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, right-of-way services 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 across Texas.

INSIDE THIS ISSUE: **Unlicensed Activity by a License Holder's Business Entity** (page 1) **From the Chair** (page 2) **TREC Rule Actions** (page 3) **CE Posting System a Success** (page 4) **TREC Enforcement Actions** (page 4) **Employee Updates** (page 4)

Be Careful! Unlicensed Activity by a License Holder's Business Entity Can Lead to Discipline

Did your accountant, business advisor, or attorney tell you that you "should" form a limited liability company (LLC), a corporation, or a partnership for your brokerage activities? While there may be good business or tax reasons to do so, there are also risks involved.

A License is Required

When a license holder forms a business entity to perform real estate brokerage activities or to receive a commission or fee for brokerage activities, the business entity must have its own Texas real estate broker license. If not, serious penalties and other discipline could result.

The entity must also designate an individual broker who holds a Texas real estate broker license in active status and is in good standing with the Commission. Good standing means, at a minimum, that the broker is not on probation and does not owe the Commission any money.

In addition, the designated broker must be a manager of the LLC, an officer of the corporation, or a general partner in the partnership and must sign the application for a business entity license. If the designated broker does not own 10 percent or more of the business entity, then the business entity must provide proof to the Commission that the entity maintains errors and omissions insurance with a minimum annual limit of $1 million for each occurrence.

These requirements are stated in The Real Estate License Act, Texas Occupations Code Section 1101.355, and the Rules of the Commission at Section 535.4(f).

Enforcement

Frequently, the agency reviews situations where an unlicensed business entity engages in an activity that requires a license. When caught, the penalties can be harsh for any license holders involved in the activity. Sections 1101.652(b)(11) and (26) of the Texas Occupations Code prohibit paying a commission or fee to, or 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. The Rules provide for suspension or revocation of a license and/or administrative penalties of $1,000 to $5,000 per violation per day for such a violation.

Please avoid all unlicensed activity. If you have questions on this subject, contact the Commission or your attorney. You can apply for a business entity broker license on our website.

From the Chair...

The Commission met in our regular quarterly meeting on February 9th to elect officers, appoint committees, advisory committee members and liaisons, hear reports from two of its advisory committees, and to monitor and guide the work of the agency's executive director and staff team. Although shorter than usual, the meeting was very productive.

There has been a lot of activity over the winter season and for that we offer our sincere gratitude to the many volunteers who staff our important advisory working groups, especially the Education Standards Advisory Committee (ESAC) and the Inspector Advisory Committee (IAC). Both have been grappling with important issues that could have a major impact on license holders. ESAC has been gathering significant input from stakeholders on the effectiveness of various education course delivery and assessment models. IAC has been doing the same with respect to a flexible gas distribution product known as corrugated stainless steel tubing (CSST). Stay tuned for more developments.

A "housekeeping" bill has been filed in the Legislature to clarify certain areas of the Occupations Code Chapter 1101. The bills' sponsors are Senator Kevin Eltife and Representative John Kuempel. SB 699 and its companion HB 1918 seek to update definitions in Texas' law to better cover certain areas of practice and simplify key notices to consumers and clients. Other elements that are proposed to be improved involve adding increased emphasis on education for promulgated contracts, lowering fees by repealing the "professional fee" or "occupation tax", more flexibility for meeting continuing education requirements, and enhanced confidentiality for complaint investigations. We'd greatly appreciate your help in getting these topics addressed and passed when you come to the hill on April 14.

Avis Wukasch, Chair

Our next regularly scheduled meeting is on Monday, May 4th. If you are in town, please stop by to see your Commission at work. We promise the Commission will continue do its part to assist you in serving Texans with the highest standards in the real estate profession. Our appreciation goes out for your continued support and for making our job easy with your continued commitment to professionalism.

IMPORTANT DATES TO REMEMBER

ESAC Working Group Meeting—March 31

ESAC Committee Meeting—April 7

TREC Commission Meeting—May 4

Check the TREC website regularly for postings of all of our upcoming meetings.

Adopted Rules

The following is a summary of amendments to TREC Rules adopted at the February 9, 2015 meeting of the Commission. Unless otherwise noted, they will be effective March 4, 2015. You can see the full text of the rules at the Recently Adopted Rules section of our website.

§535.53, Business Entity; Designated Broker. The amendments clarify the requirements necessary to apply for a business entity broker license and adds language regarding what is required to meet the "in good standing" with the Commission standard set out in §1101.355 of the Texas Occupations Code for a broker to act as designated broker for a business entity. For example, a broker may not act as a designated broker for an entity if the broker's license was revoked or suspended, including probated revocation or suspension, in the past two years.

§535.212, Education and Experience Requirements for a License. The amendments revise the options through which an applicant may satisfy the field work component of the substitute experience requirement. The amendments define the term "interactive experience training module," increase the methods of delivery to satisfy each training option and reduce the required hours under one option to lower costs and promote hands-on training. The amendments also extend the deadline that eliminates one option to allow course providers more time to develop courses for the other two options.

Proposed Rules

The following amendments or new rules were proposed at the February 9, 2015, meeting of the Commission and are up for adoption at the May 4, 2015 meeting. You can see the full text of these rules on the "Proposed Rules" section of the TREC Website. Written comments on the proposed rules can be sent to general.counsel@trec.texas.gov and must be received prior to 5 p.m. April 14, 2015 to be included in the materials for the May meeting. After that date, comments will need to be made in person at the meeting.

§539.81, Funded Reserve. These amendments are a re-proposal following receipt of input from a stakeholder which resulted in substantive changes to the original proposal. The proposed amendments specify certain minimum reserve criteria for captive insurance companies to make sure that Texas consumers continue to have the protection the legislature mandated when the statute requiring a funded reserve was put in place.

§543.4, Forms. The proposed amendments update and clarify the use and content of the forms necessary to register, amend or renew a timeshare plan.

§535.401, Required Notices. The proposed amendments update and clarify the form Easement and Right-of-Way Agents are required to give a consumer prior to the consumer entering into a transaction concerning an easement or right-of-way.

§535.223, Standard Inspection Report Form. The proposed amendments are recommended by the Texas Real Estate Inspector Advisory Committee (TREIC) to notify consumers regarding potential hazards with improper bonding of corrugated stainless steel tubing or other metal gas tubing by adding language to the "Consumer Notice Concerning Hazards or Deficiencies" section, and to adopt by reference changes to the standard inspection form, Property Inspection Report Form REI 7-5, approved by the Commission for use in reporting inspection results.

§535.2, Broker Responsibility. The proposed amendments insert the obligation to notify the Commission when a broker delegates responsibility to another license holder for more than six months. This provision was inadvertently dropped from another section during the reorganization and clarification of Chapter 535.

New/Revised Forms

The following new or revised forms were adopted and are effective for immediate use:

Supplemental Form for Military Spouse (SFMS-1)

Affidavit Regarding Substitute Experience Field Work Requirement (INSA-1)

Notice of Assumed Business Name or DBA for a Professional Real Estate Inspector or Real Estate Inspector's License (IDBA-0) NEW

Real Estate Inspector License Application (REIA-6)

Professional Real Estate Inspector License (REPIA-6)

CE POSTING SYSTEM IS A SUCCESS!

The new Continuing Education (CE) Posting System launched in January and is an overwhelming success. While a handful of our 350+ CE providers had minor challenges registering or posting to the system, TREC's Customer Service Representatives and Education Specialists were able to assist. CE Providers are excited about being able to post CE directly into TREC's records without delay and we've received numerous emails giving us a "thumbs up."

Some CE providers have already made suggestions on how we can improve the posting experience and we will implement some of those suggestions during Phase 2 of our CE posting plan. Providers of inspector CE are currently unable to post directly into the system because inspector courses were approved as qualifying courses prior to January 1, 2015. As inspector license holders are not subject to the real estate CE deferral requirements, we hope to implement inspector CE posting during Phase 2. Meanwhile, inspector CE providers should continue to provide course completion information to TREC as they have in the past.

Stay tuned for more improvements!

TREC Enforcement Actions

The Texas Real Estate Commission has published enforcement actions taken in January and February. To read the full report and get access to all of the enforcement actions taken by the Commission please go to the TREC website and click on, "Complaints, and Consumer Info" and then click "Disciplinary Actions" .

TREC Employee Updates

Tony Renteria *Standards and Enforcement Services*

Tony was hired as an Attorney in the TREC Standards and Enforcement Services Division beginning February 17, 2015. Tony comes to us from Rockford, Illinois, where he worked as a Criminal Prosecutor for the Winnebago County State's Attorney's Office before going into private practice. His law practice included real estate, criminal defense, civil, and administrative law. He has over 14 years of combined legal experience. Tony now lives in Pflugerville with his wife, Patty, and his two sons, Antonio and Diego. He is very happy to join the TREC team!

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.

TEXAS APPRAISER LICENSING & CERTIFICATION BOARD

INSIDE THIS ISSUE: New TALCB Website and Logo Launched (page 1) From the Chair (page 2) TALCB Enforcement Actions (page 32 Course Required to Renew Trainee License and Supervisor's Certifications (page 3) TALCB Rule Actions (page 3)

New TALCB Website and Logo Launched

The Texas Appraiser Licensing and Certification Board (TALCB) is pleased to announce the launch of its new logo and website: talcb.texas.gov. The new website is designed with the needs of various users in mind. Applicants, license holders, and the public will now be able to easily access information that is more relevant to their specific needs.

The new website includes a dedicated consumer section where home owners and buyers can get information about the appraisal process, learn what to expect from an appraisal, and access contact information about a specific appraiser. This section of the website will also include articles, links, and other material to ensure consumers in Texas are well informed on issues pertaining to the appraisal and home buying process. It also contains information and links about how to file a complaint with the agency about an appraiser or appraisal management company.

The website has specific sections dedicated to applicants and current license holders where users can find information pertaining to the application process and specific licensing requirements. These sections also provide applicants and license holders quick access to relevant forms, frequently asked questions, and other related information.

The new TALCB website incorporates the new agency logo and employs a responsive design, which allows users to access the website on any computer or mobile device, without reducing available content.

This new, revamped website is the next step in embracing technology to educate license holders and the public and safeguard Texas consumers more effectively. Please be sure to check the website regularly for updates from the agency.

IMPORTANT DATES TO REMEMBER

TALCB Board Meeting—May 15

Check the TALCB website regularly for postings of all of our upcoming meetings.

From the Chair

At the Board's regular quarterly meeting on February 20th, we adopted an earlier proposed rule to improve the training of both Supervisory Appraisers and Appraiser Trainees. Effective September 1, 2015, all supervisors and trainees must have completed the AQB approved Supervisor/Trainee Course within the prior four years in order to be eligible to renew a license. The proposal was supported by the Foundation Appraiser Coalition of Texas (FACT).

Since January 1, 2015, this same course is required by both parties prior to establishing any new Supervisor/Trainee relationship. The Board is very pleased with this opportunity to address an area that has been a major source of complaints in the past. Better training in the duties and responsibilities of this critical apprenticeship relationship should lead to fewer complaints. And the 4-hour course will count toward the Supervisor's ACE hours requirement.

In addition, we elected officers, appointed working committees, named Peer Investigative Committee members and Mentors, and heard reports from the AMC Advisory Committee, and from the Commissioner and staff. Other business we accomplished includes approval of nine Agreed Orders and consideration of a Proposal for Decision from a hearing at SOAH. I am honored to continue as the Board's Chair and thank Laurie Fontana and Mark McAnally for agreeing to serve for another year as Vice-Chair and Secretary, respectively.

We also recognized longtime TALCB Appraiser/ Investigator Jack McComb upon his retirement. Jack was one of the earliest fulltime appraisers to join the Board staff as an investigator, and many appraisers have benefited from having Jack review their work over the last ten years. We are grateful for his dedicated service and wish him well.

Chair, Jamie Wickliffe

Lastly, by the time your read this, a "housekeeping" bill should be filed in the Legislature seeking clarifications and improvements to Chapter 1103 of the Occupations Code. Every few years, industry developments warrant seeking minor adjustments to the appraiser licensing act in Texas. This bill will make the work of the Board more effective by clarifying the background check requirements for license holders, normalizing the Board member appointments process and tenure, and enhancing the confidentiality of complaint files until resolved. FACT has been a vocal proponent of the bill, and we thank them for their leadership in this process.

Our next meeting will be in Austin on Friday May 15, 2015 at the TALCB HQ. We welcome your continued input and feedback on all that we do. Our mission to protect Texas consumers is directly implemented by ensuring appraisers remain both professional and competent. How do you think we are doing? Stop by and let us know. We'd love to hear from you.

TALCB Enforcement Actions

The Texas Appraiser Licensing and Certification Board publishes their enforcement actions regularly on the new TALCB website. To read the reports please go to the TALCB website and click on, public and disciplinary actions.

Texas Appraiser Trainee/Supervisor Course Required to Renew Trainee Licenses and Supervisor's Certifications After September 1, 2015

Amendments to 22 TAC §153.21 were adopted at the February 20th Board meeting. The amendment to this rule becomes effective September 1, 2015 and is applicable to all appraiser trainees and sponsors.

Q: What does this mean to an appraiser trainee or a certified sponsor who renews a license after September 1?

A: An appraiser trainee or sponsor who has not completed the 4-hour Texas Appraiser Trainee/Supervisor course within the last four years must complete the course before they can renew the license or certification.

We encourage appraiser trainees and sponsors who renew their license after September 1 to take the course well in advance of your renewal date.

Rules Actions from the February 20th Meeting of the Board

The Board took the following actions regarding rules at its meeting on February 20, 2015. You may review the full text of all actions on the Rules and Laws section of the TALCB website.

ADOPTED RULES

The Board adopted amendments to the following rules at its meeting on February 20, 2015. These amendments are effective on March 19, 2015.

22 TAC §153.9. Applications

The amendments to this rule allow the Board to evaluate applications consistent with the exceptions authorized by the Appraiser Qualifications Board (AQB), including the exception for service on active duty in the United States armed forces as announced by the AQB on October 21, 2014.

22 TAC §153.21. Appraiser Trainees and Sponsors

The amendments make this rule applicable to all appraiser trainees and sponsors and require all appraiser trainees and sponsors to take to the appraiser trainee/sponsor course within four years prior to their license renewal date. This course requirement will be effective for all appraiser trainees and sponsors on September 1, 2015.

PROPOSED RULES

The Board proposed amendments to the following rules at the Board meeting on February 20, 2015. These proposed amendments will be on the agenda for adoption by the Board at the May 15, 2015 meeting.

22 TAC §153.24. Complaint Processing

The proposed amendments to this rule correct a typographical error to align the rule with the Board's statutory authority.

Inspector Insight

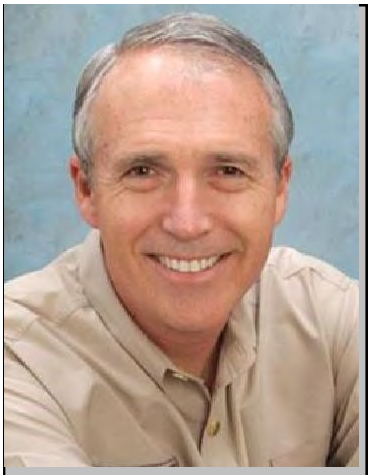
The Texas Real Estate Inspector Committee is as an advisory committee to the Texas Real Estate Commission on matters pertaining to the licensing and regulation of real estate inspectors. The Committee recommends rules and policies that ensure inspections meet high professional standards and enhance consumer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

Inside this Issue: From the Chair (page 1) **Inspector Committee Members Announced** (page 2) **Clarification of Rule from February Issue** (page 2)

From the Chair

The Inspector Committee met on Friday February 27 at the agency headquarters in Austin. I was honored to be elected as the Chair of the Committee for the next 12 months. Lee Warren was elected as Vice-chair and Dianna Rose as Secretary. We have also appointed new subcommittees, where much of the initial work is done. I am originally from the Dallas/ Ft Worth area but have lived in Central Texas for the last 40 years. I have been a Professional Inspector since 2001 and have served on this committee for the last 4 years. I was the past chair of the Standards of Practice and Education subcommittees and most recently served as the vice chair of this committee. I commit to continue to do my very best to keep us moving forward in a productive manner, taking all viewpoints into account as we make important recommendations to the Commission.

At our meeting we welcomed several new members to the Committee: Inspectors Dianna Rose of Bastrop and Doyle Williamson of Austin, and public members Matt Hart of Austin and Bryan Woods of San Antonio. Barbara Evans of Fort Worth was also reappointed as a public member. A brief write-up on each member is included elsewhere in this newsletter. Welcome to each of them. Based on their active participation at their first meeting, we look forward to their meaningful contribution to our discussions.



Steven Rinehart, Chair

The Committee considered several comments received, heard testimony from several commenters, and agreed to modify our earlier recommendation to the Commission. The recommendation was to amend the preamble to the standard report form to add text related to the potential hazard of CSST and similar gas distribution lines if not properly bonded. Additional comments will be accepted and considered prior to the next Commission meeting in May. By that time, we will also know whether any action is being considered in the Legislature to impact this issue. A few other states have taken legislative action to require more impactful notices or have placed additional burdens on inspectors.

You are always invited to attend our meetings. Agendas and materials will be posted on our website at least a full week ahead, so watch there if interested. Remember also that all our meetings are video recorded and are available for viewing from a link on the meetings page of the commission website.

Thanks for all you do to ensure the Committee and Commission remain true to their charge to protect and serve the people of Texas.

IMPORTANT DATES TO REMEMBER

Inspector Committee Meeting— April 13

Check the TREC website regularly for postings of all of our upcoming meetings.

New Inspector Committee Members Announced

The Texas Real Estate Commission (TREC) announced appointments to the Texas Real Estate Inspector Committee at its February meeting. Dianna Rose and Doyle Williamson were appointed to six-year terms as inspector members. Matt Hart of Austin was appointed to fill a two-year public member term and Bryan Woods of San Antonio was appointed to fill a one-year public member term. In addition to these new appointments, Barbara Evans, who has served as a public member of the Committee for the past two years, was reappointed for to another two-year term.

Dianna Rose has been a licensed home inspector since 2003. Her company, D&S Home Inspection Service, is based in Bastrop. Dianna is active in professional and business associations, serving as President of the Texas Association of Real Estate Inspectors in 2013, member of the Bastrop and Smithville Chambers of Commerce and the Bastrop County Board of Realtors. Dianna also contributes to community organizations, currently serving as Vice-chair of the Arts in Public Places Commission for the City of Bastrop.

Doyle Williamson has been a TREC professional inspector since 1998. Williamson thinks his participation on the Inspector Committee will be a vital reciprocal learning experience. Drawing on his experience and knowledge, he hopes to contribute meaningful efforts to help the Committee address important issues and move the inspection industry ahead.

Matt Hart's career began in construction in Ohio. After years of field experience, he went to The Ohio State University and graduated with a Bachelor of Science in Architecture. He received the Construction Award and was awarded the Austin E. Knowlton Faculty Prize for distinguished work. His career continued while working for local firms in Columbus, Ohio where his deep interest in building science and sustainability eventually brought him to Austin, Texas. He is currently one of three principals at Barley| Pfeiffer Architecture.

Bryan Woods has practiced law for more than 30 years, largely representing consumers. He graduated from the University of Texas at Austin with a BA with honors in marketing in 1978. Bryan attended the joint law/MBA program, obtained his law degree from UT at Austin in 1982 and has been licensed to practice since May 1983. He is looking forward to assisting the Committee in making important decisions regarding the inspection industry.

Barbara Evans of Fort Worth is an education consultant with a focus on professional development and has almost 40 years' experience in the education field and a clear interest in serving the public. During her previous term on the Committee, her unique insight has served the Committee well as it addressed inspector education issues.

Clarification From the February Issue

The TREC Real Estate Inspector Rules require any advertisement or home inspection report to have the license holder's name and license number. The Rules do not, however, require an inspector to have a copy of their license or identification on hand for a consumer to view (the Rules do not prohibit this, either).