



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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April is Fair Housing Month: To market, to market but follow the law

Forty-five years ago, Congress enacted Title VIII of the Civil Rights Act of 1968, more commonly referred to as the Fair Housing Act.

Housing agencies across the country since have traditionally celebrated the passage of this landmark legislation by designating April as Fair Housing Month. This year is no exception.

Most individuals who show, own, or manage rental housing properties understand not to discriminate based on race, color, national origin, religion, sex, disability, or familial status.

But some in the housing industry may not have a clear understanding of how to market and advertise available properties in the spirit of the Fair Housing Act. So, to mark the occasion of Fair Housing Month 2013, here are six helpful best practice tips:

1. All marketing and advertising material should include the Fair Housing/Equal Opportunity (FHEO) logo. This logo should be visible on all housing-related materials and comparable in size to any other symbols used. Electronic versions of the FHEO logo are available on the US Department of Housing and Urban Development's (HUD) Web site at www.hud.gov. Radio spots should include the Fair Housing slogan: "Equal Housing Opportunity."

2. Distributing housing information through the exclusive use of media catering to the majority population in an area to the exclusion of any available non-English language or other minority media could result in a violation of the Fair Housing Act.

3. The same may be said for the strategic placement of billboards in certain portions of town or brochures distributed only within a limited geographic area.

4. Photographs, drawings, or other graphic elements may not be used to indicate restrictions based on race, color, religion, sex, disability, familial status, or national origin.

5. Models used in display advertising, brochures, or other visual media should be clearly definable as reasonably representing majority and minority groups in the market area, both sexes and, when appropriate, families with children.

6. Always be prepared to provide reasonable accommodations for persons with disabilities and language assistance for persons with limited English proficiency.

This is only a sample of the guidelines real estate professionals and property developers, owners and managers need to follow, especially for properties supported by or receiving any type of government subsidy.

Fair Housing Month is a good time to learn the specifics of the Fair Housing Act and its advertising and marketing regulations. To learn more, visit HUD online at www.hud.gov. Read and follow the letter of the law, and you'll be in good shape.

Otherwise, you're just advertising for trouble.

Article originally written by Texas Department of Housing and Community Affairs.

From the Administrator

It is Spring, the real estate market is picking up, and the Commission is humming with activity. While our phones are very busy, remember that we answer calls from 7 AM to 6 PM every business day, so please try to call before 10 AM or after 3 PM and you will have a better chance of getting right through on one of our 14 lines without a hold time. And also, most of our services are available online, so you can renew your license or change a sponsor without any personal assistance needed.

2013 promises to be a steady building year for the agency. We look forward to implementing additional online tools to serve both license holders and the public, and upgrading many of our website tools to be more comprehensive, accurate and responsive. We are in the early phases of a comprehensive website update project to make it much easier to find agency information and services. Our current website while functional, has significant limitations. As always, we welcome your comments on all we do.

As Administrator, I will be attending the Texas Real Estate Teachers Association state conference in Bryan for the first time later this month. They meet each year in April (as do many

other organizations) and although they are very generous in extending an invitation each year, I finally have no conflict in my schedule. Since education is one of TREC's most important missions, I look forward to spending time with these essential industry professionals.



Douglas E. Oldmixon

The Commission will meet next on Monday, May 6th at 10 AM in Room 170 of the Stephen F Austin building at 1700 North Congress Avenue, just two blocks north of the State Capitol. As always, we welcome our license holders and any members of the public who are interested in watching the Commission in action and offering public comments. If you can't make it, know that the meetings are also broadcast live over the internet and video recorded as the official record of the meeting. Links to the agenda, materials, live broadcast and video archive are all available on the agency's website.

Welcome to Texas Realtors

April 9, 2013 is Texas REALTOR hill visit day at the Texas Capitol. While we know many of you will have very busy days meeting with your legislators, the Commission and staff want to extend the invitation to all those Texas REALTOR members who are in attendance to come on down to the TREC offices. We are located just up the street from the Capitol and would love to have you all come by and take a

tour of our new offices! We might even have your old master files waiting for you!

We are located at 1700 North Congress Avenue, in the Stephen F. Austin Building. Head on over if you have time, we would love to meet you and show you around!

For additional information please email Christine Anderson at christine.anderson@trec.texas.gov.

TREC Legislative Update

It has been a relatively quiet session in terms of legislation related to the regulation of real estate related activity. In fact, only three bills have been filed that specifically address TREC license holders.

An inspector housekeeping bill has been filed in both the Senate - SB 1296 (Taylor), and the House - HB 2911 (Kuempel). This bill contains provisions designed to upgrade the quality of real estate inspectors in Texas and conform agency practices related to inspectors to match those used by TREC for its other licensees. The bill adds a fingerprinting requirement and criminal history background review of license holders, provides a late renewal provision for inspectors, grants applicants a full year to complete the application process, and contains language that enables TREC to better communicate with inspectors.

The bill also clarifies the pre-license education requirements to include some hands-on training prior to a license holder commencing an actual field inspection. It clarifies the current mandated financial responsibility requirements by adding a bond alternative to E&O coverage, under which TREC could continue to issue and renew licenses, and allow inspectors to continue to

work, should the market cease to provide E&O coverage. Finally, the bill provides a mechanism for winding down the Real Estate Inspection Recovery Fund, including a provision to refund to active inspectors up to \$100 of the fees each previously paid into the recovery fund.

A bill has also been filed in both houses concerning timeshare owner associations - HB 2944 (King) and SB 1372 (Hinojosa). Timeshare owners associations are currently exempt from the provisions mandated by the Homeowners Association Act found in Chapter 209 of the Texas Property Code that govern the operation of homeowners associations. This bill would create a comparable set of provisions under the Texas Timeshare Act (Chapter 221 of the Texas Property Code) applicable to the governance of timeshare owners associations.

Finally, HB 2696 (Johnson) would prohibit a residential service company (RSC) from requiring a homeowner, lessor or renter to provide a home inspection report to the RSC after the RSC has already contracted with the homeowner, lessor or renter.

The full text of these bills can be found on the Texas Legislature Online website www.capitol.state.tx.us.

Relationship Management: You Have to Pay to Play

The Relationship Management Tool (RMT) has been up and running for 6 months and its positive impact has been felt by both the agency and our license holders. While the RMT is used for the most part with little or no issues, there is still some confusion on the part of some of our license holders as to what point in the RMT process a sponsorship is considered active.

The RMT does not send invitations for a sponsorship until payment is made by the

requesting party. In addition, a sponsorship is not active until the recipient accepts the invite.

So, just because a salesperson has paid and sent an invitation to a new broker does not mean that salesperson can practice real estate. The sponsorship becomes active only when the broker accepts the invite.

For more information on the RMT and all of TREC's online services, check out our [user guide](#).

Information for Brokers and Salespersons Regarding Use of Unlicensed Assistants in Real Estate Transactions

Brokers and salespersons often use unlicensed personnel for assistance in conducting their real estate brokerage activities. Such unlicensed persons, sometimes referred to as administrative assistants, can be of great help to a busy agent. However, care must be taken to ensure that the unlicensed person does not conduct any of the activities for which real estate licensure is required. This article defines some of those activities which may and may not be legally conducted by unlicensed persons.

Sections 1101.351(a) and 1101.758 of The Real Estate License Act establish that it is a crime for an unlicensed person to engage in activity for which a real estate license is required. The broker or salesperson that employs an unlicensed person might be criminally charged for the crime as well. In addition, TREC may take disciplinary action against a broker or salesperson that pays or associates with an unlicensed person who engages in activities that require a real estate license. Authority for this disciplinary action is set out in Sections 1101.652 (b)(11) and (26) of the License Act. For these reasons, it is important to distinguish between those activities that do and those that do not require a real estate license. Section 1101.002(1) (A) of the License Act sets forth a list of activities that require licensure and are worthy of a close reading.

Preliminarily, the real estate brokerage activities must be "for another" person or entity. This means that persons who are buying, selling or leasing their own property do not need a license; they are acting for themselves and not for another person. The activities must also be for a fee or something of value, or with the intention of collecting a fee or something of value. This means, for example, that an unlicensed person whose neighbor has been transferred out of state may solicit tenants and negotiate a lease on behalf of the neighbor so long as the person does not receive or expect to receive anything of value for helping.

The list of activities requiring licensure may be summarized and placed in two categories (but remember, this is a summary only and not all inclusive). First, and as used in the paragraph above, are those activities in which a person directly helps another buy, sell, or lease real property. These activities, such as negotiating a listing agreement with a property owner, spending the afternoon with a couple showing houses for sale, or negotiating a contract to buy or lease real property, obviously require licensure. These "direct" activities are seldom the subject of debate or controversy.

The second category of activities might be referred to as "indirect" activities and are more troublesome. Section 1101.002(1)(A)(viii) of the License Act requires licensure of those persons who procure or assist in procuring prospects to buy, sell, or lease property. Section 1101.002(1) (A)(ix) of the License Act requires licensure of those persons who procure or assist in procuring properties to be bought, sold, or leased. If the words "assist in" were read broadly enough, virtually everyone working in a real estate office would need a license. Common sense dictates, however, that many activities can be legally conducted in a real estate brokerage office that do not require licensure. There may sometimes exist only a thin line between those activities that require licensure and those that do not. The foregoing general rules and the following discussion of factual situations may help licensees accurately draw this line.

Q: May an unlicensed person, identified as such, make calls to determine whether a person is interested in buying or selling property, or has property they wish to sell, and if so, make an appointment for a licensed agent to talk to them?

A: No. Often referred to as "telemarketing," any such activities conducted in Texas must be conducted by a licensee. In Tex. Atty. Gen. Op. H

Use of Unlicensed Assistants (continued)

-1271 (1978), the attorney general concluded that a license was required. Also, Commission Rule 535.4(e) makes it clear that all solicitation work must be conducted by licensees.

Q: May an unlicensed person sit in on an open house?

A: Yes, but care must be taken that the unlicensed person does not "show" the house to prospective purchasers. Commission Rule 535.4 (c) makes clear that only licensed agents are allowed to show properties. On the other hand, Commission Rule 535.5(h) also specifically allows a broker to hire an unlicensed person to serve as a "host or hostess" at homes offered for sale by the broker. The Rules do not define these terms, and such a hostess should be limited to welcoming the visitors. The hostess may register the guests and refer inquiries to a licensee. Clearly, the hostess must not point out features of the home or neighborhood to visitors; however, as is the case with secretaries and receptionists discussed below, the hostess may distribute a flyer or brochure that describes the property.

Q: May unlicensed assistants set appointments to show a listing?

A: Yes. Under the general rules stated above, it is permissible for an assistant to call a homeowner and schedule an appointment for the broker to bring a potential buyer to see the home. If the broker then becomes tied up on other matters, can the unlicensed assistant drive the purchaser to the listing and let them in the home? Again, yes, but extreme care must be taken that the assistant does not engage in "showing" the property. The assistant should identify himself as an unlicensed assistant and explain the assistant's limited role. Any questions that arise regarding the property or the purchase of the property must be referred to a licensee.

Q: May the unlicensed assistant place "for sale" signs; open a property or accompany inspectors; place newspaper advertisements as directed by the broker?

A: Yes, subject to the following guidelines.

Commission Rule 535.5(g) provides that answering the telephone and acts of a secretarial nature do not require licensure. Clerical employees need not be licensed so long as they do not engage in solicitation and do not hold themselves out as licensed agents. Further, Commission Rule 535.5(g) also states that an unlicensed clerical or secretarial employee, identified to callers as such, may confirm information concerning the size, price and terms of property advertised. Taken together, this means that an unlicensed person may, after identifying himself or herself as an unlicensed person, confirm information previously advertised to callers or persons dropping by. The unlicensed person should not give information about properties other than that inquired about, and should refer any requests for information regarding other properties to a licensed agent. For example, the assistant might confirm that a particular property called about has three bedrooms and one bath, as previously advertised; however, the assistant may not attempt to identify properties which instead have two baths and bring these to the attention of the caller. Such questions must be referred to a licensee. The assistant should not attempt to "qualify" the caller in any respect. Many other duties that are administrative in nature can be safely performed, such as inputting data into a computer or typing contracts, but, only as specifically directed by a licensee. Support personnel can order supplies, schedule maintenance, and all the other things that are involved in keeping the office open. Bookkeeping and office management functions may be performed by an unlicensed assistant, as discussed immediately below.

Q: What functions may an unlicensed office manager perform?

A: Unlicensed persons may perform administrative tasks such as training or motivating personnel, and those tasks dealing with office administration and personnel matters. In addition, Commission Rule 535.2(c) notes that who a broker designates to sign checks in the brokerage is not regulated by the Commission.

Use of Unlicensed Assistants (continued)

Thus, an unlicensed person may serve as bookkeeper for the company and handle personnel matters. Such an office manager may also serve as a trainer. However, Commission Rule 535.4(d) further states that an unlicensed person may not direct or supervise agents in their work as licensees. Therefore, an unlicensed person may not direct or advise agents in their attempts to help others buy, sell, or lease property. They may not review contracts, or help make "deals" work. These tasks are properly conducted only by licensed persons.

Q: May unlicensed persons assist in arranging financing?

A: Yes; however, great care must be taken that the person acts solely in an administrative capacity. An unlicensed assistant may be directed by a broker or salesperson to assist a particular buyer in obtaining information and forms to apply for and qualify for a loan. However, these acts should be at the direction of a licensee. Mortgage brokers and loan originators are licensed by the [Texas Department of Savings and Mortgage Lending](#), and any questions regarding the requirements for licensure for persons dealing with financing issues should be directed to that agency.

Q: May unlicensed persons serve as property managers for rental properties?

A: Those who hold themselves out as "property managers" for others and for compensation must be licensed, provided the person also rents or leases the property for the property owner. In addition, Section 1101.002(1)(A)(x) of the License Act requires licensure for a person who controls the acceptance or deposit of rent from a resident of a single-family residential real property unit. Section 535.4(g) of the Commission Rules provides that a person controls the acceptance or deposit of rent if the person has the authority to use the rent to pay for

services related to management of the property or has the authority to deposit the rent into a trust account and sign checks or withdraw money from the account. Many property management activities, such as bookkeeping and arranging for repairs, do not generally require licensure. So long as an unlicensed person carefully limits his or her property management activities to those which do not require a license, neither criminal charges nor Commission disciplinary action would be warranted. Note that persons acting as on-site managers at apartment complexes are exempt from licensure under Section 1101.005 (7) of the License Act.

Q: What can a licensee do to avoid criminal or disciplinary actions?

A: First, a broker should NOT let his or her license or any of the licensed associates' licenses lapse. The lapse of a license, often inadvertent, is a common basis for disciplinary action on the grounds of improper unlicensed activity. Second, analyze any new factual situation according to the rules above to determine the extent to which the unlicensed person is being allowed to act with discretion, and how close the unlicensed person is "directly" assisting others in buying, selling, or leasing property. If still troubled, contact your attorney. You may also write or email the Commission (or call in an emergency) for an informal opinion based on a particular fact situation. Managing brokers might gain some protection from disciplinary action by establishing written guidelines and training dictating to both their agents and unlicensed personnel what is allowed and not allowed of non-licensees.

As always, you should contact your attorney regarding matters raised by this article. You may also wish to ask your attorney for advice regarding potential civil liability for acts performed by unlicensed persons.

Important Dates to Remember

Education Standards Advisory Committee Meeting— April 10, at 10a.m.

TREC Commission Meeting— May 6, at 10a.m. (watch live by [clicking here](#))

WHAT YOU SHOULD KNOW ABOUT RESIDENTIAL SERVICE CONTRACTS

Under Chapter 1303, Occupations Code, a residential service contract is an agreement where a residential service company is paid a fee to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling or air conditioning systems of a residential property. These contracts are generally one year, but can be more or less.

The service contract is not insurance, which does not typically cover wear and tear. The service contract is also not a true “warranty”, which guarantees the work performed. With few exceptions, the service contract will cover only those named items which are in good, working order at the time of the purchase of the contract and which cease functioning properly due to normal wear and tear. Many times “pre-existing” problems and items that are not well maintained pursuant to the manufacturer’s instructions are excluded from coverage.

What should a real estate licensee know?

By law, the service contract must be understandable and free from misleading language, with the coverage and exceptions to coverage spelled out clearly. To avoid consumer misunderstandings about what is covered, **real**

estate licensees need to be familiar with the general content of these service contracts and not claim that a particular item is covered or not covered.

- A real estate licensee **must be especially careful** not to convey a message to any party that the service contract “covers everything.”
- A real estate licensee **must refrain from** making statements such as “don’t worry about ‘X’, I am sure the service contract will cover that”.

If a licensee represents one or both parties to a real estate transaction and receives a payment for services provided for or on behalf of a residential service company, the licensee must complete a TREC Form RSC-1, Disclosure of Relationship with Residential Service Company, form (the form is on our website). The licensee must provide the form to each party the licensee represents.

Enforcement

The Commission regulates both real estate licenses who make representations about residential service contracts as well as the residential service companies who issue those contracts.

New Electronic Minutes Now Available

The Commission recently approved the use of electronic minutes, along with a bookmarked video recording of the Commission meetings, as the official record of the meetings. While the public can still watch an archived video of the meeting in its entirety, this new and innovative process allows the public to go directly to any agenda item that is of particular interest to them by a simple click of their mouse. This is how it works:

- The electronic minutes consist of an annotated meeting agenda summarizing the actions taken by the Commission for each agenda item is

placed on the TREC website as.

- Those minutes are electronically tied to the archived video of that particular meeting.
- Each agenda item is linked to the point in the video where discussion of that item took place.
- Simply click on a specific agenda item and you will be taken directly to that part of the meeting to watch the Commission deliberate that item .

The electronic minutes for the February 2013 Commission meeting will be available on the TREC website on April 12 and can be accessed at: www.trec.texas.gov/newsandpublic/meeting.asp

Rule Actions proposed for adoption at the May 6, 2013, Meeting of the Commission.

PROPOSED RULES

Chapter 535, General Provisions

Subchapter G. Mandatory Continuing Education

22 TAC §535.75 Education Standards Advisory Committee

The amendment changes the expiration date for the term of appointments to the committee and expands the term officers serve to two years .

Subchapter N. Suspension and Revocation of Licensure

22 TAC §535.144. When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child

The amendment streamlines the rule for clarity and provides a definition of "license holder" for purposes of the rule. The definition of "license holder" in the amendment includes the license holder's spouse, a business entity in which the licensee is more than a 10% owner (in the existing rule) and a trust of which the licensee is the trustee or of which the licensee or the licensee's spouse, parent or child is a beneficiary .

Subchapter R. Real Estate Inspectors .

22 TAC §§535.206. The Texas Real Estate Inspector Committee

The amendment reduces the term served by public members of the committee from six years to two years. There are no term limits in the rule as proposed, so members could serve for additional terms if reappointed by the Commission.

22 TAC §535.223. Standard Inspection Report Form.

TREC previously proposed amendments to this rule in November 2012, but withdrew them on February 12, 2013. The amendments track revisions to the inspector standards of practice that are re-proposed under a separate rule. (See §§535.227-535.233). The amendments also clarify how the form is to be used and in what ways an inspector may modify the form. The

amendments provide an exemption for inspectors performing single component systems inspection, adopt by reference a new inspection form and remove the requirements for the two current forms.

22 TAC 535.227-§535.233. Standards of Practice. (REPEAL).

TREC previously proposed the repeal of the Standards of Practice in November 2012, but withdrew the repeal on February 12, 2013. The repeal of the sections is re-proposed because the subjects addressed in these sections will be covered in new §§535.227-535.233 being simultaneously re-proposing as part of the Real Estate Inspector Committee comprehensive review and recommendations regarding inspector standards of practice.

22 TAC §535.227-§535.233. Standards of Practice. (NEW)

TREC previously proposed the rules regarding Inspector Standards of Practice (Standards) in November 2012, but withdrew them on February 12, 2013. The new Standards are re-proposed following revisions made in response to comments received after the previous publication. The proposed rules make several non-substantive changes to the Standards by making them easier to read and providing a clearer understanding of what an inspector is and is not required to inspect and report. In addition, the rules make several substantive changes to the Standards to encourage a more performance based approach to real estate inspections. The new rules are proposed following a comprehensive review of the Standards by the Texas Real Estate Inspector Committee, an advisory committee of six professional inspectors and three public members appointed by TREC. Both the substantive and non-substantive revisions are recommended by the Committee. A detailed explanation of the revisions is provided in the [preamble](#) to the proposed rules.

<p>Case#: 121690 ATKERSSON, JON (license # 0) None SPRING(MONTGOMERY) Effective Date: 2/4/2013</p> <table border="1" data-bbox="110 361 355 453"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.351(a)</td> </tr> </table>	Violation(s)	1101.351(a)	<p>Ordered to cease and desist all unlicensed real estate brokerage activities. Assessment of an administrative penalty of \$5,000.00.</p>	<p>Consumer Complaint Respondent performed unlicensed real estate brokerage activity by negotiating the resale of a deeded timeshare interest.</p>								
Violation(s)												
1101.351(a)												
<p>Case#: 121856 PALOMARES, ORPHA RUTH (license # 502650) Real Estate Broker / Salesperson-I CYPRESS(HARRIS) Effective Date: 2/15/2013</p> <table border="1" data-bbox="110 726 427 1201"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.652(b)(01)</td> </tr> <tr> <td>1101.652(b)(02)</td> </tr> <tr> <td>1101.652(b)(05)</td> </tr> <tr> <td>1101.652(b)(09)</td> </tr> <tr> <td>1101.652(b)(23)</td> </tr> <tr> <td>22 TAC 535.146(a) (1/11)</td> </tr> <tr> <td>22 TAC 535.146(e) (1/11)</td> </tr> <tr> <td>22 TAC 535.154(e)</td> </tr> <tr> <td>22 TAC 535.159(h)</td> </tr> </table>	Violation(s)	1101.652(b)(01)	1101.652(b)(02)	1101.652(b)(05)	1101.652(b)(09)	1101.652(b)(23)	22 TAC 535.146(a) (1/11)	22 TAC 535.146(e) (1/11)	22 TAC 535.154(e)	22 TAC 535.159(h)	<p>Agreed one year suspension of broker license fully probated for one year. Agreed administrative penalty of \$1,000.00.</p>	<p>Consumer Complaint Without documenting the terms in writing, Respondent told a prospective tenant that property would be held for her if she would deposit money into Respondent's bank account. The prospective tenant did not deposit the total amount, the property was not leased to her, and her money was refunded only after the complaint was filed. Respondent used an assumed name without notifying the Commission and placed advertisements which did not identify her as a licensee. Respondent failed to maintain trust funds in a separate trust account designated as such and commingled trust funds with non-trust funds.</p>
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22 TAC 535.146(e) (1/11)												
22 TAC 535.154(e)												
22 TAC 535.159(h)												
<p>Case#: 130455 VEGSUND, RICHARD H JR (license # 508082) Real Estate Broker / Salesperson-I CYPRESS(HARRIS) Effective Date: 2/21/2013</p> <table border="1" data-bbox="110 1476 407 1711"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.651(b)</td> </tr> <tr> <td>1101.652(b)(23)</td> </tr> <tr> <td>22 TAC 535.144(b)</td> </tr> <tr> <td>22 TAC 535.154(e) (3/11)</td> </tr> </table>	Violation(s)	1101.651(b)	1101.652(b)(23)	22 TAC 535.144(b)	22 TAC 535.154(e) (3/11)	<p>Agreed administrative penalty of \$4,000.00. Agreed completion of 30 classroom hours in a property management course on or before June 20, 2013.</p>	<p>Consumer Complaint Respondent failed to disclose in writing to a tenant that he was a licensee and had ownership interest in the beneficiary of a trust that was the owner of the property. Respondent used an assumed name engaging in property management services not through his sponsoring broker and without notice of the name to the Commission. He accepted compensation for these services and advertised these services without his broker's name or identification that he was a licensee.</p>					
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1101.651(b)												
1101.652(b)(23)												
22 TAC 535.144(b)												
22 TAC 535.154(e) (3/11)												

<p>Case#: 121621 FEIGELSON, EUGENE ALEX</p> <p>(license # 244738) Real Estate Broker / Salesperson-I HOUSTON(HARRIS)</p> <p>Effective Date: 2/27/2013</p> <table border="1" data-bbox="110 495 310 590"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.652(b)(01)</td> </tr> </table>	Violation(s)	1101.652(b)(01)	<p>Agreed reprimand of broker. Agreed administrative penalty of \$1,500.00.</p>	<p>Consumer Complaint</p> <p>Respondent entered into a property management agreement (PMA) with property owners and prepared and executed at least two versions with different terms. In the PMA, Respondent listed himself and an unlicensed individual and business entity as the real estate brokers. The PMA stated that the property was to be managed by another unlicensed business entity. Respondent prepared and signed a lease which stated that he, along with an unlicensed individual and business entity, were the managers of the property and responsible for rent collection. Respondent collected rent when it was unclear whether the PMA was in effect and that rent has not been returned to the property owners.</p>			
Violation(s)							
1101.652(b)(01)							
<p>Case#: 110261 VELA, MARKY LEE</p> <p>(license # 494544) Real Estate Broker / Salesperson-I SAN MARCOS(HAYS)</p> <p>Effective Date: 2/28/2013</p> <table border="1" data-bbox="110 888 383 1146"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.652(b)(01)</td> </tr> <tr> <td>22 TAC 535.146(e) (1/11)</td> </tr> <tr> <td>22 TAC 535.154(c) (3/11)</td> </tr> <tr> <td>22 TAC 535.159(f)</td> </tr> </table>	Violation(s)	1101.652(b)(01)	22 TAC 535.146(e) (1/11)	22 TAC 535.154(c) (3/11)	22 TAC 535.159(f)	<p>Agreed two year suspension of broker license fully probated for two years. Agreed administrative penalty of \$2,100.00.</p>	<p>Consumer Complaint</p> <p>The licensee, while still a salesperson, entered into a leasing and property management agreement with owners of a residential property without the involvement of his sponsoring broker in setting up a financial account to handle funds that should have been held in trust. Later, the agreement, funds, and management responsibilities were moved with the licensee to a subsequent sponsoring broker without the consent of his first broker or the property owners. Funds that should have been held in trust were commingled with the licensee's operating account. The licensee failed to complete lease forms properly and gave inaccurate information to the owners related to the size of a dog owned by prospective tenants. The licensee did not have a backup system for maintaining financial records related to the property and certain records could not be produced for the owners and the Commission. The Commission had not been notified in writing by the licensee's sponsoring brokers of a business name he used in his brokerage activities.</p>
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1101.652(b)(01)							
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22 TAC 535.154(c) (3/11)							
22 TAC 535.159(f)							
<p>Case#: 121506 BYERS, PATRICK MICHAEL</p> <p>(license # 6600) Inspector-I RICHARDSON(DALLAS)</p> <p>Effective Date: 2/28/2013</p> <table border="1" data-bbox="110 1402 383 1497"> <tr> <th>Violation(s)</th> </tr> <tr> <td>22 TAC 535.228(k)</td> </tr> </table>	Violation(s)	22 TAC 535.228(k)	<p>Agreed reprimand of professional inspector. Agreed administrative penalty of \$500.00</p>	<p>Consumer Complaint</p> <p>Respondent, during a home inspection, failed to report as deficient the lack of functional emergency escape and rescue openings in all sleeping rooms.</p>			
Violation(s)							
22 TAC 535.228(k)							
<p>Case#: 121485 PROPERTIESMART LLC</p> <p>(license # 565915) Real Estate Company-O TEMPLE(BELL)</p> <p>Effective Date: 2/14/2013</p> <table border="1" data-bbox="110 1776 394 1917"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.652(a)(05)</td> </tr> <tr> <td>1101.652(a)(06)</td> </tr> </table>	Violation(s)	1101.652(a)(05)	1101.652(a)(06)	<p>Reprimand of broker. Assessment of an administrative penalty of \$5,000.00. Suspension of broker license until the requested information is received and the penalty is paid in full.</p>	<p>Administrative Complaint</p> <p>Respondent failed or refused to produce on request, for inspection by the Commission or a Commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder. Respondent failed to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission.</p>		
Violation(s)							
1101.652(a)(05)							
1101.652(a)(06)							

<p>Case#: 121485 FLEMING, SUSAN TRUETT (license # 477888) Real Estate Broker / Salesperson-I BELTON(BELL) Effective Date: 2/14/2013</p> <table border="1" data-bbox="110 432 381 573"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.652(a)(05)</td> </tr> <tr> <td>1101.652(a)(06)</td> </tr> </table>	Violation(s)	1101.652(a)(05)	1101.652(a)(06)	<p>Reprimand of broker. Assessment of an administrative penalty of \$5,000.00. Suspension of broker license until receipt of the requested information and the administrative penalty is paid in full.</p>	<p>Administrative Complaint Respondent failed or refused to produce on request, for inspection by the Commission or a Commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder. Respondent failed to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission.</p>
Violation(s)					
1101.652(a)(05)					
1101.652(a)(06)					
<p>Case#: 130155 BAILEY, DEBORAH CAROL (license # 626388) Real Estate Broker / Salesperson-I COPPERAS COVE(CORYELL) Effective Date: 2/14/2013</p>	<p>Agreed two year probationary license issued.</p>	<p>Administrative Complaint 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. Applicant provided documentation addressing the factors outlined in Tex. Occ. Code §53.023 and, subject to reasonable terms of a probationary license, 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).</p>			
<p>Case#: 130775 GONZALEZ, JOSE ALBERTO (license # 489370) Real Estate Broker / Salesperson-I HOUSTON(HARRIS) Effective Date: 2/25/2013</p> <table border="1" data-bbox="110 1144 401 1239"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.655</td> </tr> </table>	Violation(s)	1101.655	<p>Agreed revocation of broker license fully probated until the Real Estate Recovery Trust Account is repaid in full.</p>	<p>Administrative Complaint Respondent failed to repay the Commission for payment of \$43,663.00 plus interest made from the Real Estate Recovery Trust Account towards satisfaction of a judgment.</p>	
Violation(s)					
1101.655					
<p>Case#: 130820 JACKSON, SHARETHA V (license # 575355) Real Estate Broker / Salesperson-I DE SOTO(DALLAS) Effective Date: 2/1/2013</p> <table border="1" data-bbox="110 1509 446 1604"> <tr> <th>Violation(s)</th> </tr> <tr> <td>53.021 (Broker/Sales)</td> </tr> </table>	Violation(s)	53.021 (Broker/Sales)	<p>Revocation of salesperson license.</p>	<p>Administrative Complaint 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).</p>	
Violation(s)					
53.021 (Broker/Sales)					

<p>Case#: 130689 HQR INVESTMENTS LLC (license # 9002107) Real Estate Company-O AUSTIN(TRAVIS)</p>	<p>Agreed one year probationary license issued. Agreed administrative penalty of \$1,000.00.</p>	<p>Applications Applicant conducted brokerage activities without being licensed. Applicant demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate broker.</p>
<p>Case#: 121701 MARTINEZ, JESSICA (license # 626244) Real Estate Broker / Salesperson-I SAN ANTONIO(BEXAR) Effective Date: 2/11/2013</p>	<p>Two year probationary salesperson license issued.</p>	<p>Applications 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. Applicant provided documentation addressing the factors outlined in Tex. Occ. Code §53.023 and, subject to reasonable terms of a probationary license, 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).</p>
<p>Case#: 130408 SCOTT, DEBRA K (license # 626177) Real Estate Broker / Salesperson-I SAN ANTONIO(BEXAR) Effective Date: 2/7/2013</p>	<p>Agreed four year probationary license issued.</p>	<p>Applications 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. Applicant provided documentation addressing the factors outlined in Tex. Occ. Code §53.023 and, subject to reasonable terms of a probationary license, 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).</p>
<p>Case#: 130497 GONZALEZ, KELLY KATHRYN (license #) Real Estate Broker / Salesperson-I AUSTIN(TRAVIS) Effective Date: 2/26/2013</p>	<p>Agreed three year probation upon issuance of a salesperson license.</p>	<p>Applications 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. Applicant provided documentation addressing the factors outlined in Tex. Occ. Code §53.023 and, subject to reasonable terms of a probationary license, 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). Applicant's application returned to licensing for processing.</p>
<p>Case#: 130703 LESCALLE, LINDA DOMINICK (license # 626746) Real Estate Broker / Salesperson-I ALLEN(COLLIN) Effective Date: 2/26/2013</p>	<p>Agreed three year probationary license issued.</p>	<p>Applications 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. Applicant provided documentation addressing the factors outlined in Tex. Occ. Code §53.023 and, subject to reasonable terms of a probationary license, 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).</p>

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. In 2011, TALCB's jurisdiction was expanded to register and regulate appraisal management companies.

Inside this issue: Proposed Valuation Advisory From The APB (page 1) From the Commissioner (page 3) Proposed Rules (page 4) New Electronic Minutes (page 4)

PROPOSED VALUATION ADVISORY FROM THE APB

Change, and measuring change is what appraising is all about. We realize that the market is constantly changing and we work very hard to keep up to understand how change is occurring and what the change means.

Change is with us in the world of appraisal guidance and requirements also. Late in 2010 federal regulators released *Interagency Appraisal and Evaluation Guidelines*, while **Fannie Mae** and **Freddie Mac** continue to revise their respective *Seller's Guides*. We know that **The Appraisal Foundation (TAF)** has revised USPAP a number of times since its inception. We are not as aware of the changes of standards and requirements coming through a number of other and different venues.

This article will focus on the newest board of TAF, the **Appraisal Practices Board (APB)**, changes they are presently proposing and what appraisers can do in response.

The Appraisal Foundation and Its Boards

We know that besides the Board of Trustees, TAF is comprised of three boards with separate and distinct areas of responsibility. The newest board is the Appraisal Practices Board. To quote the TAF, "The APB has been charged with the responsibility of identifying and issuing opinions on *Recognized Valuation Methods and Techniques* [emphasis added], which may apply to all disciplines within the appraisal profession." The APB fulfills its duties by offering "voluntary guidance in topic areas which

appraisers and users of appraisal services feel are the most pressing."

Since it's formation on July 1, 2012, the APB has identified, researched, sought public comment, revised and released three (3) APB valuation advisories. Valuation Advisory #1 dealt with the *Identification of Contributory Assets and Calculation of Economic Rents*. Valuation Advisory #2 addressed *Adjusting Comparable Sales for Seller Concessions* and Valuation Advisory #3 provided guidance with *Residential Appraising in a Declining Market*.

Characteristics of A Valuation Advisory

While they cover different aspects of appraisal practice, all the valuation advisories have many characteristics in common:

- The topics were been identified as area that many appraisers and appraisal users believe require additional guidance;
- Panels of **Subject Matter Experts (SMEs)**, with expertise in the topic, researched and detailed all pertinent sources of existing information of the topic;
- The Valuation Advisory(s) represent the APB's guidance on generally accepted appraisal methods and techniques;
- They provide the appraisal practitioner with the theory behind the issue as well as specific methodology to address the topic;

VALUATION ADVISORY (continued)

From the APB's perspective compliance with the guidance is entirely voluntary; and

They were only released after the appraisal community, as well as other interested parties, had an opportunity to review, critique and suggest revisions.

While the APB recognizes that "the methods and techniques discussed . . . may not be the only way to solve (appraisal) problem(s) as there may be other equally acceptable methods and techniques;" . . . "they do represent an extensive review of current recognized methods and techniques" [emphasis added].

Current Draft and Exposure Drafts

Most recently, the APB released two new exposure drafts and one discussion draft for comment.

A working group on customer-related assets developed the Discussion Draft on proposed *Best Practices for the Valuation of Customer-Related Assets*. This first draft document is designed to stimulate conversation on the subject through questions and discussion points. After receiving comments on this discussion draft, an exposure draft will be provided for comment.

The Appraisal Practices Board also recently released exposure drafts cover guidance applicable to *Identifying Comparable Properties* and *Identifying Comparable Properties for Automated Valuation and Mass Appraisal Models*.

The APB is seeking public comment in response to the exposure drafts. Based on the comments received, they may make revisions to the guidance and may issue *subsequent* exposure drafts. After the board believes it has received all relevant comment on this topic, it *may* vote to adopt the material as *official guidance* from the APB [emphasis added].

Focus on Identifying Comparable Properties Exposure Draft

Because of its wide-ranging applicability to the appraisal practices of Texas appraisers, we would like to call particular attention to the *Identifying Comparable Properties* exposure draft.

Topics covered in this proposed advisory include:

- Property Characteristics;
- Comparable Suitability; and

Market Area and Neighborhood Characteristics.

In the draft, the APB pulls together the current thinking on comparables from a number of diverse sources including Fannie Mae, various appraisal organizations as well as applicable laws and regulations. The draft not only discusses the criteria for identifying comparable properties, but also addresses methods for applying the criteria including examples and discusses the appraiser's responsibilities in selecting comparables.

The exposure draft also contains a glossary of terms and definitions. Examples of the defined terms include "bracketing" and "neighborhood" as well as others to assist in understanding the advisory draft. Two appendices are also provided. *Appendix I: Examples of Physical Comparability Factors* discusses these factors by property type, while *Appendix II: Suggested Further Reading* offers a six page-reading list on the topic.

Comments Requested

The APB desires that appraisers and other interested parties provide their thoughts on this as well as other exposure drafts. The comments should address the extent and appropriateness of the valuation advisory including any suggested revisions. The APB assures appraisers that the comments will be given serious consideration, as it is their stated policy to review every comment *prior* to any further action being taken on the draft.

Obtaining a copy of the exposure draft is easy as downloading a file through TAF's website (www.appraisalfoundation.org). Once you enter the website, just click of the APB's tab found on the left-hand side, then click the APB Exposure Drafts link and select from the current exposure drafts any or all of the pending drafts. You will then be able to easily download a PDF file of your selected draft(s).

Take a moment and have your voice heard. All interested parties are encouraged to comment in writing to the APB before the deadline of April 22, 2013. All comments become part of the permanent public record and are available online through TAF's website.

Comments are also invited at the APB public meeting on April 26, 2013, in Austin, Texas.

From the Commissioner

The Governor has appointed rancher Clayton Black of Stanton to fill a public member seat on the Board, and two members to the Appraisal Management Company (AMC) Advisory Committee: Sara Jones Oates of Austin as the AMC member and attorney Lawrence McNamara of Dallas as the public member. We warmly welcome all three to serve with us in fulfilling our mission of consumer protection for Texans.

The Appraisal Subcommittee (ASC) has announced the commencement of the National Appraisal Complaint Hotline mandated under Dodd-Frank. The hotline consists of a website and a toll-free phone number that will assist appraisers, consumers and others who have a potential complaint regarding the appraisal process to reach the correct government agency where their complaint can be addressed. The initial intent was to ensure that appraisers who are concerned about undue pressure from any loan originator or AMC have a place to turn, but the final law is more expansive. Because of the potentially overlapping jurisdiction of both state and federal agencies, it is not often clear to which agency a complaint should be addressed. Check it out at

www.refermypappraisalcomplaint.asc.gov

The Association of Appraiser Regulatory Officials (AARO) will be having its Spring meeting in Austin on April 27-29 at the downtown Omni

Hotel. More information is available on the AARO website at www.aaro.net if you are interested. The Appraisal Foundation's Appraisal Practices Board (APB) and State Regulator Advisory Group (SRAG) are also

meeting in Austin on Friday April 26th at the Sheraton Hotel. The meetings are free but require advance registration. Details at www.appraisalfoundation.org

The Board will meet next on Friday May 17 at 10 AM in Room 170 of the Stephen F Austin building at 1700 North Congress Avenue, just two blocks north of the State Capitol. We welcome our license holders and members of the public to attend, observe and even comment. If you cannot make it, know that the meetings are also broadcast live over the internet and video recorded as the official record of the meeting. Links to the agenda, materials, live broadcast and video archive are all available on the agency's website. As always, we welcome your comments on all we do.



Douglas E. Oldmixon

Important Dates to Remember

AMC Advisory Committee Meeting—April 11

TALCB Enforcement Committee Meeting— April 11

TALCB Board Meeting—May 17

Proposed Rules For Adoption at the May 17, 2013 Meeting of the Board

Proposed rules will be up for adoption at the May 17, 2013 meeting of the Board. The proposed rules can be found on our website at www.talcb.state.tx.us. Comments on proposed rules should be sent to general.counsel@talcb.texas.gov on or before April 8, 2013.

22 TAC §153.24, Complaint Processing:

Amendments are proposed to clarify that receipt of a complaint intake form by TALCB does not constitute the filing of a formal complaint against the individual named on the complaint intake form, to clarify all of the information that a respondent must provide to TALCB following notification of receipt of a complaint intake form, to establish a timeframe for completion of a preliminary review to determine if a violation occurred, to set out the criteria and procedure for

the filing of a formal complaint by TALCB, to more clearly set out levels of discipline and the mitigating and aggravating factors to be considered when assessing sanctions and to more clearly define penalty parameters at each level.

22 TAC §153.21, Appraiser Trainees and Sponsors:

Amendments are proposed to require disclosure by sponsors of any disciplinary action taken against them in the past three years and to bring the rules into compliance with the *Real Property Appraiser Qualification Criteria (Criteria)* set out by The Appraiser Qualifications Board of The Appraisal Foundation. The *Criteria* states that Supervisory Appraisers shall be in "good standing" for a period of at least three years.

TALCB Approves New Electronic Minutes

The Board recently approved the use of electronic minutes, along with a bookmarked video recording of the Board meetings, as the official record of the meetings. While the public can still watch an archived video of the meeting in its entirety, this new and innovative process allows the public to go directly to any agenda item that is of particular interest to them by a simple click of their mouse. This is how it works:

- The electronic minutes consist of an annotated meeting agenda summarizing the actions taken by the Board for each agenda item is provided on the TALCB website as a written record of the meeting.

- Those minutes are electronically tied to the archived video of that particular meeting.
- Each agenda item is linked to the point in the video where discussion of that item took place.
- Simply click on a specific agenda item and you will be taken directly to that part of the meeting to watch the Board deliberate that item.

The electronic minutes for the February 2013 Board meeting will be available on the TALCB website on April 12 and can be accessed at: www.talcb.state.tx.us/agencyinfo/meeting.asp.

Inspector Insight



The Texas Real Estate Inspector Committee is as an advisory committee to the Texas Real Estate Commission on matters pertaining to the licensing and regulation of real estate inspectors. The Committee recommends rules and policies that ensure inspections meet high professional standards and enhance consumer protection.

Inside this Issue: From the Chair (page 1) Inspector Committee Open Positions (page 2)

From the Administrator

The Inspector Committee has been very busy lately. At its February meeting, after adopting a few suggested changes based on public comments, the Commission re-proposed the Committee's recommended update to the Standards of Practice. This allows an additional period of public comments and I urge inspectors across Texas to weigh in with their ideas. This is your chosen career, and your voices are welcomed. The Committee will meet again on April 12th to consider any comments received.

We welcome Lee Warren from Collin County as a new inspector member of the Committee and congratulate both him and returning member Brad Phillips who were appointed by the Commission in February. The Committee relies on both qualified inspectors and willing public members to fulfill its mission. Two public member openings will be filled in May and I encourage all interested parties to consider applying to serve for a proposed two- year term (down from 6) on the committee as a service to the citizens of Texas. Public member volunteers are often hard to find, so we also urge inspectors

to recommend someone you know who might be willing to serve in this valuable role.

The Commission and the Committee continue to work cooperatively to improve the ability of inspectors to serve the needs of real estate buyers and sellers. Several improvements are needed in the enabling statute and we have seen some progress in the legislative session to advance these via SB 1296 and HB 2911. I urge you all, especially the major professional associations, to remain engaged and assist the industry and the committee in achieving its goals. Your input is always welcomed.



Douglas E. Oldmixon

Open Public Positions on the Inspector Committee

The applications for appointment to two open public member seats on the Texas Real Estate Commission (TREC) invites Estate Inspector Committee. The Committee's purpose is to make recommendations to the Commission regarding a variety of inspection-related matters toward the goal of ensuring a high degree of service to and protection of the public in dealing with inspectors. The committee consists of six professional inspectors and three public members.

While anyone can apply to be a public member, following the Commission's model, public members may not hold occupational licenses in the real estate field (appraiser, real estate broker/salesperson, mortgage broker, etc.). The current term for a public member is six years. However, a rule was proposed at the February 2013 Commission meeting to reduce the public member terms to two years, with the potential for being reappointed to additional two-year terms.

Committee meetings are usually scheduled to meet in Austin. However, the Committee does have the authority to meet by teleconference and subcommittee meetings are usually held via teleconference.

If interested, there is no need to fill out an application. Individuals wishing to be considered for appointment should send a letter expressing your desire to serve, along with a resume and any letters of recommendation, or any other additional information that would benefit the selection process, to Chairman Avis Wukasch at the Texas Real Estate Commission.

Application materials can be submitted by mail to Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, by fax to 512-936-3788, or by e-mail to administrator@trec.texas.gov. For additional information about the selection process or the Texas Real Estate inspector Committee, please contact Tony Slagle at tony.slagle@trec.texas.gov.

Important Dates to Remember

Inspector Committee Meeting—April 12 at 10am

TREC Commission Meeting—May 6 at 10am