



TREC Advisor

Texas Real Estate Commission ★ Volume 20, Number 5 ★ November 2009

Quarterly Report

In the last Advisor, I was introduced and you learned a bit about my background and experience. Also, I offered you a glimpse of the direction I think the agency should be headed. Every quarter, here in the pages of the Advisor, I plan to give you a summary of the progress we've made and the major milestones which lay ahead of us. I hope you find it informative and useful.

I consider my approach to be a mix of common sense, innovation, and urgency. I tend to ask questions like "Why not?" and "How soon?" Within 30 days of beginning this adventure, I had met with each and every staff member and solicited their feedback to this question: "If you could change just one thing to allow you to do your job more effectively, what would it be?" I got some great suggestions from the team at TREC and TALCB.



DOUGLAS E. OLDMIXON

For example, we had several team members in the Communication Center who arrive at work by 7 am each day (because of kids and traffic), but they could not officially start work until 8 am when the agency opened. They wished they could work a 7am to 4pm day. We explored that a bit further and found that all of the Communications Center team would not mind working a flexible schedule to allow the agency to begin accepting calls at 7 am and continue answering calls until 6 pm. Why not? How soon? The team pulled together, came up with a plan and as of October 19, 2009, the agency phones are now answered 11 hours per day, a 22% increase! Now both the public and licensees have substantially more access to the assistance and service the agency offers. That seemed to be a common sense solution that is truly a "win-win."

In the first two months we restructured some of the agency functions to help them operate more efficiently, added significant resources to TALCB where complaints have reached new levels, hired a highly qualified Director of Standards & Enforcement, and an experienced Public Affairs assistant. We sent out an information release to over 200,000 e-mail addresses regarding the expanded call answering hours, and we have begun testing the electronic delivery of licenses to those who renew online. In the last Advisor I asked for your feedback on these initiatives, and while we didn't get a large response, the results we did get were positive. We have simplified the online customer service survey, and truly welcome your comments.

Continuing in that spirit, we have begun a formal "Bottom-Up Review" process, looking for more opportunities to eliminate or reduce limitations to effectiveness, improve service and streamline processes, and reduce expenses. As we evaluate the results, we will invite your ideas and feedback on specific opportunities that we will propose. Since these will affect you, we want your inputs. Watch for notices about these in your e-mail. Our mission is to protect consumers and to contribute to the economy by assisting real estate related service providers through education, licensing, and regulatory services. We value your participation.

We held both a Commission meeting and a Board meeting in October and the staff did an excellent job of preparation to ensure both meetings were very effective. I have to tell you, I was impressed. Having observed Commission meetings in the past, and having served on the Board for over three years, I was still quite amazed to see how much work goes into the preparations for such meetings. Now that I am responsible to ensure these meetings are as effective as possible, I have a new appreciation for the dedication and expertise of the agency's staff. You have a great team of public servants working hard to perform our mission better every day. And that is a commitment I will ensure we continue to honor. Aiming high; and proud to serve.

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TEXAS REAL ESTATE COMMISSION

Meeting Highlights

October 19, 2009

The Texas Real Estate Commission held its regularly scheduled meeting at the TREC headquarters in Austin, Texas on Monday, October 19, 2009. Chairman John D. Eckstrum presided.

The Commission approved payment of two recovery funds and granted staff authority to negotiate the settlement of a third recovery fund payment.

The Commission proposed amendments to 22 TAC §543 regarding Rules Relating to the Provisions of the Texas Timeshare Act. (see pg. 4)

The Commission proposed amendments to 22 TAC §535.61 regarding Examinations; §535.62 regarding Accreditation of Schools and Approval of Courses and Instructors and §535.64 regarding Payment of Annual Fee, Audits, Investigations and Enforcement Actions. (see pg. 4)

The Commission adopted amendments to 22 TAC §537.30 and §537.31 concerning Standard Contract Forms TREC No. 23-9 and No. 24-9. It also adopted the repeal of §537.50 regarding the Addendum Containing Required Notices Under §5.16, §420.001 and §420.002, Texas Property Code. (see pg. 4)

The Commission appointed Patrick Noon of Longview and Dan Odom of Fort Worth to the Broker Lawyer Committee with terms to expire August 31, 2015.

The Commission approved the Memorandum of Understanding with the Texas Appraiser Licensing and Certification Board regarding administrative services provided by TREC staff.

The Commission approved four Proposals for Decision from the State Office of Administrative Hearings: In the Matter of George Edward Durell, SOAH Docket No. 329-09-3916.REC; In the Matter of Deborah L. Gonzales, SOAH Docket No. 329-09-5442.REC; In the Matter of Philip Perez Romo, SOAH Docket No. 329-09-4070.REC and In the Matter of Seung M. Santillan, SOAH Docket No. 329-09-2018.REC.

The Commission denied the motion for rehearing in the Matter of Erasmo Garcia, SOAH Docket Number 329-09-1334.REC/TREC Hearing Number 09-88-053590.

The next scheduled meetings of the Commission will be at 10 a.m. on December 14, 2009, at the TREC headquarters in Austin, TX. The Commission also set meeting for February 8, 2010, May 17, 2010, September 9, 2010 and November 15, 2010. All scheduled meetings would begin at 10 a.m.

The Texas Online initiative was developed to aid Texans when interacting with state agencies by going online instead of standing in line. TREC has increased the convenience to licensees by offering web-based license renewals, original applications and other time saving services, such as the *TRECAdvisor* newsletter, online. The resulting decrease in operating costs has allowed TREC to avoid some fee increases, realign resources and increase other services to licensees. To further this effort, TREC is considering adopting an email delivery system for license renewal notices. **Instead of sending the current renewal postcard notices, TREC would send an email to licensees 90 days, 60 days and 30 days prior to their upcoming license expiration date.** These email notices would be sent to all active license holders, and notices to sponsored licensees (salespersons, apprentice and real estate inspectors, appraiser trainees) would be sent to their sponsors as well. **As part of a related initiative, at completion of an online renewal, TREC would provide a website link to the licensee which allows the printing of license certificates (with companion wallet-size certificates) by the licensee.** Currently almost 85% of license renewals are completed online and an email address is required to do so. To ensure the success of this proposed effort, TREC needs a valid email address for each licensee. TREC welcomes your input on these proposed initiatives. Please send your comments to admin@trec.state.tx.us.

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

Volume 20, Number 5
November 2009

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Governor

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Desktop Publishing
Patricia Holder

The *TRECAdvisor* (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 *TRECAdvisor* 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 acknowledgments. Subscriptions are available for \$4.00 for two years. Single issues are \$1.00. To order a subscription or a single issue write to *TRECAdvisor*, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. For information regarding TREC, contact:

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

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

Meeting Highlights

The mission of the Texas Appraiser Licensing and Certification Board is to protect the public interest by assuring that consumers of real estate appraisal services are served by real estate appraisers qualified in accordance with federal and state law and in sufficient numbers to facilitate the free flow of commerce and industry.

October 16, 2009

The Texas Appraiser Licensing and Certification Board held its regularly scheduled meeting at the TREC headquarters in Austin, Texas on Friday, October 16, 2009. Chairman Clinton Sayers presided.

The Board adopted amendments to 22 TAC §153.24 regarding processing a complaint. The amendments enable the Board and the commissioner to designate a staff member to sign off on dismissals of enforcement complaints.

The Board adopted amendments to 22 TAC §153.19 regarding licensing and certification of persons with criminal histories. The amendments serve two primary purposes: (1) clarify that the TALCB's licensing requirements for persons with criminal histories comply with Chapter 53 of the Texas Occupations Code and (2) establish rules to implement House Bill 963's requirement that the agency issue a criminal history evaluation letter to prospective applicants for licensure or certification..

The Board adopted a revised complaint form that restored the litigation question that had previously been deleted.

The Board adopted amendments to §153.5 regarding fees. The amendments create a fee of \$30 for prospective applicants for a license or certification who request an evaluation of their criminal history pursuant to House Bill 963 (81st Legislature), which created a process by which applicants for occupational licenses may seek a determination regarding their criminal history prior to filing an application for licensure. The amendments also increase licensing fees by \$50 per year, as follows: to apply for or renew a (two-year) general certification; to apply for or renew a (two-year) residential certification; to apply for or renew a (two-year) license (including provisional licenses); and to apply for or renew a (one-year) appraiser trainee approval.

The Board adopted amendments to 22 TAC §153.9 regarding applications. The amendments reflect revised application fees, consistent with amendments to 22 TAC 153.5 adopted above, clarify the requirements regarding education evaluations, and adopt by reference 17 new and revised application forms. The changes to the forms primarily reflect formatting changes; however, the forms also expand and clarify the criminal background questions and harmonize, when possible, the instructions and certification sections at the end of the forms. For more information see the TALCB web site at www.talcb.state.tx.us

The Board adopted an enforcement case management process, which includes risk assessment, progressive scope of investigations, a review of the use of independent contractors to provide appraisal review and investigative services to the Board, and revitalization of the Peer Investigative Committee process.

The Board approved the fiscal year 2010 operating budget and a Memorandum of Understanding with the Texas Real Estate Commission.

In consideration of TALCB enforcement issues, the Board approved three Proposals for Decisions, eleven agreed final orders, one surrender of certification and two requests for extensions.

Texas Appraiser Licensing and Certification Board

Rick Perry
Governor

Board Members:

Clinton P. Sayers
Chairman
AUSTIN

James (Jamie) B. Ratliff
Vice-Chair
GARLAND

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Secretary
DESIGNEE MEMBER

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EL PASO

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HOUSTON

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HOUSTON

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Donna L. Walz
LUBBOCK

TALCB Commissioner
Douglas E. Oldmixon

Desktop Publishing
Patricia Holder

Texas
Appraiser Licensing and Certification
Board
P.O. Box 12188
Austin, Texas 78711-2188
(512) 459-2232 or (877) 825-2289
<http://www.talcb.state.tx.us>

Calendar of Events Board Meetings

December 11, 2009
At 10:00 a.m.
(Austin)

February 12, 2010
At 10:00 a.m.
(Austin)

Web site:
<http://www.talcb.state.tx.us>

Phone
877-TALCB-TX (1-877-825-2289 or
(512) 459-2232

RULE ACTIONS FROM OCTOBER 19, 2009 MEETING OF THE TEXAS REAL ESTATE COMMISSION

RULE NO.	EARLIEST DATE OF ADOPTION	SUMMARY OF PROPOSED RULE <i>For text of the rules as they were filed with the Texas Register, go to the web site www.trec.state.tx.us</i>
22 TAC §§535.61, 535.62, and 535.64	12/14/2009	<ul style="list-style-type: none"> • The amendment to §535.61 would establish the pre-license examination pass rate for salespersons and brokers at 75%. • The amendments to §535.62 and §535.64 would define how TREC-approved proprietary schools' passage rates are calculated and published by the commission and would implement the statutory requirement that schools demonstrate a 55% examination passage rate to renew their accreditation. In response to comments to previously proposed amendments to these rules, the proposed amendments would allow schools that offer correspondence courses in association with accredited colleges or universities to issue certificates of completion in the name of the TREC-approved school and to count the examination passage rates of students in those courses toward the school's overall passage rates. The proposed amendments further state that correspondence courses offered in association with accredited colleges or universities, like correspondence courses offered by accredited colleges and universities, do not require commission approval because all such courses must comply with the college or university's curriculum accreditation standards.
22 TAC §543.4, §543.5, §543.12, §543.13	12/14/2009	<ul style="list-style-type: none"> • The amendments to §543.4 would adopt by reference four amended forms, TSR 1-5, 2-5, 3-3, and 8-1. The changes to the forms correct typographical errors, and TSR 1-5 is amended to be consistent with recent amendments to the Texas Timeshare Act, Chapter 221, Texas Property Code enacted under SB 1036 during the 81st Legislative Session. The revisions remove references to the name and address of the person who prepared the operating budget, and remove language that used to be required in the contract of purchase but is no longer required under SB 1036. • The amendment to §543.5 adds to the list of material violations failure to properly comply with requirements for filing an assumed name. • The amendment to §543.12 adds subsection (d) to provide a 60-day time period in which a developer must respond to a request for additional information from TREC in connection with an application to renew a timeshare plan. • New §543.13 provides a process and time period for which developers must file assumed names with the commission to comply with changes to the Timeshare Act made by SB 1036.

RULE NO.	EFFECTIVE DATE	SUMMARY OF RULES ADOPTED <i>For text of the rules as they were filed with the Texas Register, go to the web site www.trec.state.tx.us</i>
22 TAC §537.30, §537.31 (adopted)	12/1/2009	<p>The rules</p> <ul style="list-style-type: none"> • are adopted on a permanent basis to eliminate from the new home contracts provisions required by the Texas Residential Construction Commission Act (Title 16 of the Texas Property Code) that will not be appropriate after the September 1, 2009, expiration of the Act. Section 537.30 and section 537.31, Standard Contract Forms TREC Nos. 23-8 and 24-8 are amended to delete from Paragraph 22 the references to the Addendum Containing Required Notices Under §5.016, §420.001 and §420.002, Texas Property Code.
22 TAC §537.50 (adopted)	12/1/2009	<p>The rule</p> <ul style="list-style-type: none"> • repeals on a permanent basis an addendum for new home contracts required by the Texas Residential Construction Commission Act (Title 16 of the Texas Property Code) that will not be appropriate after the September 1, 2009, expiration of the Act. The repeal of §537.50, Standard Contract Form TREC No. 43-0, repeals the Addendum Containing Required Notices Under §5.016, §420.001 and §420.002, Texas Property Code, which will no longer required to be provided to buyers of new homes.

TREC is proud to announce two honorees for the Outstanding Performer Awards: for the 3rd Quarter of FY 2009 - Loretta DeHay and for the 4th Quarter FY 2009 - Tonya McCullough.



Tonya McCullough, Douglas E. Oldmixon, Administrator, and Loretta R. DeHay

Loretta joined TREC in June of 1998 and has completed over 11 years with the agency. Prior to TREC, she served as an Assistant Attorney General for Texas from March of 1993. Loretta started as Director in the Enforcement Division, was later selected as General Counsel for the agency, and in 2007 she added Assistant Administrator to her areas of responsibility. Twice she has fulfilled all the duties of her positions, as well as fulfilled the duties of Interim Administrator when that position was vacated. The latest period was for eight long months, including the very challenging 2009 legislative session last spring. Her skill and direction ensured the agency had a very successful session, achieving some unprecedented goals. Despite the responsibilities and pressures of many challenges, she remained focused, strong and cheerful, and always kept the good of the agency as her foremost consideration. For all of these reasons, Loretta is recognized as a TREC Outstanding Performer.

Tonya joined TREC in February 2008, coming to us from Flood Data Services, a private sector company, where she had worked since 1999. Prior to that she had served for 4 years at the Attorney General's Office. Tonya is currently an administrative assistant in the Enforcement Division, where she supports legal assistants and attorneys in managing and closing complaint cases. She manages much of the correspondence for each file and handles phone inquiries as well. According to multiple co-workers who nominated her, she is organized and efficient, always cheerful and professional, with a remarkable level of teamwork attitude that deserves official recognition. Although she is relatively new, she has obviously made quite an impression. For her commendable efforts, consistent results, positive outlook and overall contributions to the success of the division, Tonya McCullough is recognized as a TREC Outstanding Performer.

To renew your license you must pay a renewal fee.

There are three steps to renew.

1. **Complete** the required **education** for the license type. **(Total of 210 core hrs. and 60 related or core hours for SAE or 15 hours of MCE)**
2. **Submit** your **fingerprints** through L-1 if you haven't already done so.
3. **Pay** the renewal **fee**.

Education and fingerprinting are not required for a timely renewed inactive license if you are subject to MCE.

If you are subject to SAE you are required to complete the education requirement even if you are renewing on an inactive status. Renewals without education for this type of license will be rejected. **Both SAE and fingerprinting should be completed at least 10 days prior to the license expiration date.** Fingerprinting is not required for a timely renewed inactive license if you are subject to SAE.

Late renewal applications require the submission of fingerprints if not previously obtained for TREC.



TREC Disciplinary Actions September 2009-October 2009

Jo, Young Nam
(Houston); License #584033

Agreed reprimand of salesperson license, entered September 16, 2009; Agreed administrative penalty of \$500, entered September 16, 2009; 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).

Texas Apartment Locators, Inc.
(San Antonio); License #329027

Revocation of broker license, effective September 21, 2009; payment of \$5,466.30 made from the Texas Real Estate Recovery Trust Account toward satisfaction of a judgment as authorized by §1101.655(a) of the Texas Occupations Code.

Clop, James Patrick
(Palestine); License #316605

Agreed reprimand of broker license, entered September 9, 2009; Agreed administrative penalty of \$1,000, entered September 9, 2009; failing to give written notification to the Commission within 30 days after broker or salesperson sponsored by broker started using a name in business other than the name in which the person was licensed, in violation of 22 TAC §535.154(c).

Becton, Jason Bryant
(Lubbock); License #516431

Revocation of salesperson license, effective September 14, 2009; while acting as a buyer's agent, acting negligently or incompetently in completing contracts using a name other than his sponsoring broker's name, in violation of §1101.652(b)(1) of the Texas Occupations Code; in the same transaction, engaging in conduct that is dishonest or in bad faith or that demonstrated untrustworthiness in allowing the buyers to move into a property prior to closing without a valid lease agreement, in violation of §1101.652(b)(2) of the Texas Occupations Code; in connection with the renewal of his salesperson license, failing or refusing to provide the information requested by the Commission within the required time, in violation of §1101.656 of the Texas Occupations Code; failing or refusing to produce on request, for inspection by the Commission or a Commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder, in violation of §1101.652(a)(5) of the Texas Occupations Code; and failing to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission, in violation of §1101.652(a)(6) of the Texas Occupations Code.

The Michael Group, LLC
(Dallas); License #520106

Agreed reprimand of broker license, entered September 14, 2009; Agreed administrative penalty of \$500, entered September 14, 2009; acting negligently or incompetently by failing to monitor the brokerage activities of a sponsored salesperson, in violation of §1101.652(b)(1) of the Texas Occupations Code.

Aijalon Properties, Inc.
(Dallas); License #N/A

Agreed administrative penalty of \$500 and order to cease and desist unlicensed real estate brokerage activities, entered September 22, 2009; engaging in property management and leasing services for others for a fee and advertising on its web site services for property management and leasing, in violation of §1101.351(a) of the Texas Occupations Code.

Brown, Jonathan Jason
(Allen); License #428926

Agreed reprimand of salesperson license, entered September 24, 2009; Agreed administrative penalty of \$1,500, entered September 24, 2009; acting negligently and

Calendar of Events

Commission Meetings
December 14, 2009
At 10:00 a.m.
(Austin)

February 8, 2010
At 10:00 a.m.
(Austin)

Broker-Lawyer Committee Meeting
January 21-22, 2010
(Austin)

Inspector Committee Meeting
February 15, 2010

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

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

incompetently in failing to properly return phone calls from a Constable prolonging a tenant eviction and failing to return phone calls promptly thus causing owner to lose potential tenants, in violation of §1101.652(b)(1) of the Texas Occupations Code; engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness by failing to properly list the correct number of bedrooms and age of the owner's home and misrepresenting to owner that eviction had been filed when no eviction was ever filed, in violation of §1101.652(b)(2) of the Texas Occupations Code.

**Reisinger, Jeremy Lee
(Sachse); License #510727**

Revocation of salesperson license, effective September 25, 2009; while acting as a buyer's agent for A & J Investment Group, Jermaine Frazier (Frazier), Anthony Jones (Jones), and their investors, Jeremy Lee Reisinger (Respondent) assisted the buyers to locate properties in 14 sales transactions under a scheme that included a 1st sales contract between the seller and the buyer(s) and/or assigns and soon thereafter a 2nd sales contract for an amount that was substantially greater than the 1st sales contract sales price. In some transactions an assignment or similar fee or seller's proceeds was paid to Frazier, Jones or their investor. In other transactions, the assignee/buyer would receive funds from the sale for the purpose of payment to Frazier, Jones or their investors. The assignee/buyer or 2nd buyer was under the belief the properties would be managed and leased on their behalf and within a short time period resold for a profit. However, in most of these sales transactions, the properties were foreclosed approximately 12-18 months later. The same loan officer and title company were used in most transactions. After 7 transactions, Respondent's then sponsoring broker advised him to stop using the schemes described above and instead Respondent changed sponsoring brokers to continue the scheme. Respondent knew or should have known the schemes described above contained elements of fraud and dishonesty. Respondent knew or should have known the payments directly or indirectly to Frazier, Jones or their investors were in part for services they had performed defined as real estate brokerage. Respondent's conduct was negligent and incompetent, in violation of §1101.652(b)(1) of the Texas Occupations Code and his conduct was dishonest or in bad faith or demonstrated untrustworthy, in violation of §1101.652(b)(2) of the Texas Occupations Code. Further, Respondent established an association and aided and abetted or conspired with Frazier, Jones, and their investors, who were not licensed as a real estate brokers or salespersons but conducted real estate brokerage assisting in the sale of properties and receiving fees for the services, in violation of §1101.652(b)(26) of the Texas Occupations Code, and conspired with others to circumvent the License Act, in violation of §1101.652(b)(27) of the Texas Occupations Code.

**Newkirk, Reina Lucinda
(Fort Hood); License #492386**

Agreed 2 year suspension of salesperson license, effective September 30, 2009, beginning March 31, 2010; the remaining 6 months probated for 3 years and 6 months 2 counts of acting negligently or incompetently in completion of contracts, opening title, not transferring earnest monies, in violation of §1101.652(b)(1) of the Texas Occupations Code; not depositing earnest money within a reasonable time, in violation of §1101.652(b)(30) of the Texas Occupations Code; making material misrepresentations regarding property required for usage and restrictions critical for buyer, in violation of §1101.652(b)(4) of the Texas Occupations Code; providing legal advice on owner financing documentation, in violation of §1101.654(a)(2) of the Texas Occupations Code; being dishonest or fraudulent on loan applications while purchasing property in name of license holder's spouse, in violation of §1101.652(a)(3)(B) of the Texas Occupations Code; failing or refusing to produce on request, for inspection by the Commission or a Commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder, in violation of §1101.652(a)(5) of the Texas Occupations Code; and failing to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission, in violation of §1101.652(a)(6) of the Texas Occupations Code.

**Unicom Realty, Inc.
(Katy); License #N/A**

Agreed administrative penalty of \$500 and order to cease and desist unlicensed real estate brokerage activities, entered September 4, 2009; acting as or representing that the person is a broker and accepting valuable consideration for services as a broker in violation of Texas Occupations Code §1101.351(a)(1) and acting in the capacity of, engaging in the business of, or advertising or holding itself out as engaging in or conducting the business of a real estate broker or a real estate salesperson within the state without first obtaining a real estate license

in violation of §1101.758(a) of the Texas Occupations Code.

**Richardson, John Gary
(Houston); License #418412**

Agreed reprimand of broker license, entered October 12, 2009; Agreed administrative penalty of \$500, entered October 12, 2009; failing within a reasonable time to make good a check issued to the Commission, in violation of §1101.652(a)(4) of the Texas Occupations Code; failing to pay a check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 TAC §534.2(a)

**Smith, Larry
(Spring); License #150**

Agreed revocation of professional inspector license fully probated for 2 years, effective October 12, 2009; payment of \$12,500.00 made from the Real Estate Inspection Recovery Fund toward satisfaction of a judgment as authorized by §1102.402 of the Texas Occupations Code

**Hawke, Celia Moor
(Edmond, OK); License #524644**

Revocation of salesperson license, effective October 19, 2009; 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 a real estate salesperson license, in violation of 22 TAC §535.91(c)

**Gray, Robin Roanne
(Katy); License #576417**

Agreed reprimand of salesperson license, entered October 5, 2009; failing to obtain the written consent from each party to act as an intermediary in the transaction and failing to state the source of any expected compensation to the broker in the consent(s), in violation of §1101.559 (a) of the Texas Occupations Code; failing to make clear to all parties to a real estate transaction the party for whom the license holder is acting, in violation of §1101.652(b)(7) of the Texas Occupations Code

**Brown, Amber Michelle
(Dallas); License #426203**

Agreed reprimand of broker license, entered October 19, 2009; Agreed administrative penalty of \$2,000, entered October 19, 2009; engaging in conduct that constituted withholding from or inserting into a statement of account or invoice a statement that the license holder knew made the statement of the account or invoice inaccurate in a material way, specifically by charging a property owner for the filing of an eviction lawsuit when, in fact, such eviction did not occur, in violation of §1101.652(b)(24) of the Texas Occupations Code; engaging in conduct that constituted dishonest dealings, bad faith or untrustworthiness in charging a property owner for the filing of an eviction lawsuit, when such eviction failed to occur, authorizing repairs without the property owner's authorization, and posting disparaging remarks in the MLS about a property owner, in violation of §1101.652(b)(2) of the Texas Occupations Code

**Bel Air Realty Group, Inc.
(Dallas); License #490229**

Agreed reprimand of broker license, entered October 19, 2009; Agreed administrative penalty of \$500, entered October 19, 2009; acting negligently or incompetently by failing to monitor and properly supervise the brokerage activities of a sponsored salesperson, in violation of §1101.652(b)(1) of the Texas Occupations Code

**Andrade, Melissa Irene
(Corpus Christi); License #522403**

Agreed suspension of salesperson license, fully probated for 2 years, effective October 30, 2009; pleading guilty to and being placed on deferred adjudication for a felony in which fraud is an essential element, in violation of §1101.652(a)(1) of the Texas Occupations Code; failing to notify the Commission, not later than the 30th day after the date of the entry of a plea of guilty, that the person has entered a plea of guilty to a felony involving fraud, in violation of §1101.652 (a)(9) of the Texas Occupations Code; and failing to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission that would indicate a violation of The Real Estate License Act, in violation of §1101.652(a)(6) of the Texas Occupations Code

TALCB Disciplinary Actions October 2009



WELLS, Donald Lee
Lic. # TX-1332046-L
Humble; *Complaint No.: 08-186*

Board Action Taken: (1) 15 classroom-hour course in USPAP; and (2) 15 classroom-hour course in Residential Market Analysis and Highest and Best Use.

Reason for Complaint: Allegations that the Respondent had produced an appraisal report that contained potential violations of USPAP.

Summary of Violations Found: (1) Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule (record keeping provisions); USPAP Standards: 1-2(e)(i) & 2-2(b)(iii); 1-3(b) & 2-2(b)(ix); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-4(c)(iii) & 2-2(b)(viii); 1-1(a) & 1-4(c); 1-1(a); 1-1(b); 1-1(c); and, 2-1(a). (2) Respondent violated 22 TEX. ADMIN. CODE § 153.20(a)(9) by omitting material facts.

THOMAS, Barry Douglas
Lic. # TX-1333439-R
Fort Worth *Complaint No.: 09-024*

Board Action Taken: NOW, THEREFORE, IT IS ORDERED that certification number TX-1333439-R hereto issued to BARRY DOUGLAS THOMAS, to practice real property appraisal in the State of Texas, be permanently revoked without formal charges, notice of hearing, or a formal hearing.

Reason for Complaint: Allegations that the Respondent had produced an appraisal report that contained potential violations of USPAP.

THARALDSON, Chad Duston
Lic. # TX-1337121-R
Lake Charles *Complaint No.: 08-218*

Board Action Taken: (1) 15 classroom-hour course in USPAP; (2) 15 classroom-hour course in Sales Comparison Approach; (3) 7 classroom-hour course in Review Appraisal assignments; and Pay to the Board an administrative penalty of \$500.00.

Reason for Complaint: Allegations that the Respondent had produced a review appraisal report that contained various deficiencies.

Summary of Violations Found: Respondent violated the following provisions of USPAP as prohibited by 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Competency Rule; USPAP Standards Rules: 3-1(c), 3-2(c), 1 and 3, and 3-2(e).

NILSSON, Kathy
Lic. # TX-1336163-L
Tolar; *Complaint No.: 08-165 & 09-141*

Board Action Taken: The Board ORDERS that Respondent's certification shall be and is hereby REVOKED. Respondent shall not be entitled to apply for reinstatement in accordance with TEX.OCC.CODE §1103.518.

Reason for Complaint: Allegations that the Respondent failed to comply with the Uniform Standards of Professional Appraisal Practice in the completion of her reports.

MURPHY, Kevin
Lic. # TX-1337138-R
Houston; *Complaint No.: 09-068*

Board Action Taken: (1) 15 classroom-hour course in USPAP; (2) 15 classroom-hour course in the Cost Approach; and (3) 15 classroom-hour course in the Sales Comparison Approach or Residential Case Studies.

Reason for Complaint: Allegations that the Respondent had produced an appraisal report that contained various deficiencies.

Summary of Violations Found: Respondent violated the following provisions of USPAP

as prohibited by 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3); USPAP Ethics Rule (record keeping provisions); USPAP Standards Rules: 1-3(a) & 2-2(b)(viii); 1-3(b) & 2-2(b)(ix); 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 2-2(b)(viii); 1-1(a); 1-1(b); 1-1(c); and, 2-1(a).

MCNUTT, Chris Andre

Lic. # TX-1334380-R

Dallas; Complaint No.: 07-011 & 07-129

Board Action Taken: The certification of Chris Andre McNutt in this matter is hereby REVOKED, effective twenty days after the date Chris Andre McNutt is notified of this Final Order. IT IS FURTHER ORDERED that Chris Andre McNutt shall not be entitled to apply for reinstatement in accordance with TEX.OCC.CODE §1103.522.

Reason for Complaint: Allegations that the Respondent failed to comply with the Uniform Standards of Professional Appraisal Practice in effect at the times he conducted his appraisals.

Summary of Violations Found: TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(3) and 155.1(a)

KAPALSKI, Stephen Wayne

Lic. # TX-1333969-L

Houston; Complaint No.: 09-060 & 09-102

Board Action Taken: The Board ACCEPTS the Respondent's surrender of his license. Further, the Respondent agrees and the Board hereby ORDERS that he shall not be entitled to apply for reinstatement in accordance with TEX. OCC. CODE § 1103.522.

Reason for Complaint: Allegations that Respondent failed to comply with the Uniform Standards of Professional Appraisal Practice in the completion of his reports.

ENDERS, Donald Roy

Lic. # TX-1334547-R

Elmendorf; Complaint No.: 08-045

Board Action Taken: The Board ORDERS that Respondent shall not seek renewal of his certification, nor apply to the Board for any authorization, license, certification or registration in the future.

Reason for Complaint: Allegations that the Respondent had produced an appraisal report that contained potential violations of USPAP.

Summary of Violations Found: (1) Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule; USPAP Standards: 1-3(a) & 2-2(b)(ix); 1-3(b) & 2-2(b)(x); 1-4(b)(i) & 2-2(b)(ix); 1-4(b)(ii) & 2-2(b)(ix); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(ix); 1-1(a) & 1-4(a); 1-5(b) & 2-2(b)(ix); 1-4(e) & 2-2(b)(ix); 1-1(a); 1-1(b); 1-1(c); and 2-1(a). (2) Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by omitting material facts and making material misrepresentations

DUNCUM, Justin Mitchell

Lic. # TX-1325185-R

Houston; Complaint No.: 08-243

Board Action Taken: (1) 15 classroom-hour course in USPAP; (2) 15 classroom-hour course in the Sales Comparison Approach; (3) 15 classroom-hour course in Highest and Best Use; and (4) 7 classroom-hour seminar in Market Conditions and Sales Concessions; (i) No examination shall be required for this course.

Reason for Complaint: Allegations from the Fraud Unit of the Texas Department of Insurance that the Respondent had produced an appraisal report that contained potential deficiencies.

Summary of Violations Found: (1) Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Scope of Work Rule; USPAP Ethics Rule (record keeping provisions); USPAP Standards: 1-2(e)(i) & 2-2(b)(iii); 1-3(a) & 2-2(b)(viii); 1-3(b) & 2-2(b)(ix); 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 2-2(b)(viii); 1-1

(a); 1-1(b); 1-1(c); and, 2-1(a). (2) Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by omitting material facts and making material misrepresentations.

DIXON, James Alan

Lic. # TX-1332555-L

Rockwall; *Complaint No.: 08-231*

Board Action Taken: (1) 15 classroom-hour course in USPAP; (2) 15 classroom-hour course in Market Data Analysis or the Sales Comparison Approach; (3) 15 classroom-hour course in Residential Report Writing; (4) 15 classroom-hour course in Residential Cost Analysis; (5) 15 classroom-hour course in Highest and Best Use; and (6) Pay to the Board an administrative penalty of \$200.00.

Reason for Complaint: Allegations that the Respondent had produced an appraisal report that contained potential violations of USPAP.

Summary of Violations Found: (1) Respondent violated the following provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1(a) and 153.20(a)(3): USPAP Ethics Rule; USPAP Standards: 1-2(e)(i) & 2-2(b)(iii); 1-2(e)(iv) & 2-2(b)(viii); 1-3(a) & 2-2(b)(viii); 1-3(b) & 2-2(b)(ix); 1-4(b)(i) & 2-2(b)(viii); 1-4(b)(ii) & 2-2(b)(viii); 1-1(a) & 1-4(b); 1-4(a) & 2-2(b)(viii); 1-1(a) & 1-4(a); 1-5(a) & 2-2(b)(viii); 1-5(b) & 2-2(b)(viii); 1-1(a); 1-1(b); 1-1(c); and, 2-1(a). (2) Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(9) by omitting material facts and making material misrepresentations.

BYRD, Fredrick

Lic. # TX-1329257-R

San Antonio; *Complaint No.: 09-122*

Board Action Taken: NOW, THEREFORE, IT IS ORDERED by the Texas Appraiser Licensing and Certification Board that the certification of Fredrick Byrd in this matter is hereby REVOKED.

Reason for Complaint: Allegations that the Respondent failed to comply with the agreed final order in violation of 22 TEX. ADMIN. CODE § 153.20(a)(21).

Summary of Violations Found: Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(21) by failing to comply with a final order of the Board.

AUSTIN, Gregory Wayne

Lic. # TX-1322654-R

Austin; *Complaint No.: 09-117*

Board Action Taken: (1) Have his certification revoked with that revocation being fully probated for a period of thirty-six months (36), under the following conditions: (i) Respondent must satisfy all the terms of his previous agreed order in complaint #06-111 and #06-195, dated October 5th, 2007; (ii) Respondent shall not sponsor or supervise any appraiser trainees during his entire probation period; (iii) During the entire thirty-six month probation period Respondent shall submit on a form prescribed by the Board, an appraisal experience log to the Board every three months. The log shall detail all real estate appraisal activities he has conducted during the previous three-month period. This experience log shall be signed by Respondent and contain a notarized affidavit attesting that the log is true, complete and fully accurate. Upon request from the Board, Respondent shall provide copies of his appraisal reports and work files for any appraisal assignments he performs during the course of his period of probation within twenty days of notice of such request; (iv) Respondent shall timely remit payment of any administrative penalty (2) Pay to the Board an administrative penalty of \$5,000.00, which shall be made in twenty (20) monthly installment payments of \$250.00 each, beginning on November 1st, 2009 and recurring monthly thereafter until the entire amount is paid in full.

Reason for Complaint: Allegations that the Respondent failed to comply with the agreed final order in violation of 22 TEX. ADMIN. CODE § 153.20(a)(21).

Summary of Violations Found: Respondent violated 22 TEX. ADMIN. CODE §153.20(a)(21) by failing to comply with a final order of the Board



Kerri Galvin is New Standards and Enforcement Services Director

Kerri joined TREC/TALCB on November 1 and has taken the helm of the “Standards and Enforcement Services” Division. As a self described high-energy, analytical, people-person, she is a welcomed asset to the agency and her division. Those qualities, coupled with 25+ years of legal, management and mediation experience makes her the perfect fit as one of the agency’s top lawyers. Kerri has worked in both the public and private sector in Austin and Washington D.C., including the State of Texas Credit Union Department, where she was the Assistant Commissioner and General Counsel, The University of Texas System, where she worked as a real estate attorney, and the Texas Finance Commission, where she worked with the Administrative Law Judge on licensing enforcement cases. As a mother of three who has “successfully launched her children” into the world, she is excited about focusing her energies on her new TREC team. Some of the first things she plans to do is setting up standards for moral character determinations, handling phone and email complaints more effectively, and developing a more cohesive team. Kerri received her undergraduate degree from Rice University and graduated from the University of Texas Law School.

Betsy Bird Joins TREC



Betsy Bird is the newest addition to the “Administration & Management Services” Division. She comes to TREC/TALCB by way of the Texas Commission on Environmental Quality where she most recently served as the Executive Assistant to then-Commissioner Larry R. Soward. Beginning November 1, she has only had a few short weeks to get her feet wet, but by all accounts she dove right in! As part of the AMS team, Betsy is serving as one of Administrator Oldmixon’s Executive Assistants, and is happy to be here. Prior to her work at TCEQ, which was the catalyst for her move to Texas from California, she worked as the District Director for then-Assemblyman Guy S. Houston.

Betsy will also be the legislative liaison for TREC/TALCB going into the 2011 Legislative Session. With her background in public, legislative, and media relations, she is a great fit! She has a double degree from the University of Redlands, Redlands, CA, in government and creative writing and laughs that she can “creatively write government documents!” Betsy is feeling right at home in AMS.

TREC welcomes Kerri and Betsy and looks forward to working with them for years to come.

Please be reminded that licensees who choose to renew active but do not complete the education or pay the deferral fee within 60 days are no longer referred to the Enforcement Division for disciplinary action. The license will go inactive. Any salespeople sponsored by an inactive broker will also go inactive.

To reactivate the license, the licensee will be required to complete the required MCE, pay the \$200 deferral fee, an additional \$250 late reporting fee and \$20 to reactivate the license by filing a Return to Active Status form for a broker or a salesperson sponsorship form for a salesperson.