverage a schedule of charges for services covered under the contract that was not filed and approved by Petitioner, in violation of Tex. Occ. Code §1303.253(a).

Raymond, Richard A. (Dallas); License #3321 Agreed reprimand of professional inspector license, entered August 11, 2011; Agreed administrative penalty of \$500, entered August 11, 2011 failing to follow the specific requirements in the scope of the Standards of Practice for roof covering materials, roof structure and attic, by failing to report multiple problems with the roof of the property, as required by 22 Tex. Admin. Code §535.228(e); and failing to follow the specific requirements in the scope of the Standards of Practice for porches, balconies, decks, and carports, by failing to report mul-

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multiple problems with the deck, including but not limited to: rotten boards and other damage that caused the deck to be structurally unsound and beyond repair, as required by 22 Tex. Admin. Code §535.228(s).

Leboeuf-Petix, Tonya J. (Port Neches); License #540275 Agreed 36 month suspension of broker license fully probated for 36 months, effective August 5, 2011; Agreed administrative penalty of \$3,500, effective August 5, 2011 engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness while acting as a broker or salesperson, in violation of Tex. Occ. Code §1101.652(b)(2); failing to disclose to a potential buyer a significant defect that is known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property in violation of Tex. Occ. Code §1101.652(b)(4).

Fosnight, Buford Gale (Kemah); License #454830 Revocation of salesperson license, effective August 1, 2011; Assessment of an administrative penalty of \$3,500, effective August 1, 2011 engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness while acting as a broker or salesperson by residing in listed property under false promise of lease payment and better showing then failing to pay rent and damaging the property, in violation of Tex. Occ. Code §1101.652(a)(3) and §1101.652(b)(2); failing or refusing to produce on request, for inspection by the Commission, a document, book, or record, in violation of Tex. Occ. Code §1101.652(a)(5); failing to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission, in violation of Tex. Occ. Code §1101.652(a)(6).

Mirabal Montalvo & Associates, LLC (Corpus Christi); License #9000762 Agreed 1 year probationary broker license issued, effective August 23, 2011; Agreed administrative penalty of \$1,000, entered August 23, 2011 engaging in unlicensed real estate brokerage activities through its owner, a duly licensed real estate broker, or an associate salesperson and in so doing demonstrated a lack of good judgment and trustworthiness. Applicant presented sufficient other evidence of honesty, trustworthiness and integrity that satisfied the Commission as required under Tex. Occ. Code §1101.354(2) and the issuance of a probationary license was appropriate.

James, Melvin Bryan(Springtown); License #500346 Revocation of broker license, effective August 15, 2011 failure to repay the Commission for payment of \$50,000.00 made from the real estate recovery trust account toward satisfaction of a judgment as authorized by Tex. Occ. Code §110.655.

Isgar, Gilbert Barry (Katy); License #419941 Revocation of broker license, effective August 9, 2011 automatic revocation of license by operation of law upon imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision pursuant to Tex. Occ. Code §53.021(b) and in accordance with the Opinion no. GH-0064 of the Attorney General of Texas.

Brei, Scott Joseph (Dallas); License #433442 Suspension of salesperson license until payment in full of the replacement fees and \$500 administrative penalty, effective August 3, 2011; Assessment of an administrative penalty of \$500, effective August 3, 2011 failing within a reasonable time to make good a check issued to the Commission, in violation of Tex. Occ. Code §1101.652(a)(4); failing to pay a check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 Tex. Admin. Code §535.2(a).

Dodge, Warren Lee (Dallas); License #615338 Agreed 2 year probationary salesperson license issued, effective August 26, 2011 commission of an offense that directly relates to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).

Dodson, Kale Evan (Dallas); License #615233 Agreed 4 year probationary salesperson license issued, effective August 18, 2011 commission of an offense that directly relates to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).

TALCB Bulletin



TALCB was created by an act of the Texas Legislature in 1991 to license, certify and regulate real estate appraisers in Texas under state and federal laws.

Inside this issue: Registry Fee Increase (Page 1) From the Commissioner (Page 2) FACT Legislative Session (Page 3) Data Sought to Assist TALCB (page 3) Proposed Rule Actions (Page 4)

National Registry Fee Increasing to \$40 a year

Effective January 1, 2012, the National Registry fee is increasing to \$40/year (\$80 per two-year license). The increased fee will be required for all new licenses issued on or after January 1, 2012, timely renewals of licenses expiring after December 31, 2012, and all late renewals filed on or after January 1, 2012. This change was initiated by the Appraisal Subcommittee (ASC), as required by federal law, and all Registry fees are forwarded to the ASC. The following examples may be helpful in determining whether you will need to pay the increased fee:

Example – timely renewal:

An appraiser whose license expires November 30 files a renewal application on November 10. Because the new license is effective December 1, the Registry fee is \$50 (\$25/year).

Example – timely renewal:

An appraiser whose license expires December 31 files a renewal application on October 30. Because the new license is effective January 1, the Registry fee is \$80 (\$40/year).

Example – timely renewal:

An appraiser whose license expires January 31 files a renewal application on December 30. Because the new license is effective after January 1 (February 1), the Registry fee is \$80 (\$40/year).

Example – late renewal:

An appraiser whose license expires December 31 files a late renewal application on January 6. Because the new license is effective after January 1, the Registry fee is \$80 (\$40/year).

Example – new application:

An application is received on December 1, but the applicant does not pass the examination until January 3. Because the license is not issued until January, the Registry fee is \$80 (\$40/year).

Important Dates to Remember

TALCB Board Meeting—December 9

From the TALCB Commissioner...



Douglas E. Oldmixon

Mark Mrnak, Director of TALCB's Standards & Enforcement Services Division, and I just returned from the annual joint conference of Association of Appraiser Regulatory Officials (AARO), the Appraisal Subcommittee (ASC) and the Appraisal Foundation (TAF) in Washington DC. As expected, implementation of the many provisions in the federal Dodd-Frank bill highlighted the meetings,

along with release of the new 2012-13 version of USPAP. Recognizing and prosecuting mortgage fraud remains a hot topic.

Good news is that up to 30 states continue to implement AMC regulations and so there is no shortage of examples of proposed and current regulations. However, there is a lack of federal agency leadership on the issue as the various agencies are struggling with setup or expansion, hiring and coordination. The ASC and other federal agencies still need to write the final rules required to implement the Dodd-Frank bill and that will take some time yet. In the meantime, AARO has appointed an AMC Task Force that is working currently to assist with information coordination among the states.

Expect to see that task force develop into a full standing committee in the next year.

At the last Board meeting, many of the rules proposed at the 19 August meeting were adopted, but four rules regarding AMCs were re-proposed based on significant input from stakeholders and the recommendations of the Working Group. The next TALCB meeting is set for 9 December where it is expected final action will be taken on these. Before that meeting, the appointed HB 1146 Working Group will convene to discuss any comments received on these re-proposed rules and make recommendations to the Board. Please ensure your voice is heard by going to the agency's website or to the Texas Register to read and comment on these proposed rules.

Your Board is also streamlining one other process to be consistent with agency processes. A new applicant for an appraiser license must pay the National Registry Fee, but rather than collect it "up front" with the application fee, the agency will only collect it after all other licensing requirements have been satisfied. So if it takes multiple attempts to complete the exam, or any other requirement, the applicant will not have to pay the National Registry Fee until all steps have been successfully met. Look for this change in November. While this is a small matter, every bit helps in tight economic times.

As always, look for us to keep you informed as any law or rule changes affect Texas appraisers. We welcome your continued meaningful involvement as we move ahead.

TALCB LICENSED OR CERTIFIED APPRAISERS MAY BECOME TDLR LICENSED PROFESSIONAL TAX APPRAISERS

It might be of interest to many real estate appraisers that there was a bill passed in the last legislative session that amends the Property Tax Professionals (Assessor/Collectors and Property Tax Appraisers) Act.

As of September 1, 2011, real estate appraisers with an active certification or license from the Texas Appraiser Licensing and Certification Board may become a registered Professional Tax Appraiser under the Texas Department of Licensing and Regulation (TDLR) without any additional pre-registration education required.

Interested real estate appraisers may submit an application form (available at <http://www.license.state.tx.us/taxprof/taxprofreg.pdf> and provide your active TALCB License number in Box 13 of the form), pay the appropriate fee, and pass the required examination.

Perhaps a new line of business is appropriate for some appraisers?



This two hour workshop will highlight the new Appraisal Management Company Regulation Bill that went into effect September 1st, 2011 and how it affects the way appraisers will do business in Texas. In addition we will review the changes to the Texas Licensing & Certification Board (TALCB) rules. Appraisers will have an opportunity to ask questions for clarification and voice concerns!

Need a Reason to Attend? Here are a few:

Education - Learn about the latest developments affecting the AMC & TALCB Bills & Rules (2 hours of ACE requested and pending)

Networking - Discuss issues with other attendees and learn what is going on in the industry

Advocacy - It has never been more important to learn about legislative issues that are affecting our industry today! Attend this workshop to make sure your voice is heard! You will have the ability to provide input!

“HOW THE AMC & TALCB BILLS AFFECT TEXAS APPRAISERS”

SEMINAR DATE & LOCATION:

San Antonio - November 10th, 2011 ~ 1:00—3:00 pm
San Antonio CPA Continuing Education Training Center at
901 NE Loop 410 Ste 420 ~ San Antonio TX 78209

Presenters:

Roger Miller , Legislative Consultants for FACT
James E. Jacobs, FACT President
Sara Jones Oates, FACT Legislative Management Team
Chair
Brian Hearne, AMC Taskforce Chair
Joe Woller, TALCB Taskforce Chair

FACT serves as the face and voice of the appraisal industry in Texas. FACT enhances the professional lives of its members through advocacy, communication, education and service.

Data Sought to Assist TALCB:

Framing Appraisal Management Fee Assumptions

HB 1146 directed TALCB to begin registering and regulating Appraisal Management Companies (AMCs) in Texas by March 1, 2012. In preparing the initial Fiscal note for HB 1146, the agency researched fees charged by other states that regulate AMCs and the number of AMCs registered in other jurisdictions. In addition, the agency anticipated using the number of appraiser panelists serving any particular AMC to assist in reducing the overall fees collected by the agency to the minimum required to implement the law, exactly in the manner the federal Dodd-Frank law authorizes the ASC (Appraisal Subcommittee of FFIEC) to levy an AMC Registry fee . In that manner, the total fees paid by AMCs will at least partially reflect their size, or at least the size of their panel, offering some relief on fees to the smaller AMCs.

In order to sharpen the assumptions the agency needs to make in order to more realistically set AMC registry fees, we are asking for both AMCs and appraisers who work with them to answer a couple of questions for us. **First, for AMCs, what is the size of the panel of appraisers that you currently have in Texas?** If an average size panel is 400 appraisers, the fee per panelist collected by TALCB might be only half of what the fee would be if the average size panel

is 200 appraisers. **Secondly, for appraisers who work for AMCs as independent contractors, how many AMCs does the average appraiser work with?** If an average appraiser serves on a panel of 20 AMCs, then the fee might be less than if the average appraiser serves on only 10 panels. So we need to gather data on both of these questions. Please send your answers to general.counsel@talcb.texas.gov with the subject line **“DATA-Not a Comment”**. This will allow us to use your data without publishing your message as a “Comment” on the proposed rule.

Of course, we also encourage any other comments on the four proposed rules currently open for comments, to be sent to the same email address above. The rules may be found on our website at www.talcb.texas.gov under the Act & Rules tab. Remember that the more comprehensive and accurate information the agency has, the better assumptions it can make to assist in collecting only the fees needed to meet the operating budget. Lastly, recall that HB 1146 prevents AMCs from “charging back” to the appraiser any fee collected by TALCB. Thank you for your prompt assistance.

ADOPTED RULES

**Chapter 153. Rules Relating to
Provisions of the Texas Appraiser
Licensing and Certification Act**

22 TAC §153.1 Definitions

The amendments to Section 153.1:

- clarify that appraisal involves opinions, rather than estimates, of value
- modify the definition of “provisional license” to delete references to the statute regarding issuance of a provisional license, as House Bill 2375 repealed that license category
- add the definition of “USPAP” to reference the Uniform Standards of Professional Appraisal Practice *Effective 11-1-2011*

22 TAC §153.3 The Board

The amendments to Section 153.5:

- increase most application and renewal fees by \$10 per two-year licensure period. The trainee application and renewal fees, which were previously for a one-year approval, are proposed to be reduced on an annualized basis and restated as two-year fees (trainee approvals are proposed to be changed from one year to two years in the proposed amendment to §153.10)
- reduce from one year to six months the period of time during which a person may renew an expired license by paying a fee of two times the timely renewal fee and would amend a reference to the state treasury to the Texas Treasury Safekeeping Trust Company in accordance with fiscal changes due to the passage of Senate Bill 1000 *Effective 11-1-2011*

22 TAC §153.10 Issuance of
Certification, License, or Trainee
Approval

The amendments to Section 153.10:

- change the license period for a trainee approval from one year to two years

22 TAC §153.11 Examinations

The amendments Section 153.11:

- implement the provision of House Bill 2375 that prohibits an applicant who has failed the examination three times from retaking it until he or she has completed additional education as

required by the Board

- require an applicant who failed by one to five points to take 15 hours of additional education, an applicant who failed by six to ten pointed to take 30 hours, etc., with a maximum of 60 hours of additional education *Effective 11-1-2011*

22 TAC §153.13 Educational
Requirements

The amendments to Section 153.13:

- mirror previous amendments to §153.18, Appraiser Continuing Education (ACE), to extend clarifications regarding the duration of course approval and the process for revoking the approval of courses, to pre-licensure courses. *Effective 11-1-2011*

22 TAC §153.16 Provisional License

The amendments to Section 153.16:

- implement House Bill 2375's repeal of the provisional license category, deleting references to the issuance of such a license (approximately 20 provisional licenses that were issued prior to House Bill 2375's May 27, 2011 effective date remain valid until their expiration) *Effective 11-1-2011*

22 TAC §153.20 Guidelines for
Revocation, Suspension, or Denial of
Licensure or Certification

The amendments Section 153.20:

- implement provisions of House Bill 2375 that authorize the Board to issue probationary licenses and certifications, subject to reasonable terms and conditions as established by the Board *Effective 11-1-2011*

22 TAC §153.21 Appraiser Trainees and
Sponsors

The amendments to Section 153.21:

- change the trainee approval period from one year to two years and clarify that a trainee may be placed on inactive status *Effective 11-1-2011*

22 TAC §153.23 Inactive Certificate or
License

The amendments to Section 153.23:

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- specifically authorize inactive status for trainees
Effective 11-1-2011

22 TAC §153.26 Identity Theft

New Section 153.26:

- is primarily a non-substantive reorganization of provisions relating to identity theft
- clarifies that the form on which an appraiser who is the victim of identity theft is to report the issue to the Board is on the appraiser complaint form
Effective 11-1-2011

22 TAC §153.27 Certification and
Licensure by Reciprocity

The amendments to Section 153.27:

- conform the rules regarding issuance of a license or certification by reciprocity to changes made in House Bill 2375 as required by the federal Dodd-Frank Wall Street Reform and Consumer Protection Act
- extend reciprocity, subject to the usual background check requirements, to licensed and certified appraisers from any state whose appraiser program has not been disapproved by the Appraisal Subcommittee *Effective 11-1-2011*

**Chapter 157. Rules Relating to Practice
and Procedure**

22 TAC §157.1 Definitions

The amendments to Section 157.1:

- clarify that the definitions in 22 TAC Section 153.1 apply to actions against an appraiser and the definitions in 22 TAC Section 159.1 apply to actions against an appraisal management company *Effective 11-1-2011*

22 TAC §157.7 Denial of a License

The amendments to Section 157.7:

- clarify that a person requesting a criminal history evaluation letter does not have a right to appeal the determination (until and unless the person actually files an application) and further extends the provisions of the section to appraisal management companies *Effective 11-1-2011*

**New Chapter 159, Rules Relating to
the Provisions of the Texas
Appraisal Management Company**

Registration and Regulation Act

22 TAC §159.1 Definitions

New Section 159.1:

- establishes definitions relevant to registration and regulation of appraisal management companies (AMCs)
Effective 11-1-2011

22 TAC 159.3.

New Section 159.3:

- establishes parameters for the Appraisal Management Company Advisory Committee
Effective 11-1-2011

22 TAC 159.4

New Section 159.4:

- clarifies the Board's jurisdiction over AMCs acting within various exceptions to the registration requirement as outlined in Chapter 1104
Effective 11-1-2011

22 TAC §159.101 Registration
Requirements

New Section 159.101:

requires registrants to notify the Board within 30 days after beginning or ceasing to use an assumed business name *Effective 11-1-2011*

22 TAC §159.102 Eligibility for
Registration; Ownership

New Section 159.102:

- permits applicants to rely on Appraisal Subcommittee records for the purpose of certifying to the Board that its owners have not had adverse action against a license that would prevent the applicant from becoming registered as an AMC *Effective 11-1-2011*

22 TAC §159.103 Applications

New Section 159.103:

- establishes technical requirements for applications
- requires registrants to retain ownership records for a period of five years from the date of application *Effective 11-1-2011*

Board Meeting

22 TAC §159.104 Primary Contact;
Appraiser Contact

New Section 159.104:

- establishes parameters for the primary contact and appraiser contact
- establishes a process by which a registrant may add, remove, or change either of these persons *Effective 11-1-2011*

22 TAC §159.105 Denial of
Registration

New Section 159.105:

- establishes moral character/criminal history requirements, standards for evaluating criminal history information, and the process by which the Board may deny an application for registration *Effective 11-1-2011*

22 TAC §159.107 Expiration

New Section 159.107:

- provides that a registration is valid for the term for which it was issued unless it is suspended or revoked for cause *Effective 11-1-2011*

22 TAC §159.108 Renewal

New Section 159.108:

- establishes a process for the issuance of renewal notices and for the renewal of a registration *Effective 11-1-2011*

22 TAC §159.109 Inactive Status

New Section 159.109:

- provides a process for returning to active status
- clarifies that a registrant may not engage in any act for which registration is required while on inactive status *Effective 11-1-2011*

22 TAC §159.156 Business Records

New Section 159.156:

- clarifies that a communication between an AMC and an appraiser is "substantive" if it relates to the appraiser's qualifications or to the scope of work of an assignment *Effective 11-1-2011*

22 TAC §159.159 Disclosure of
Registration Number

New Section 159.159:

- clarifies that the requirement that registrants include their registration number on all documents used to procure appraisals applies to all types of documents used for that purpose but not to general advertisements *Effective 11-1-2011*

22 TAC §159.161 Appraiser Panel

New Section 159.161:

- establishes a process by which a panelist may be added to or terminated from a panel *Effective 11-1-2011*

22 TAC §159.162 Dispute Resolution

New Section 159.162:

- provides guidelines for a registrant's dispute resolution process as required under the Act *Effective 11-1-2011*

22 TAC §159.201 Guidelines for
Revocation, Suspension, or Denial of
a Registration

New Section 159.201:

- establishes parameters for the revocation, suspension, or denial of a registration for conduct, as articulated in the rule, that suggests that a person is unfit to act as an AMC *Effective 11-1-2011*

22 TAC §159.204 Complaint
Processing

New Section 159.204:

- establishes a process, modeled after the process for complaints against an appraiser, by which the Board would receive and process complaints against AMCs *Effective 11-1-2011*

PROPOSED RULES

22 TAC §157.11 Contested Cases

The proposed amendments to Section 157.11;

- would delete an erroneous reference to the statute relating to notice of hearing and conforms it to general provisions regarding contested cases for appraisal management companies

Inspector Insight



***Inside this issue: Approved Inspector SOP/Legal/ Ethics Providers
(Page 1) Your FAQ's Answered (Page 2)***

The providers listed below are currently approved to offer the Texas Standards of Practice/Legal/Ethics Update:

- The University of Texas at Arlington (with American Home Inspectors Training)
6 hours classroom- satisfies pre-licensing and renewal requirements
- Real Estate Training Systems, LLC
8 hours classroom, satisfies renewal hours only
- Texas Association of Real Estate Inspectors
6 hours classroom, satisfies renewal hours only
- Champions School of Real Estate
8 hours classroom, satisfies renewal hours only
- Texas A & M Commerce (with Center for Professional Development)
6 hours correspondence - satisfies pre-licensing and renewal requirements
- Champions School of Real Estate in association with Lone Star College
8 hours correspondence - satisfies pre-licensing and renewal requirements
- Champions School of Real Estate in association with Lone Star College
38 hours Home Inspector's Course includes 6 hours of Texas Standards of Practice/Legal/Ethics Update –correspondence – satisfies pre-licensing and renewal requirements. (This course has to be taken in the 38 hours format only)

Important Dates to Remember

Standards of Practice Subcommittee—October 25

Commentary Subcommittee— October 27

Inspector Committee Meeting— November 1

Your Frequently Asked Questions Answered:

Q: The Standards of Practice require inspectors to report as deficient the lack of a 1-3/4" solid wood or fire-rated door between a house and garage. How should an inspector positively identify fire-rated doors when the markings are covered by paint?

A: Information regarding fire ratings of doors is often obscured by paint. In that case, inspectors are required to do their best to determine whether the door is fire-rated and to report accordingly. In some instances, the inspector will only be able to report that he or she was not able to determine whether the door was fire-rated or that the door appeared to be (or did not appear to be) fire-rated.

Q: Is it a "reasonable opinion of the inspector" NOT to report the absence of AFCI devices as deficient in houses built before AFCIs were required? Does the specific limitation not requiring operation of over current devices apply to AFCI devices, which are also over current devices? Will TREC enforcement allow the inspector to use his reasonable opinion and judgment, to not report the absence of AFCI devices where not required by NEC codes, as deficient, but rather allow the inspector to inform real estate consumers about the technology of AFCI devices, and refer them to www.usconsumersproductssafetycommission.gov and a licensed electrician to specify the work and cost to have AFCI devices?

A: Section 535.229(a) of the Standards of Practice require inspectors to report as deficient the absence, or failure of operation, of AFCIs in all houses, not just those built after a certain year, with an exception to the requirement to test them in cases in which the inspector reasonably believes that testing them may result in damage to the property. While TREC recognizes that the building codes have not always required AFCIs, the agency believes that it is important for consumers to be made aware of these safety devices when they are not present and functioning in a home as a consumer protection issue.



Couldn't make it to the last TREIC Meeting? We've got you covered

All of the meeting Agenda's and Minutes are posted on the TREC Website Here: www.trec.state.tx.us/newsandpublic/meetings.asp#inspector

Find out everything that happened during the meetings from the comfort of your office chair!