



TREC Advisor

Texas Real Estate Commission ★ Volume 16, Number 2 ★ March 2005

Commission Proposes Amendments to "Minimum Broker Services Rule"

At its meeting on February 21, 2005, the Commission proposed amendments to §535.2, concerning a broker's responsibility, adding new subsections (d), (e) and (f). The **amendments** read as follows:

§535.2 Broker's Responsibility. [Ref: §1101.803]

(a) - (c) (No Change).

(d) In negotiating for his or her principal a broker shall provide the following services:

(1) accept and present to the principal offers and counter-offers to buy, sell, or lease the principal's property or property the principal seeks to buy or lease;

(2) assist the principal in developing, communicating, and presenting offers, counter-offers, and notices that relate to the offers and counter-offers; and

(3) answer the principal's questions relating to offers, counter-offers, and notices.

(e) Under §1101.652(b)(22) of the Act a broker may not negotiate or attempt to negotiate the sale or lease of property with a principal with knowledge that the principal is a party to an outstanding written contract that grants exclusive agency to another broker. Under §1101.652(b)(27) of the Act, a broker may not aid, abet, or conspire with another to circumvent the Act. A broker who represents a principal under a listing contract that grants an exclusive agency to the broker may not instruct or authorize another broker who represents another party in the transaction to negotiate directly with the principal.

(f) When a broker delivers an offer or counter-offer to another broker, the broker is not negotiating or attempting to negotiate with a principal he or she does not represent by delivering a copy of the offer or counter-offer to the principal he or she does not represent so long as the broker representing the principal consents to the delivery and the broker who makes the delivery does not discuss or attempt to discuss the terms or conditions of the offer or counter-offer with the principal he or she does not represent.

In 2002, the Texas Association of Realtors (TAR) recommended that the Commission adopt a similar rule to require that all brokers must at a minimum provide the three services included in the current proposed amendment. After a lawsuit was filed, the Commission repealed the rule to provide for additional public comment.

At the April 19, 2004 meeting of the Commission, the members instructed staff to request an opinion from the Office of the Attorney General (OAG) regarding TREC's statutory authority to establish minimum service standards for a real estate broker who enters into an exclusive agency relationship to represent a party to a real estate transaction.

In December of 2004 the OAG issued its opinion which stated that the Commission is permitted to clarify existing rules by adopting new ones, and that the suggested language did not exceed the Commission's rule-making authority, nor did it conflict with the Act's statutory scheme.

Comments concerning the proposed amendment were presented at the meeting of the Commission on February 21, 2005. Individuals both in favor of and against the amendment presented their arguments. After hearing from all those who wished to speak on the matter, the Commission voted unanimously to propose the amendments.

Final action may be taken on this rule at the next Commission meeting on April 25, 2005. Comments may be submitted by mail or e-mail. Comments should be directed to:

**TREC General Counsel
P.O. Box 12188
Austin, TX 78711-2188
general.counsel@trec.state.tx.us**

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TEXAS REAL ESTATE
COMMISSION

Meeting Highlights

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.

Official publication of the
Texas Real Estate Commission

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March 2005

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P.O. Box 12188
Austin, Texas 78711-2188
(512) 459-6544 or (800) 250-TREC
<http://www.trec.state.tx.us>

February 21, 2005

The Texas Real Estate Commission held its regularly scheduled meeting at the TREC headquarters in Austin, Texas on Monday, February 21, 2005. Chairman John Walton presided.

The Commission elected Commissioners Mary Frances Burleson as Vice-Chair and Elizabeth Leal as Secretary.

Loretta DeHay, general counsel, presented the Attorney General Opinion which had been received in December concerning the Commission's authority to propose and adopt specific rule amendments to §535.2.

The Commission voted to propose amendments to §535.2 (see page 1). Over 100 people were in attendance for the discussion on the rule amendments. Of the 10 people offering comments, only two spoke in opposition to the rule.

The Commission appointed George Stephens to the Mortgage Broker Advisory Board and Bill Jones to the Broker-Lawyer Committee (see page 3). The Chairman appointed a subcommittee to review applications and recommend nominees to the Inspector Committee. The members of the subcommittee are Commissioners Paul Jordan, Larry Jokl and Elizabeth Leal (see page 3).

The Commission approved a request from the Inspector Committee to conduct public roundtable discussions to review real estate inspector standards of practice.

The Commission proposed amendments to 22 TAC §§534.3-534.7. These amendments concerning employee training and education, historically underutilized businesses, vendor bid opening and tabulation, negotiation and mediation of certain contract disputes and vendor protest procedures are required by the Government Code.

The Commission approved the suggested rule review plan for 2005-2008 and schedule of reviews for 2005.

The Commission adopted resolutions concerning recognition of licensees with at least 50 years of continuous licensure. Seventy-eight resolutions will be presented in the next two months at various location around Texas. (See page 9.)

The Commission approved payment of two recovery fund claims, one in the amount of \$27,000 and one for \$5,000.

The next meetings of the Commission will be April 25, 2005 and June 13, 2005.



Commissioner Mary Frances Burleson was elected Vice-Chair of the Texas Real Estate Commission on February 21, 2005.

She is a Broker and president of Ebby Hallday Real Estate, Inc.

She is immediate past president of the North Dallas Chamber of

Commerce and an Executive Member of the Greater Dallas Chamber of Commerce. She serves on the Board of Directors for the National Association of Realtors and is a former Chair of the Board of the Texas Association of Realtors. Burleson is also a member of the Southern Methodist University Planned Giving Council. She received a bachelor's degree from SMU.



Commissioner Elizabeth Leal was elected Secretary of the Texas Real Estate Commission on February 21, 2005.

She is a Broker-Associate with Coldwell Banker deWetter Hovious, licensed since 1977.

The only member of the Greater El Paso Association of REALTORS® to be twice named Salesman of the Year, she is also the only member of the El Paso del Norte Chapter of Women's Council of REALTORS® to be twice named Member of the Year, and is the Texas WCR Member of the Year for 2003. She has earned the following designations: ABR, CRS, GRI, LTG, PMN, SRES.

Subcommittee Appointed to Recommend Applicants for the Texas Real Estate Inspector Committee

On February 21, 2005, Chairman John Walton appointed Commissioners Larry Jokl of Brownsville, Elizabeth Leal of El Paso, and Paul Jordan of Georgetown to serve on a subcommittee that will review applications and make recommendations to the full Commission concerning the appointment of three persons to the Real Estate Inspector Committee.

Fifteen individuals submitted requests to be considered for the three positions on the Inspector Committee. The subcommittee will meet on April 13, 2005, at the Commission headquarters in Austin. At that meeting the subcommittee will meet with and interview selected candidates.

The subcommittee will present its recommendations to the Commission at the Commission's meeting on April 25, 2005 in Austin.

TREC Appoints Members to Mortgage Broker Advisory Committee and Broker-Lawyer Committee



George C. Stephens of Houston was appointed to the Mortgage Broker Advisory Committee at the February 21, 2005 meeting of the Texas Real Estate Commission.

Mr. Stephens is the President of deRATT-STEPHENS, INC. (d/b/a ERA STEPHENS PROPERTIES) and operates Celebration Lending Corporation, under his Mortgage Broker License. He has been president and Chairman of the Board of Celebration Lending Corporation since 2001. He answers questions from consumers dealing with mortgage loans and real estate in his ongoing Ask-George & Chuck columns published by the Houston Chronicle, TexasRealEstate.com and RealtyTimes.com.

George C. Stephens

Mr. Stephens served on the Broker-Lawyer Committee for the Commission from 1993 to 1999. He and Charles Jacobus co-authored *Texas Real Estate Brokerage and Law of Agency 3 Ed. 2004*. He is a member of the Houston Association of Realtors, the Women's Council of Realtors-Houston Chapter, the Texas Association of Realtors and the National Association of Realtors.



Bill Jones of Temple was appointed to the Broker-Lawyer Committee to serve the unexpired term of Rob Orr. Representative Orr resigned his position on the committee when he was elected state representative. The term expires in 2007.

Mr. Jones is the owner of Century 21 Accent and has been the broker for that company since 1999. He brings a great deal of experience in residential, and farm and ranch properties to the committee.

Bill Jones

Mr. Jones is a member of the Temple/Belton Association of Realtors. He has been a task force member for FastFill forms, property management forms, and other association studies. Mr. Jones served on the Ft. Hood Housing Initiatives for Base Realignment and Privatization, 1998-1999. During this time he worked with the Real Estate Center to increase base allowance for quarters to a rate consistent with housing values in the Ft. Hood area.

Check out the TREC web site www.trec.state.tx.us for ONLINE filing of applications and renewals, useful consumer information and downloads, FAQs concerning Enforcement, Inspectors, and Education, among other things.



Disciplinary Actions

December 2004–January 2005

Consumer Complaints

Calendar of Events

Commission Meetings:

April 25, 2005
(Austin)

June 13, 2005
(Austin)

Broker-Lawyer Committee Meetings:

March 31, 2005-
April 1, 2005
(Austin)

Inspector Committee Meetings:

March 18, 2005
(Austin)

Web site:

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

Phone

(800) 250-TREC (8732)
or
(512) 459-6544

Wilson, Dianne (Austin); license #265286

Agreed administrative penalty of \$250 against broker license, entered December 6, 2004; negligent supervision of a salesperson sponsored by the broker, in violation of §1101.652(b)(1) of the Texas Occupations Code; allowing an unlicensed person to perform brokerage activity while associated with the brokerage firm, in violation of §1101.652(b)(26) of the Texas Occupations Code; and, paying a commission or fees to an unlicensed person for compensation for services as a real estate agent, in violation of §1101.652(b)(11) of the Texas Occupations Code.

McKissack, James Preston, Jr. (Denton); license #184047

Agreed reprimand of broker license, entered December 7, 2004; acted negligently or incompetently when the corporate broker he sponsors and persons the corporate broker sponsors, an office manager/salesperson and a salesperson, made a demand as a buyer's agent on their client to pay a commission although the salespersons knew, or should have known, the terms in the written Buyer Representation Agreement did not obligate the client to pay the commission, in violation of §1101.652(b)(1) of the Texas Occupations Code.

McKissack Group, Inc. (Denton); license #449245

Agreed reprimand of broker license, entered December 7, 2004; Agreed administrative penalty of \$500, entered December 7, 2004; acted negligently or incompetently when persons it sponsors, an office manager/salesperson and a salesperson, made a demand as a buyer's agent on their client to pay a commission although the salespersons knew, or should have known, the terms in the written Buyer Representation Agreement did not obligate the client to pay the commission, in violation of §1101.652(b)(1) of the Texas Occupations Code.

Pokorny, Harry L. (Austin); license #430788

Agreed administrative penalty of \$500 against broker license, entered December 10, 2004; negligent supervision of a salesperson sponsored by the broker, in violation of §15(a)(6)(W) of the Real Estate License Act [§1101.652(b)(1) of the Texas Occupations Code, effective June 1, 2003]; allowing an unlicensed person to perform brokerage activity while associated with the brokerage firm, in violation of §15(a)(6)(S) of the Real Estate License Act [§1101.652(b)(26) of the Texas Occupations Code, effective June 1, 2003]; and, paying a commission or fees to an unlicensed person for compensation for services as a real estate agent, in violation of §15(a)(6)(F) of the Real Estate License Act [§1101.652(b)(11) of the Texas Occupations Code, effective June 2003].

Giunca, Giovanni Jean (Flower Mound); license #515129

Agreed 1 month suspension of salesperson license, fully probated for 6 months, effective December 13, 2004; agreed administrative penalty of \$500, entered December 1, 2004; acted negligently or incompetently when he demanded as a buyer's agent that his client pay him a commission although he knew, or should have known, the terms in the written Buyer Representation Agreement did not obligate his client to pay the commission and he had directed the commission to be paid directly to him, a salesperson, and not his sponsoring broker in violation of §1101.652(b)(1) of the Texas Occupations Code.

Perry, Carolyn Holly (Lewisville); license #295686

Agreed 1 month suspension of salesperson license, fully probated for 6 months, effective December 13, 2004; Agreed administrative penalty of \$500, entered December 1, 2004; acted negligently or incompetently when as the office manager, she approved the conduct of another salesperson to make a demand as a buyer's agent on his client to pay a commission although she knew, or should have known, the terms in the written Buyer Representation Agreement did not obligate the client to pay the commission, in violation of §1101.652(b)(1) of the Texas Occupations Code.

Morales, Alice (San Antonio); license #262744

Agreed reprimand of broker license, entered December 22, 2004; Agreed administrative penalty of \$250, entered December 22, 2004; conducting brokerage activities using a name in business other than the name under which she was licensed without filing that business name with the Commission, in violation of §15(a)(6)(P) of The Real Estate License Act, Art. 6573a, Texas Civil Statutes [1101.652(b)(23) of the Texas Occupations Code, effective June 1, 2003]; failing to properly supervise a salesperson, in violation of §1(c) of The Real Estate License Act [§1101.803 of the Texas Occupations Code, effective June 1, 2003] and in violation of 22 TAC §535.2(a) of

the Rules of the Texas Real Estate Commission.

Five Star Realty, Inc.
(Carthage); license #416286

Agreed administrative penalty of \$1,000 against broker license, entered December 30, 2004; acted negligently or incompetently when a person who had been sponsored by it as an associate real estate salesperson, continued to act as a licensed real estate salesperson and associate of the broker after the expiration of the salesperson's license, in violation of §1101.652(b)(1) of the Texas Occupations Code.

YNK, Inc.
(Richardson); license #481259

Agreed administrative penalty of \$250 against broker license, entered December 30, 2004; established an association with an unlicensed person who was expected or required to act as a real estate licensee and aided or abetted or conspired with the person to circumvent the requirements of the Real Estate License Act when a person who had been sponsored by it as an associate real estate salesperson, continued to act as a licensed real estate salesperson and associate of the broker after the expiration of the salesperson's license, in violation of §1101.652(b)(26)&(27) of the Texas Occupations Code.

Triangle Group GP, LLC
(Allen); license #490032

Agreed administrative penalty of \$250 against broker license, entered January 3, 2005; paid a commission or fees to a person not licensed as a real estate salesperson for compensation for services as a real estate agent when a person who had been sponsored by it as an associate real estate salesperson, continued to act as a licensed real estate salesperson and associate of the broker after the expiration of the salesperson's license in violation of §1101.652(b)(11) of the Texas Occupations Code; established an association with an unlicensed person who was expected or required to act as a real estate licensee when the person who had been sponsored by it as an associate real estate salesperson, continued to act as a licensed real estate salesperson and associate of the broker after the expiration of the salesperson's license, in violation of §1101.652(b)(26) of the Texas Occupations Code.

Gregorian, Irene B.
(Arlington); license #415612

Agreed 6 month suspension of salesperson license, fully probated for 2 years, effective January 3, 2005; Agreed administrative penalty of \$500, entered December 31, 2004; engaged in dishonest or fraudulent action when selling real property in her own name by completing a seller's disclosure of property condition notwithstanding the fact that she had no knowledge of the condition of the property and knowing that another property owner, who did not complete the disclosure, had actual knowledge of the condition of the property, and failing to disclose her 33% ownership in the corporate entity which owned the property, in violation of §15(a)(3) of The Real Estate License Act [§1101.652(a)(3) of the Texas Occupations Code, effective June 1, 2003].

Boodagh, Michael
(Arlington); license #400884

Agreed 1 year suspension of broker license, fully probated for 3 years, effective January 3, 2005; Agreed administrative penalty of \$4500, entered January 3, 2005; acted negligently or incompetently, engaged in conduct which constituted dishonest dealings, bad faith or untrustworthiness, and failed to disclose to a potential purchaser a latent structural defect when, acting as a listing agent, he had actual knowledge of, but failed to disclose the fact that the property had a defective foundation, caused someone other than the buyer to sign the buyer's name to a notice of repair form, and failed to provide a notice regarding lead based paint to the buyers in a timely manner, in violation of Sections 15(a)(6)(A), 15(a)(6)(V) and 15(A)(6)(W) of The Real Estate License Act [Sections 1101.652(b)(3), 1101.652(b)(2) and 1101.652(b)(1), respectively, of the Texas Occupations Code, effective June 1, 2003]; engaged in dishonest or fraudulent action when selling real property in his own name by failing to disclose that he was 33% owner of the corporate entity which owned the property and by failing to accurately portray the condition of the property in the seller's notice of property condition in violation of Section 15(a)(3) of The Real Estate License Act [Section 1101.652(a)(3) of the Texas Occupations Code, effective June 1, 2003]; attempting to procure a real estate license by making a material misstatement of fact in an application for real estate broker license in violation of Section 15(a)(2) of The Real Estate License Act [Section 1101.652(a)(2) of the Texas Occupations Code, effective June 1, 2003].

Griggs, Bridget Lea
(Frisco); license #514497

Agreed 3 month suspension of salesperson license, fully probated for 1 year, effective January 15, 2005; acted negligently or incompetently when she suggested to buyers who were not her clients that they either (1) terminate a new home sales contract to substitute a new sales contract that included her name as their agent or (2) submit to the seller a buyer representation agreement listing her as the buyer's agent that was backdated before the sales contract was signed, in violation of §1101.652(b)(1) of the Texas Occupations Code; in the same transaction, she induced or attempted to induce the buyers to a sales contract to break it for the purpose of substituting in lieu thereof a new sales contract, in violation of §1101.652(b)(21) of the Texas Occupations Code.

Administrative Complaints

**Watson, Carolyn Sue
(Crockett); license #244156**

Revocation of broker license, effective December 1, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Bolin, Michael Jess
(Canton); license #175375**

Agreed reprimand of broker license, entered December 6, 2004; Agreed administrative penalty of \$250, entered December 6, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Poston, Kimberly Kean
(Dallas); license #314873**

Agreed reprimand of salesperson license, entered December 13, 2004; Agreed administrative penalty of \$250, entered December 13, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Tomczek, Stephen Roger
(Harker Heights); license #522164**

Agreed 1 year suspension of salesperson license, fully probated for 2 years, effective December 20, 2004; failure to provide information in his Application for Inactive Real Estate Salesperson License, in violation of §1101.652(a)(2) of the Texas Occupations Code.

**Riggs, Blake Lewis
(Amarillo); license #290500**

Agreed reprimand of salesperson license, entered December 22, 2004; the Commission paid from the Real Estate Recovery Fund (the "Fund") in accordance with an order that was made in a civil case rendered against Mr. Riggs which constituted cause for the suspension or revocation of his license pursuant to §8(i) of the Real Estate License Act [§1101.655 of the Texas Occupations Code, effective June 1, 2003] and thereafter, Mr. Riggs paid to the Commission the amount paid from the Fund plus interest.

**Williams, Houston Philmore, III
(Camp Wood); license #477290**

Revocation of salesperson license, effective December 28, 2004; failing within a reasonable time to make good a check issued to the Commission and pay the processing fee, in violation of §1101.652(a)(4) of the Texas Occupations Code.

**Gonzalez, Ramiro Pablo
(Houston); license #468068**

Revocation of salesperson license, effective December 28, 2004; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(c) of the Rules of the Texas Real Estate Commission.

**Deweese, Scott Wayne
(Garland); license #507781**

Revocation of salesperson license, effective December 28, 2004; failing within a reasonable time to make good a check issued to the Commission and pay the processing fee, in violation of §1101.652(a)(4) of the Texas Occupations Code.

**Breaux, Leslie Nicole
(Houston); license #485876**

Revocation of broker license, effective December 28, 2004; failing within a reasonable time to make good a check issued to the Commission and pay the processing fee, in violation of §1101.652(a)(4) of the Texas Occupations Code.

**Flick, Mary Dee
(Frisco); license #506442**

Revocation of salesperson license, effective January 6, 2005; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(c) of the Rules of the Texas Real Estate Commission.

**Costas, Minka Kay
(Pflugerville); license #469894**

Agreed reprimand of salesperson, entered January 7, 2005; Agreed administrative penalty of

\$250, entered January 7, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Gifford, Carole Johnson
(Plano); license #302125**

Agreed reprimand of salesperson license, entered January 10, 2005; Agreed administrative penalty of \$250, entered January 10, 2005; failing to complete mandatory continuing education hours and pay the \$ 200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Eige, Sheri Jean
(Houston); license #355922**

Agreed reprimand of salesperson license, entered January 14, 2005; Agreed administrative penalty of \$250, entered January 14, 2005; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC 535.91(c) of the Rules of the Texas Real Estate Commission.

**Morris, Elaine Huff
(DelRay Beach, Florida); license #301947**

Agreed reprimand of salesperson license; entered January 14, 2005; Agreed administrative penalty of \$250, entered January 14, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Reim, Timothy R.
(Garland); license #424199**

Agreed 3 month suspension of salesperson license, fully probated for 6 months, effective January 18, 2005; Agreed administrative penalty of \$500, entered January 13, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Scales, Paul Lawrence
(Arlington); license #438608**

Revocation of salesperson license, effective January 18, 2005; failing to complete mandatory continuing education hours within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Webb, Dawn
(San Antonio); license #406737**

Revocation of salesperson license, effective January 19, 2005 ; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Meyer, Elaine Mantini
(Corpus Christi); license #448863**

Agreed reprimand of salesperson license, entered January 25, 2005; Agreed administrative penalty of \$250, entered January 25, 2005; failing to pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Jolivet, Aniesha Reenae
(Houston); license #496157**

Revocation of salesperson license, effective January 26, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Gonzales, Janet Leigh
(League City); license #476183**

Revocation of salesperson license, effective January 26, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Cravens, Pamela J.
(Ovilla); license #478322**

Agreed reprimand of salesperson license, entered January 27, 2005; Agreed administrative penalty of \$250, entered January 27, 2005; failing to pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

**Cook, Henry Marion
(Katy); license #254141**

Agreed reprimand of salesperson license, entered January 27, 2005; Agreed administrative penalty of \$250, entered January 27, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission.

Questions and Answers Concerning the NEW LEGAL & ETHICS REQUIRED MCE COURSES

- **I have an active two-year license that expires on April 30, 2005. I intend to complete all my Mandatory Continuing Education (MCE) requirements for renewal before January 1, 2005. Will I need to take the new legal update course and legal ethics course to renew my license on active status?**

No, not for your first renewal after the effective date. You will need to take the new legal courses anytime thereafter to renew your license on active status.

- **I was out of the business for a couple of years. I just filed a late renewal of my license and now I have an active one-year license that expires on October 31, 2005. Will I need to take the new legal update course and legal ethics course to renew my license on active status?**

No. You may, but are not required to, take the new legal courses for your first renewal after the effective date. You will need to take the new legal courses anytime thereafter to renew your license on active status.

- **I have an active two-year license that expires on April 30, 2005. I intend to complete some of my MCE requirements before January 1, 2005, but I will need to take an additional 6 hours to comply with the legal MCE requirements. Will I need to take the new legal update course and legal ethics course to renew my license on active status?**

No. You may, but are not required to, take the new legal courses for your first renewal after the effective date. You will need to take the new legal courses anytime thereafter to renew your license on active status.

- **I will get my first salesperson license that is not subject to Salesperson Annual Education (SAE) requirements in February 2005. When I renew in February 2006, will I need to take the new legal courses?**

Yes.

- **I currently have a one-year salesperson license. I completed my SAE and got my one-year license in October 2004. Will I need to take the new legal courses to renew my license on active status in October 2005?**

No. You may, but are not required to, take the legal courses for your first renewal after the effective date. You will need to take the new legal courses anytime thereafter to renew your license on active status.

- **My license is inactive. I plan on returning my license to active status in February 2005. Will I need to take the new legal courses?**

If you have not completed your legal MCE requirements by January 1, 2005, you will need to take the new legal courses to return to active status.

- **I have an active two-year license that expires on October 31, 2005. I plan on renewing inactive. When I decide to return my license to active status, will I need to take the new legal courses?**

It depends. If you wish to return to active status after September 1, 2006, you will need to take the new legal courses as no other legal courses will be available. If you wish to return to active status prior to September 1, 2006, you may, but are not required to, take the new legal courses.

- **Assume for purposes of this question that the date is August 2005. I had an active two-year salesperson license that expires on April 30, 2006. My broker terminated me in June 2005, which made my license inactive. I found another broker to sponsor me, but when I sent my sponsorship form to TREC, I received a letter indicating that I needed to complete my MCE requirements. Do I need to take the new legal courses to return to active status?**

No. You may, but are not required to, take the legal courses to return to active status. Once you have an active license, the courses you take will count for your renewal in 2006. You will need to take the new legal courses anytime thereafter to renew or reactivate a license.

- **I will get my broker license in August 2005. Will I need to take the new legal courses to renew my license in August 2006?**

Yes.

- **I will apply for a late renewal of my salesperson license in February 2005. Will I need to take the new legal courses before I apply for my license?**

If you have not completed the legal MCE requirements by January 1, 2005, you will need to take the new legal courses before you apply for a late renewal of your license.

- **I am a broker. In 1991, I got the one-time exemption from continuing education requirements under section 1101.456 of the Occupations Code. Do I need to take the new legal courses?**

No.

FOR YOUR OWN GOOD... CHECK THE EXPIRATION DATE OF YOUR LICENSE

It is your responsibility to ensure that your license is renewed in a timely manner. Any education you might require must be completed before your license expiration date if you want to maintain an active real estate license, unless you pay an additional \$200 fee and complete your MCE within 60 days of the expiration date of your license.

Renewal forms are sent out to all licensees and may also be obtained on our web site. The Texas Real Estate Commission is not responsible for U.S. Postal Service delivery or knowing where to find you if you have moved and have not filed a change of address with our office. Failure to receive a renewal notice does not provide a valid excuse for not renewing your license.

Licensees Honored for Over 50 Years of Continuous Licensure

At its meeting on February 21, 2005, the Texas Real Estate Commission unanimously adopted a resolution commending seventy-eight individuals who have been continuously licensed for at least fifty years. Presentations of the framed resolution for each of these licensees are being made this Spring. The first events were held in Plainview (J. B. Roberts) and Amarillo (Don H. Mason) on March 3rd followed by Lubbock (Donald Osborne and Donald Lamar Harris) on March 4th. Upcoming presentations will be in Corpus Christi (March 18th), Houston (March 21st), El Paso (April 7th) and San Antonio (April 13th). Austin area honorees will be recognized at the Commission meeting on April 25th.



Kay Latham, President of the Amarillo Association of Realtors and Wayne Thorburn, Administrator of the Texas Real Estate Commission, presented **Don H. Mason** with a resolution honoring his more than 50 years as a real estate licensee. Mason was licensed in 1951. He was president of the Texas Association of Realtors in 1969.



Chairman John Walton of the Texas Real Estate Commission presented **Donald Lamar Harris** of Lubbock with a resolution honoring his more than 50 years as a real estate licensee at the Lubbock Association of Realtors on March 4, 2005. Mr. Harris has been licensed since 1954 and is an active certified real estate appraiser.



At a reception on March 4, 2005, **Donald W. Osborne** provides remarks after being recognized for more than 50 years as a real estate broker in Lubbock. Mr. Osborne has been licensed since 1952 and is a former president of the Lubbock Association of Realtors.

Your License is Just a Click Away

In August of 2000, the Texas Real Estate Commission became the first state agency to provide online license renewals. In the last four years the Commission has worked continuously to improve its web site and the services that are offered there.

It is now possible to file and pay for the following licenses online:

- **BROKER**
Original Application, Timely Renewal or Late Renewal for an Individual
Original Application or Timely Renewal for a Corporation
Timely Renewal for a Limited Liability Company
- **SALESPERSON**
Original Application or Timely Renewal of a Two Year License
- **INSPECTOR**
Timely Renewals of Professional, Real Estate and Apprentice Inspector Licenses
- **EASEMENT OR RIGHT-OF-WAY**
Timely Renewals of Business and Individual ERW certificates of registration.

Go to the TREC web site www.trec.state.tx.us and make your next renewal online.

Enforcement Questions and Answers

More questions and answers can be found on the web site at
www.trec.state.tx.us

Q. I am a licensed agent. Could you please explain the "Mailbox Rule" to me?

A. The "Mailbox Rule," as it pertains to licensees, relates to when a salesperson changes sponsoring brokers. It can be found in The Rules of the Texas Real Estate Commission, Section 535.122(a), entitled, "Reactivation of License." The rule tells a licensee and broker that they must notify the Commission within 10 days after the change in sponsorship, requesting a change and submitting the appropriate fee for issuing a new license. The "mailbox rule" then comes into play by allowing a salesperson to act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission. This is done in order that the salesperson will not have to wait until a new license is received before being able to work. Section 535.122(b) should be read and followed if a salesperson is going from inactive to active under a new sponsor.

Q. I am a salesperson and my broker, an individual, has just died. What do I need to do about my license, listings, pending sales, etc.?

A. Your license became inactive at the time of your broker's death. Therefore, the first thing you need to do is find another sponsoring broker. Remember, you may not transact any business until you have a new broker. Regarding the listing agreements, pending sales, etc., generally speaking, all listing agreements belong to the broker. Because listing agreements are personal service contracts, the sellers would need to enter into new listing agreements with your new broker. Commission matters with the deceased broker's estate would need to be determined at the time the estate is probated. You may want to seek the advice of a private attorney about working with the broker's estate to resolve these matters.

Q. I am a licensed real estate salesperson, and I want to begin investing in real estate. Are there any prohibitions to this activity? Is it a conflict of interest?

A. No, there are no prohibitions against being a licensed real estate agent and investing in property. However, we would caution you that if you decide to buy or sell any property, you must disclose in writing that you are a licensee. Additionally, you must not use your expertise to the disadvantage of the other parties to the transaction.

Q. I am a real estate agent, and I have heard something about a license being required for persons who inspect for mold damage in a home. Is there anything regarding this process that I should be aware of?

A. Yes. The Toxic Substances Control Division of the Texas Department of Health (TDH), www.tdh.state.tx.us/beh/iaq, is responsible for implementing legislation that became effective May 16, 2004. TDH has now completed rules to accompany the legislation and the rules became effective January 1, 2005. The rules require that persons involved with the inspection and remediation of mold damage must be licensed. The entire process of mold assessment and remediation is regulated under the new rules.

Q. My secretary, who is not licensed by TREC, answers telephone calls regarding listed property. Is it permissible for her to give any type of information on listings such as descriptions and asking price, i.e., the basic information about a listing?

A. Yes, an unlicensed person may confirm information from an advertisement, such as, "Yes, the property has three bedrooms and 1 bathroom," but could not ask whether that would suit the needs of the caller. The unlicensed person must be careful not to ask questions of a potential prospect or attempt to "qualify" the caller in any way. It is always a good idea for an unlicensed assistant to indicate to the caller, early in the conversation, that he or she is not a licensed agent. Please see the article on our TREC web site regarding use of an unlicensed assistant. The link is <http://www.trec.state.tx.us/formslawspubs/publications/unlicensed-assistants.asp>.

Q. Is there a rule or formula for measuring residential square footage?

A. The Texas Real Estate Commission does not have statutes or rules that require the measurement of square footage of a property or provide a formula for the measurement of residential square footage. You may want to check with the Texas Appraiser and Licensing Certification Board at www.talcb.state.tx.us or 512.465.3950 for information on how appraisers calculate square footage.