

TREC *Advisor*

Texas Real Estate Commission

Volume 8 no. 1

April 15, 1997

New commissioners appointed

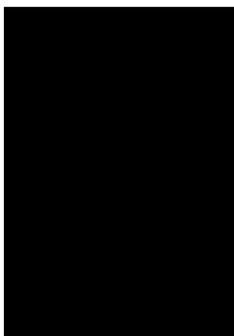
Governor George W. Bush has announced the appointment of three new members to the Texas Real Estate Commission for terms to expire January 31, 2003.

C. Michael Brodie of Richardson is a real estate broker with Keller Williams Realty in Dallas and will serve on the commission as a broker member. He is director and past president of the Texas Association of Realtors and serves as regional vice president of the National Association of Realtors. He earned a bachelor of science degree in finance from the University of Texas at Dallas. Mr. Brodie will replace Weldon Traylor, Sr. of Houston whose term expired.

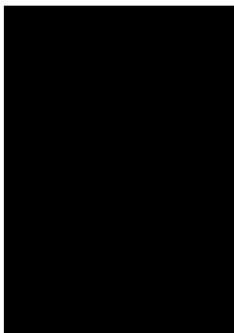
Maria Gonzalez-Avila of San Antonio is senior managing representative at Excel Communications and owner of Translating Concepts. She will serve on the commission as a public member. She received a bachelor of arts degree from the University of Miami. Ms. Gonzalez-Avila will replace Rick M. Albers of Austin whose term expired.

Kay Sutton of Midland is owner and principal broker of Kay Sutton, Inc. Realtors and will serve on the commission as a broker member. She is a member of the National and Texas Associations of Realtors. Ms. Sutton will replace Eden Box of Austin whose term expired.

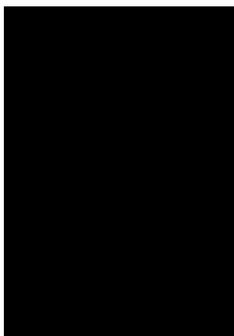
The appointees have been confirmed by the Texas Senate and are anticipated to participate in the TREC meeting scheduled for April 28, 1997.



C. Michael Brodie,
broker member



Maria Gonzalez-Avila,
public member



Kay Sutton,
broker member

Changes to standard contract forms proposed

On March 17, 1997, TREC initiated rulemaking to promulgate eight standard contract forms for mandatory use by real estate licensees. Changes proposed to twelve sections within Chapter 537 of the TREC rules would replace existing forms with revisions developed by the Texas Real Estate Broker-Lawyer Committee and would repeal three addenda currently in use. The forms being revised would be used in transactions involving one-to-four family homes, new homes, condominium units, unimproved residential properties, farms and ranches.

TREC will discuss the proposed revisions at its meeting on April 28, 1997, and could take final action on the forms at that time. If the forms are adopted, TREC would set an effective date for mandatory usage, although licensees could use the forms on a voluntary basis as soon as supplies are available.

Revisions to the contracts concern personal property included in the sale, financing terms, title insurance and survey, statutory disclosure requirements, inspections and repairs, notices to the parties, representation and brokers' fees, settlement and other expenses, proration of taxes and interest, casualty repairs, dispute resolution, and attorney's fees, as well as other subjects.

While there are many significant revisions, licensees may have particular interest in those proposed to inspections and repairs. One alternative would permit the buyer to inspect the property and request repairs to be made by the seller; if the seller did not agree to make the repairs, the contract would terminate. Another alternative would be the buyer's payment of a separate consideration for the right to inspect the property and to terminate the contract within a stated time. This change effectively moves the promulgated Addendum for Inspection with Right

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Revised lead-based paint addendum approved for use

page 4



TEXAS REAL ESTATE COMMISSION MEETING HIGHLIGHTS

DECEMBER 16, 1996 - AUSTIN

Commission discussed and declined to adopt amendment to 22 TAC §537.11 and new 22 TAC §537.45, concerning lead-based paint contract addendum.

Commission adopted an amendment to 22 TAC §534.1, concerning charges for copies of public records.

Commission adopted an amendment to 22 TAC §535.62, concerning examinations. The amendment clarifies that any examination conducted by a testing service would be done in compliance with Commission rules, unless the contract with the testing service requires differently. The amendment also clarifies the confidentiality of examination contents and provides penalties for attempting to obtain or distribute the contents (see *Revealing questions on license tests...* page 6, this issue).

Commission adopted an amendment to 22 TAC §535.71, concerning approval of MCE courses, as presented. The adopted amendment broadens the scope of MCE courses to include those topics that increase or support the licensees' development of skill and competence. Technology-based courses will be acceptable for MCE purposes when the courses primarily are devoted to the application of technology to the practice of the licensee.

Commission proposed an amendment to 22 TAC §535.66, relating to education programs. The proposed rule would adopt a course evaluation form, which could be used at the Commission's request, and would require schools to update core real estate courses.

Commission approved language of draft legislation as presented.

Commission proposed for publication the amendments to 22 TAC §535.51, concerning applications; 22 TAC §535.63, concerning broker education and experience; 22 TAC §535.208, concerning applications; 22 TAC §535.221, concerning inspector advertising; and, 22 TAC §535.222, concerning inspector standards of practice, as pre-

sented.

Commission discussed 22 TAC §537.11 and §§537.43-537.44 concerning addendum and resale certificate for property subject to mandatory membership in an owners' association. Commission requested that the Broker/Lawyer Committee continue its work regarding the homeowners' association forms and to submit a revised version to the Commission when it is ready.

Commission discussed the situation of a real estate licensee receiving commission through unlicensed corporations. Commission stated its position is that any entity receiving a commission in a real estate transaction must be licensed and any act requiring a license applies to corporations as well as individuals.

FEBRUARY 10, 1997 - AUSTIN

Commission elected Mitchell Katine as vice-chairman of TREC. Commission elected Deana Mayfield as secretary of TREC.

Commission discussed proposed amendment 22 TAC §535.66, concerning accredited schools.

Commission adopted 22 TAC §535.51, concerning applications.

Commission adopted an amendment to

22 TAC §535.63, concerning broker education and experience.

Commission adopted an amendment to 22 TAC §535.208, concerning applications.

Commission adopted an amendment to 22 TAC §535.221, concerning inspector advertising, which requires apprentice inspectors to include their license number in their advertisements (see *Amendments to inspector rule...* page 3, this issue).

Commission adopted an amendment to 22 TAC §535.222, concerning inspector standards of practice, which clarified aspects of inspection of water heaters (see *Amendments to inspector rule...* page 3, this issue).

Commission adopted a statement of TREC's jurisdiction in appraisal-related activity.

Commission discussed legislation concerning TREC. Commission approved a "housekeeping bill" requiring salesman applicants to complete a 30 hour course on the law of contracts, providing authority to permit renewals prior to completion of MCE, raising the fee ceiling for examinations, authorizing complaints and investigations to be initiated by staff in specific situations, including payments from a recovery fund, and permitting inspector applicants to substitute ad-

Calendar of Events

April

Texas Real Estate Commission
April 28
Austin

May

Broker-Lawyer Committee
May 8 & 9
Austin

June

Broker-Lawyer Committee
June 12 & 13
Austin

Texas Real Estate Commission
June 16
Austin
(call to confirm date)

Amendments to inspector rules effective March 12

ditional education or experience to satisfy licensing requirements.

Commission approved revised lead-based paint addendum for voluntary use, to be effective May 1, 1997 (see *Revised lead-based paint addendum approved for voluntary use*, page 4, this issue).

Commission appointed Rick Knowles to the Texas Real Estate Broker-Lawyer Committee.

Commission reappointed Linda McCracken and Fred Willcox, and appointed Phil Watkins to the Texas Real Estate Inspector Committee.

Commission discussed website advertising and use of electronic links to access public information and authorized staff to create a graphic link permitting licensees to provide access to TREC's homepage (see page 5, this issue).

Commission discussed acceptance of courses for which credit was obtained by College Level Examination Program (CLEP) examination or prior learning.

FEBRUARY 14, 1997 - TELEPHONE CONFERENCE MEETING

Commission discussed fees collected by the Texas Real Estate Commission. Commission passed the following resolution:

The Texas Real Estate Commission commits that it will not expend appropriations for the following exceptional items without offsetting the expenditures with increased revenue through fees:

(1) funding for three FTE's for enforcement complaint resolution; (2) funding for two additional toll-free telephone lines; (3) funding for the travel expenses for the Texas Real Estate Broker-Lawyer Committee and Texas Real Estate Inspector Committee.

MARCH 17, 1997 - AUSTIN

Commission adopted an amendment to 22 TAC §535.66, concerning accredited

Upon the recommendation of the Texas Real Estate Inspector Committee, TREC has amended two of its rules relating to inspectors. The amendments became effective March 12, 1997. 22 TAC §535.221, concerning advertisements, has been amended to require licensed apprentices to include their license numbers in their advertisements. Professional inspectors and real estate inspectors were already subject to this requirement. TREC also amended two provisions of the Standards of Practice, 22 TAC §535.222. These amendments clarify inspection requirements for water heater temperature and pressure relief valves and for electric water heaters in garage locations.

Inspectors are required by the standards to operate the water heater temperature and pressure relief valve when of an operable type, if the inspector reasonably determines that opera-

tion will not cause damage to persons or property. The amendment to §535.222(f)(2)(A)(xi)(IV) provides examples of conditions under which the inspector may reasonably determine that a water heater temperature and pressure relief valve should not be operated as part of an inspection, such as improper or undetermined termination of the drain pipe, corroded or damaged valve, improper installation of valve or drain pipe, drain pipe is of inappropriate material or lack of water supply cut-off valve at the unit.

The amendment to §535.222(f)(2)(A)(xi)(X)(b-) clarifies that both electric and gas water heaters are to be reported as in need of repair if either is not a minimum of 18 inches above the lowest garage floor elevation, as measured from the burners, burner ignition devices or heating elements, switches or thermostats.

schools. The amended rule adopts by reference an evaluation form which the Commission could require a school to use to measure the quality of instruction and materials used in a course and requires schools to update core courses in the same manner as MCE courses must be updated.

Commission proposed for publication in the Texas Register amendments to 22 TAC §535.61, regarding acceptance of courses offered by out-of-state schools and of credit awarded by examination only or for other learning.



The mission of the Texas Real Estate Commission is to assist and protect consumers of real estate services, and foster economic growth in Texas. Through its programs of education, licensing and industry regulation, the Commission ensures the availability of capable and honest real estate service providers.

*For your information***Corporations and limited liability companies**

The Real Estate License Act and the Rules of the Commission require a corporation or limited liability company (LLC) to be licensed as a real estate broker if it provides real estate brokerage services or represents to others that it is engaged in the business of real estate brokerage. Corporations and LLCs licensed as brokers have the same authority as individuals licensed as brokers. A corporation or LLC may sponsor salesmen and is responsible for the acts and conduct of any salesmen it sponsors.

The general rule is that only a corporation or LLC created under the laws of Texas may obtain a Texas resident broker license. However, a corporation or LLC formed under the laws of another state may be licensed if the corporation or LLC has its principal place of business in Texas, all of its assets are located in Texas, and all of its officers, directors or managers, and members are Texas residents. Also, a non-resident corporation or LLC lawfully conducting real estate brokerage in another state may qualify for a broker's license as a nonresident.

Section 6(c) of the Act requires a corporation or LLC to designate one of its officers or one of its managers to act for the corporation or LLC. Each designated officer or manager must be licensed as an active real estate broker. The designated officer or manager is the "real" person through which

the corporation or LLC applies and qualifies for its broker license. A licensed broker may serve as the designated officer or manager for an unlimited number of corporations or LLCs.

A salesman or unlicensed person may own all or part of a corporation or LLC that holds a real estate broker license. While the designated person must be an officer of the corporation or manager of the LLC, the designated person is not required to own an interest in the corporation or LLC. However, the designated person remains responsible for all real estate activity conducted by or through the corporation or LLC, much as an individual broker is liable for the acts of the salesmen sponsored by the broker. A complaint filed against a corporation or LLC, or any of its sponsored salesmen, is deemed a complaint against the designated person of the corporation or LLC.

Corporations and LLCs licensed as brokers enjoy potential perpetuity. If the license status of the officer or manager changes to inactive, expired, revoked, or suspended, or if the designated person dies or leaves, the corporation or LLC must cease conducting its real estate business until a qualified replacement is named. This is done by submitting a change-of-designated-officer form and the correct fee to the Commission. The corporation or LLC can then resume its real estate activities.

New contract forms proposed

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to Terminate into the contract, making possible the repeal of the addendum as a separate form.

Also proposed for repeal are the Property Condition Addendum and the Agreement for Mediation. The subjects now covered in the addenda would be addressed directly in the contract forms.

Proposed changes also include deletion of specific language relating to the seller's payment of commissions and the replacement of the "Agreement Between Brokers" with boxed language for the identification of brokers and disclosure of their representation.

Payment for the owner policy of title insurance could be designated as the obligation of either party. The contract would no longer specify the details of the survey being obtained by the buyer or the lender.

A number of nonsubstantive wording changes have been made to make the provisions clearer. The forms have also been reprinted in a larger font to make them easier to read and readily distinguishable from the forms currently in use.

TREC invites comments on the proposed forms. Comments should be mailed to Office of General Counsel, TREC, P.O. Box 12188, Austin, Texas 78711-2188. Copies of the forms and a more detailed summary of contract changes by paragraph are available by TREC Fax at: (512) 419-1623 or viewing the TREC Website at <http://www.trec.state.tx.us>.

Revised lead-based paint addendum approved for use

TREC has revised its addendum relating to lead-based paint and lead-based paint hazards. During the TREC meeting on February 10, 1997, the members of the Commission approved an addendum replacing an earlier version approved for voluntary use (see *Advisor*, Volume 7, Numbers 2 and 3). Effective May 1, 1997, licensees who wish to use a TREC addendum to comply with federal disclosure requirements for the sale of homes built prior to 1978 should use the revised version of the form.

The caption of the addendum was changed to emphasize that the disclosures are required by federal law, and language was changed to clarify that the disclosure relates to the seller's actual knowledge of the presence of lead-based paint or lead-based paint hazards. Copies of the addendum are available by downloading the form at TREC's website, <http://www.trec.state.tx.us>, utilizing TREC Fax at (512) 419-1623 (request document #66000004) or by calling TREC at 1 (800) 250-TREC.

What's New?

Distinguish yourself on the web; link your homepage to TREC's website



This official TREC web logo can be used only by persons licensed or regulated by TREC



Licensees who advertise their businesses on the world wide web with their own homepage may now use an official TREC graphic link which provides access to TREC's website. The graphic link was approved for voluntary use by the Commission at its February 10, 1997 meeting. The graphic, which looks like a Texas flag, displays the message "This business is regulated by the Texas Real Estate Commission" (see above sample homepage).

"The new, official graphic link verifies to customers viewing a real estate website that the agent or broker advertising is licensed by the Texas Real Estate Commission," said Bill Kuntz, Texas Real Estate Commission administrator. "Only persons licensed or regulated by TREC may use it. It provides a measure of confidence for customers."

Response to the link has been positive. Licensees who use the link say they value the way it adds to their homepages' credibility

and professionalism. One licensee who uses the TREC webpage in the classroom praised the fact that license renewal fees are spent for items like the TREC webpage which increase TREC's accessibility for licensees.

Kuntz, interviewed by a foreclosure listing publication out of Oakland, CA (*Virtual scams becoming a harsh reality on the internet*, The Inter-City Express, Vol.91, No.47) commented in their March issue on the use of the computer for real estate scams, "As more people are online, the potential for abuse will grow. We wanted to get out front so we could have a handle on the problem. TREC is exploring more ways to expand its use of the internet to provide greater services to its licensees."

Licensees interested in placing the link on their homepages may view easy, step-by-step instructions at: http://www.trec.state.tx.us/trec_link.html.

When you advertise...



Section 15(a)(6)(P) of the Real Estate License Act authorizes disciplinary action against a real estate broker or salesman for failing to identify the person causing an advertisement to be published as a licensed real estate broker or agent. Commission Rule 535.154(c) states that a broker advertising under an assumed name must include an additional designation such as broker or agent if the assumed name does not readily identify the broker as a real estate agent. The use of abbreviations such as "agt" or "bkr" are not acceptable for the purposes of complying with Rule 535.154(c) or the License Act.

Employee of the quarter- Charlyn Pomar

TREC is proud to announce that Charlyn Pomar, receptionist for TREC's Enforcement Division, recently received the first Employee of the Quarter award for 1997. A TREC employee since March 1995, Charlyn began work in TREC's Enforcement Division in March of 1996. Charlyn is responsible for answering the main telephone lines of the Enforcement Division, providing information and assistance to callers and performing secretarial duties for the division's staff. The Enforcement Division has received many positive comments from callers who have been assisted by Charlyn. We'd like to thank her for her good work.

TREC recognizes one employee each quarter based on nominations of fellow employees. The nominees are evaluated on performance, teamwork, initiative, flexibility, leadership and other contributions to TREC's mission.

Exam Site Info: Additional license exam sites open

A new examination site is open in **Dallas** located at 14643 Dallas Parkway. This location has 15 seats and is a welcome addition to other metroplex sites offered by Sylvan Testing Centers. Additionally, new exam seats are being added to Clear Lake's test site and the Houston test center is now operating under new management.

The Ft. Worth site has closed and all applicants are being directed to the larger **Arlington** site. Within the next year Sylvan plans on looking for new locations on the north side of Ft. Worth and in the Houston area.

A candidate may now take the Texas real estate examinations in **Louisiana**. The Bossier City, Louisiana site has now been opened to Texas candidates. There is no extra charge for taking the examination at this site outside Texas. A candidate can sign up for Bossier City just like any Texas city.

For more information on TREC's license exam test sites and test times contact TREC by phone at (800) 250-8732, (512) 459-6544 or refer to the TREC website at <http://www.trec.state.tx.us>

Revealing questions on license exams forbidden by new confidentiality rule

A new rule concerning confidentiality of examination questions was adopted at the December meeting of the Texas Real Estate Commission and became effective January 7, 1997. The new rule, an amendment to 22 TAC §535.61, makes it a violation (punishable by application disapproval or license revocation) to reveal the contents of the real estate license examination to another applicant or to any person associated with a school or examination preparation course. In accordance with the rule, license applications now include a statement affirming that the applicant will not reveal the contents of the examination to others. These revised application forms are available now and must be used

for all license applications.

Examples of conduct that are a violation of the rule are: use of pre-addressed postcards for applicants to send questions back to schools; payment for revealing examination questions; and helping another applicant by revealing specific questions and answers. Examples of conduct not in violation of the revised rule are: discussing a topic causing a student difficulty on the examination without revealing the question itself; finding where a reference to a question's subject may be found; studying with other applicants, but not revealing specific questions; and discussing entire topic areas, such as disclosure of agency, with others.

Got a question? The answer is at your fingertips:

TREC website:
<http://www.trec.state.tx.us>

TREC Fax:
(512) 419-1623

TREC toll-free phone number:
(800) 250-TREC

TEXAS REAL ESTATE COMMISSION DISCIPLINARY ACTIONS

For this and more TREC enforcement information visit <http://www.trec.state.tx.us>

REVOCATIONS

Hill, Richard W. (Austin); license #397506-Violation of §8(i): the Commission has made a payment from the Real Estate Recovery Fund toward satisfaction of a judgment. Revocation of salesman license, effective November 15, 1996.

Herrin, Billy Joe (Plano); license #232635 - asserting a claim for a commission without any legal basis for the claim and inserting a controversy into the closing of a transaction which harmed the interest of the sellers solely to advance his own interest in violation of §15(a)(6)(V). Revocation of broker license, fully probated for 2 years, effective November 15, 1996

Wentz, Mickey Ramone (Dallas); license #377520 -failing to disclose pending criminal charges in an application in violation of §15(a)(2). Violation of §15(a)(6)(W): acting negligently or incompetently in performing an act for which a person is required to hold a real estate license; Violations (4) of §4(a) of Article 6252-13c: criminal conviction of a felony or misdemeanor directly relating to the duties and responsibilities of a real estate broker or salesman. Revocation of broker license, effective December 3, 1996

West Texas Realty, Inc. (Lubbock); license #434948 -failing to account for, remit, or commingling \$20,000 in earnest money coming into its possession in violation of §15(a)(6)(E). Revocation of broker license, effective December 15, 1996

Hunter, Laura (Lubbock); license #210735 - failing to account for, remit, or commingling \$20,000 in earnest money coming into her possession in violation of §15(a)(6)(E). Revocation of broker license, effective December 15, 1996

Drum, Marvin Lannon, Sr. (Austin); license #196970 -Violation of §4(a) of Article 6252-13c: criminal conviction of a felony or misdemeanor directly relating to the responsibilities of a real estate broker or salesman; falsely providing information on an application for renewal of his real estate broker license in violation of §15(a)(2); and failing to provide information requested by the Commission in connection with a renewal application as required by 22 TAC §535.91(a) in violation of §15B(b). Revocation of broker license, effective January 17, 1997

Suspensions

Ortega, Rebeca (El Paso); license #387339-failing to account for tenant occupancy in the sale of a residential property in violation of §15(a)(6)(W). Agreed 60 day suspension of salesman license, fully probated for 6 months; effective November 15, 1996. Agreed administrative penalty of \$500, to be paid by January 15, 1997

Acosta, Armando (El Paso); license #316565-failing to provide an accounting for a security deposit in violation of §15(a)(6)(E); failing to supervise a sponsored salesman in violation of §15(a)(6)(W). Agreed 60 day suspension of broker license, fully probated for 6 months; effective November 15, 1996. Agreed administrative penalty of \$1000, to be paid by January 14, 1997

Lenox, William Arthur (Corpus Christi); license #63324-Violations (2) of §15(a)(6)(W): acting negligently or incompetently in performing an act for which a person is required to hold a real estate license; Violations (2) of §16(e): failing to use a contract form promulgated by the Commission and required for use in the type of transaction involved. 30 day suspension of broker license, effective November 18, 1996

Printz, Nora Jean (Midland); license #293731-failing to deposit earnest money in accordance with the terms of the contract as required by 22 TAC §535.159 in violation of §15B(b); and §15(a)(6)(W). Agreed 3 month suspension of broker license, fully probated for 6 months, effective January 1, 1997

Wimberly, David Otha, III (Houston); license #388419 -operating under a franchise name without the knowledge and consent of his sponsoring broker or franchisor and receiving a commission directly without the knowledge and consent of his broker; Violations (2) of §1(b); operating as a franchise and holding himself out as responsible for a real estate brokerage business without the knowledge and consent of his sponsoring broker in violation of §1(b). 60 day suspension of salesman license, effective January 6, 1997

Reid, Joseph John (Austin); license #253148 -failing to disclose a leaking roof and failure to provide a buyer with a disclosure of property condition completed by the seller in violation of §15(a)(6)(A). Agreed 1 year suspension of salesman license effective January 31, 1997, effective March 3, 1997 remaining 10 months probated

REPRIMANDS

Slankard, Lilleas Valerie (Fort Worth);license #221585-depositing rental receipts into her personal bank account in violation of §15(a)(6)(E). Reprimand of salesman license, entered November 14, 1996

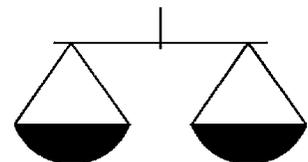
Appling, Grover Berry (Houston); license #366853 -failing to disclose unlicensed real estate brokerage activity in a late application in violation of §15(a)(2). Reprimand of broker license, entered December 9, 1996

Dickerson, Paul James (El Paso); license #236673 -salesman maintaining a trust account in violation of 22 TAC §535.159(f); and failing to license a corporation in violation of 22 TAC §535.53(e) in violation of §15B(b). Agreed reprimand of salesman license, entered December 10, 1996

Ford, Cecil Glen (Stephenville); license #124892 -failing to identify himself as a licensed real estate broker in a newspaper advertisement in violation §15(a)(6)(P). Agreed reprimand of broker license, entered January 7, 1997. Agreed administrative penalty of \$1,000, paid on January 7, 1997

Nursey, Ronald Conrad, Jr. (Dallas); license #429813 -Violation of §15(a)(6)(W). Reprimand of broker license, entered January 27, 1997

All suspensions and revocations of licenses take effect at 5 p.m. on the date specified.



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*Official publication of the Texas Real
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George W. Bush, Governor

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The TREC *Advisor* (ISSN 1047-4579) is published by the Texas Real Estate Commission (TREC) as an educational service to licensees in the state of Texas. The purpose of the newsletter is to promote a better understanding of The Real Estate License Act and to inform all licensees of changes affecting laws and practices in the real estate industry. The TREC *Advisor* is funded through legislative appropriations and subscriptions collected from TREC licensees. The official text of TREC rules is filed with the Office of the Secretary of State, *Texas Register*.

TREC encourages reproduction of this newsletter with the appropriate acknowledgements. Subscriptions are available for \$3.00 for two years. Single issues are \$1.00. To order a subscription or a single issue write to: TREC *Advisor*, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. For more information regarding TREC, contact:

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