



TREC Advisor

Texas Real Estate Commission ★ Volume 21, Number 3 ★ April 2010

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As part of operating cost savings and expense reductions requested by the Governor, Lt. Governor, and Speaker of the House, the Texas Real Estate Commission (TREC) is methodically reducing the volume of printed letters and other materials produced and mailed through the post office to license holders. This will include the efficient delivery of most official communications via electronic mail (email), beginning with license certificates. The agency has been testing this license delivery method since December, 2009 and has received very positive feedback from almost all licensees, who appreciate getting their certificates immediately upon renewal – no longer waiting for a license to be printed, proofed, and delivered through United States mail.

Based on these tests, TREC is confident this process has maximum reliability and positive impact, with minimal negatives, so it is expanding the method steadily to include additional communications and services. To make this process most effective, it is crucial that the agency have a current, unique email address for every license holder - the same email address cannot be shared among two or more license holders, even a husband and wife team. TREC currently requires every license holder to maintain a permanent mailing address on file with the agency and provides a secure online method for every licensee to update it as often as necessary. The ability to update and maintain a primary email address has been added to that same webpage.

“In light of the tough budgets ahead, I can not stress enough how important it is that the agency have a current email address for each and every licensee,” TREC Chairman John Eckstrum said. “Not only is the agency realizing cost savings, but in today’s business environment, and especially in the real estate service industry, electronic communication is much more efficient and effective. Go online and check your address right away.”

Once a licensee logs-in online (www.trec.state.tx.us/permaddress.asp), the system will show which permanent mailing address and primary email address the agency has on file for that individual. Changes can be made and submitted securely from that same page – absolutely free of charge. Furthermore, each email address is currently treated as confidential and is not subject to public disclosure under the Open Records Act.

Inside this issue...

- Consumer Alert..... 2
- ...from the Administrator...3
- “SAFE Act”.....4
- TREC Disciplinary Actions.....5
- Rules Reminder for BPOs and other “Evaluations”.....7



CONSUMER ALERT!

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

Official publication of the
Texas Real Estate Commission

Volume 21, Number 2
March 2010

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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>

The Texas Real Estate Commission Standards and Enforcement Services Division (TREC) has received complaints against a group of individuals and companies that have been doing business in the Dallas/Fort Worth area. The individuals and companies named in the complaints represent themselves as real estate agents and real estate brokerage companies but do not hold Texas real estate licenses. Owners of real property, tenants, buyers, and investors claim to have lost large sums of money related to the group's real estate schemes. Among other things, the complainants allege that the group takes and keeps deposits for properties over which they have no authority or no control. They allegedly do not pay rent to property owners on property they claim to manage for those owners, or take large security deposits from tenants and then keep the money. They take deposits or earnest money on properties that they claim are available for a short sale but in reality are days away from foreclosure. Apparently, much of the solicitation of potential victims has been conducted through www.craigslist.com.

Before a consumer gives personal information, money, or financial information to a person claiming to be a real estate agent, they should verify the identity of the person and check whether that person actually holds a Texas real estate license. License information can be obtained by doing a "licensee lookup" on TREC's website, www.trec.state.tx.us, or by calling TREC Monday through Friday between 7 a.m. and 6 p.m. at 1 (800) 250-TREC or (512) 459-6544. The public should be aware that Texas laws provide that consumers who use licensed Texas agents have the financial protection of the Real Estate Recovery Trust Account if they suffer actual damages caused by misconduct of a real estate licensee in a real estate brokerage transaction and later obtain a civil court judgment against the licensee that cannot be collected from the licensee. Consumers who use unlicensed individuals or companies to perform real estate brokerage activities are not eligible to be reimbursed by that account.

Based on information filed with the complaints, the group allegedly hires unsuspecting people to perform real estate brokerage services, such as showing real properties for sale or lease and writing contracts or leases, and misrepresents to the "employees" that a real estate license is not required in order to perform those services. These employees are also apparently solicited via [craigslist](http://craigslist.com). Unlicensed real estate activity can be subject to conviction for a Class A misdemeanor, punishable by up to one year in jail and criminal and civil penalties.

If anyone has questions or information regarding this activity or about other activities that require a real estate license, they should contact TREC at the number above. Also, additional information and a TREC complaint form can be obtained from the website above.

...from the Administrator

What a beautiful and busy Spring so far! The team at TREC has continued to make great progress on a variety of issues that are all designed to improve the access and quality of service we provide to our license holders and the general public. We continue to look for ways to reduce our operating expenses to meet the requested 5% operating expense cut. All licensees with emails on file have received a request to keep their email addresses updated. Since December, we have been testing a convenient electronic delivery of licenses for all renewals. Feedback has been very positive and it will soon be our default method of communication with all of our license holders. This is a substantial savings. More categories of communication will be added as we are convinced of its reliability.

Thanks to all who participated in person or online in the agency's public input outreach effort. We received hundreds of comments and recommendations for improvement and these are being incorporated into our Strategic Plan, which will be presented to the Commission for consideration at the May 17 meeting. Major issues which received a large volume of input are: clarifying broker training and supervision requirements for sponsored agents, closing loopholes in regulation of property leasing and management, and revisiting the pre-licensure education content. Two of these are consistent with the current Working Groups convened by the Commission. In all areas, we will be working on policy recommendations to the Commission to be included in the Strategic Plan.

Thanks also for the participation we have been receiving with our Customer Service Survey online; the responses are growing more positive as well. We work hard to serve you well, and appreciate the recognition. We welcome your constructive criticism.

Look for the long-awaited posting on the website very soon of our data collection results for TREC approved schools showing the first time exam pass rate percentages for their students. The law requires us to attribute the success or failure of each student to the school where he or she took their last required core course before taking the exam, so it is not a clear reflection of the overall quality. We hope to address some of these limitations in future "clean-up" legislation. For comparison purposes only, we also post the same results for colleges and universities. To "close the loop" for education providers, we will also be posting the exam subject matter evaluations each quarter, detailing the general categories of exam questions and showing the overall pass rates. This allows educators to see which topics need more attention in the teaching process. Also, brokers can see where increased emphasis might be needed in their training programs.

Lastly, we will also soon be posting updated versions of our FAQs or "Frequently Asked Questions", covering a large volume of issues where we receive repeated requests for clarification or explanation. Check these out before you call; you may find precisely what you are looking for. These also alert us to topics where our rules might need work. Since we are in the midst of Comprehensive Rule Review, please send us your ideas also.

Welcome Kim Mares, TREC's Newest Investigator

On March 16 TREC welcomed a new investigator to the Standards & Enforcement Services Team. Ms. Kim Mares comes to the agency by way of the West Coast where she was a licensed real estate salesperson and broker for over 30 years in California and Nevada. She also held an appraiser license in Nevada and has been in a number of roles relating to the real estate industry for years – Escrow Officer, Property Manager, and general real estate in Lake Tahoe's beautiful Incline Village. Kim's degree is in Criminal Justice and she holds a Paralegal certificate from both the University of Houston and Lincoln Law School. She is also enrolled in classes to become a certified Fraud Examiner.

Sherry Martinets TREC/TALCB Employee of the Quarter

Sherry began with the agency 29 years ago and has worked in the Enforcement division for the past twenty years. She admits that her current role is ever expanding and she likes that she is always busy – "never a boring day!" Sherry's tasks for the Standards & Enforcement Services Division include preparing and tracking agreed orders, hearing notices and motions, assembling trial notebooks for division lawyers, and putting together information and reports for the Commission meeting, all the while acting as the division, and in essence TREC's, sole liaison to the State Office of Administrative Hearings (SOAH). Co-workers describe her as extremely competent, highly proficient, motivated, dependable, and industrious. Sherry is considered one of her division's top team players and is an asset to the agency as a whole. For all of her continued efforts, Sherry is recognized as the TREC/TALCB Employee of the Quarter.



Douglas E. Oldmixon, Administrator



Texas Department of Savings and Mortgage Lending Issues Information on “SAFE Act” from Commissioner Douglas Foster, TDSML

Many of you have witnessed the impact upon lenders in the last few months with the significant changes to RESPA. There are still more changes ahead in the mortgage lending arena for those of us in Texas with implementation, on April 2, 2010, of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (“SAFE Act”) which was signed by President Bush in July 2008 creating the Nationwide Mortgage Licensing System and Registration (NMLSR).

SAFE specifies minimum standards for all states in the regulation of residential mortgage loan originators (RMLO). Fortunately, Texas was one of only two states that already exceeded all of these standards. However, there are also certain mandates that remove flexibility we have provided in the past and significantly expand the range of individuals required to be licensed.

The purpose of this article is to both raise your awareness of the upcoming changes and to seek your continued cooperation in ensuring only properly licensed individuals are providing residential mortgage loans. Unlicensed residential mortgage loan origination is a misdemeanor offense in Texas. Many people who have never been required to be licensed before will need to have completed the licensing process prior to May 31, 2010.

Our agency developed an on-line verification system in 2007 that will eventually migrate completely to the NMLSR; however, we recommend you check our system and NMLSR to verify proper licensing at least through the end of 2010. You can reach the NMLSR website through links from our website home page.

Texans have in the past enjoyed a de minimus exemption for an owner of real property who originated no more than five mortgage loans in a rolling twelve month period. Under the SAFE Act, this exemption no longer applies. There remains an exemption for seller financing of your homestead, or on behalf of direct familial relations, but anyone else who originates a loan or provides seller financing not covered by the two above circumstances, even just once, without being licensed, will be committing a misdemeanor.

The department is concerned that real estate licensees be fully informed of these changes as they may be asked to assist a client in establishing financing terms or paperwork related to seller financing or they may finance the sale of their own residential properties sale financing. Key issues in determining if RMLO licensing is required for a real estate licensee in such situations would include either the forms of compensation or the type of services performed. Before we set up a couple of specific examples let's restate that exemptions only exist if the dwelling serves as the individual's primary residence or if you are providing a loan transaction on behalf of a direct familial relative.

If all of your compensation or gain from the transaction will be in the form of your real estate sales commission and you are earning no other fee and have no interest in the property being sold, and all your actions are to facilitate the closing of the sale, then you do not need to be licensed under SAFE. If, however, you are receiving a separate fee or earning interest on a loan then you may need to be licensed and we request you contact our department to discuss the specifics of the scenario.

As to services provided, your client may ask you to help them with drawing up standard terms or providing template documents for establishing a seller financed loan transaction. If it is their homestead they are exempt from licensure, but if you perform the functions of offering or negotiating rate or terms with the buyer you may have triggered the need to be licensed regardless of whether the property is a homestead or not. For a non-homestead transaction the seller in a seller financed transaction must have a licensed individual perform the loan functions of offering or negotiating rate and terms or become licensed themselves.

Please keep in mind, if the dwelling does not serve as the individual's primary residence or the loan origination service is not on behalf of a direct familial relative, then the individual is acting in the capacity of a residential mortgage loan originator and must be licensed even for just one transaction.

There is significant information and resources available on our website including detailed plans on the implementation and timing of the various licensees' transition plans. Please take an opportunity to review what we offer at www.sml.state.tx.us and thank you for joining us in protecting the citizens of Texas in one of their biggest financial decisions.

TREC Disciplinary Actions February—March 2010



Lobue, Stephen Paul
(Katy); License #480942

Revocation of salesperson license, effective March 30, 2010; failing within a reasonable time to properly account for or remit money that is received by the license holders and that belongs to another person in failing to promptly remit rental payments and security deposits to the owner in violation of Tex. Occ. Code §1101.652(b)(9); failing or refusing upon demand to produce a document, book or record in his possession concerning a real estate transaction conducted by him for inspection by the Commission or its authorized personnel or representative, in cooperation with a disciplinary investigation in violation of Tex. Occ. Code §1101.652(a)(5); failing to provide within a reasonable time information requested by the Commission as a result of a formal or informal complaint to the Commission which would indicate a violation of The Real Estate License Act in cooperation with a disciplinary investigation in violation of Tex. Occ. Code §1101.652(a)(6); in disregarding and/or violating The Real Estate License Act by owning and operating an unlicensed corporate entity engaging in real estate brokerage activities on behalf of another with the expectation of compensation in violation of Tex. Occ. Code §1101.652(b)(33).

Adams, James T.
(Austin); License #317658

Agreed surrender of license, entered March 24, 2010, with agreement that he shall not apply for any license issued by the Commission within 3 years of the date of the order, unless certain conditions are met; seven complaints which involved broker failing to conduct his residential leasing and property management activities properly, in violation of Tex. Occ. Code §§1101.652(b)(1), (9), (10), and (24); failing to cooperate in the Commission's investigation of those complaints, in violation of Tex. Occ. Code §1101.652(a)(5) and (6); failing to be faithful and observant to trust placed in the agent, and to be scrupulous and meticulous in performing the agent's functions, in violation of 22 Tex. Admin. Code §531.1(2); placing his personal interest above that of the agent's client, in violation of 22 Tex. Admin. Code §531.1(3); failing to meet his duty to keep the principal informed at all times of significant information applicable to the transaction or transactions in which the licensee is acting for the principal, in violation of 22 Tex. Admin. Code §535.156(c); and failing to convey accurate information to members of the public with whom the licensee deals, in violation of 22 Tex. Admin. Code §535.156(d).

Walt, Kimberly Calvert
(Pasadena); License #513857

Agreed reprimand of salesperson license with a three-hour course in real estate ethics, entered March 24, 2010; failing to obtain the written consent from each party to act as an intermediary in a transaction and failing to state the source of expected compensation to the broker in the consent(s) in violation of Tex. Occ. Code §1101.559; failing to make clear to all parties to a real estate transaction the party for whom the license holder is acting in violation of Tex. Occ. Code §1101.652(b)(7); acting negligently or incompetently in formation, authorization and conduct between the parties in an intermediary relationship and failing to properly manage the owners' property under the terms and conditions agreed to between the owners and the licensee in violation of Tex. Occ. Code §1101.652(b)(1).

Burke, Doti Renee
(Haltom City); License #481160

Revocation of salesperson license, effective March 5, 2010; failing within a reasonable time to make good a check issued to the Commission, in violation of Tex. Occ. Code §1101.652(a)(4); failing to pay a check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 Tex. Admin. Code §534.2(a)

Hopkins, Eric Darnell
(Waxahachie); License #515406

Agreed reprimand of salesperson license, entered March 4, 2010; Agreed administrative penalty of \$750, entered March 4, 2010; failing within a reasonable time to make good a check issued to the Commission, in violation of Tex. Occ. Code §1101.541(a)(4); failing to pay a check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 Tex. Admin. Code §534.2(a)

De La Cruz, Danielle
(San Antonio); License #603114

Agreed probationary salesperson license issued, fully probated for 1 year, effective March 4, 2010; Applicant pled guilty to one criminal offense. This offense is directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated evidence that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).

Briester, Alisha Kimberly
(Houston); License #504286

Agreed 1 year suspension of salesperson license fully probated for 1 year, effective February 12, 2010; pleading nolo contendere and being found guilty of the felony offense of Aggregate Theft \$1,500 - \$20,000 involving fraud, in violation of §1101.652(a)(1) of the Texas Occupations Code; and failing to notify the Commission within 30 days thereafter, in violation of §1101.652(a)(9) of the Texas Occupations Code.

Portmann, Todd Williams
(Austin); License #471647

Agreed reprimand of broker license, entered February 10, 2010; Agreed administrative penalty of \$1,000, entered February 10, 2010; negligently overseeing the transaction including listing market value, presentation of offers, proper termination of prior offers, and failing to review closing statement in violation of §1101.652(b)(1) of the Texas Occupations Code; engaging in dishonest conduct in reporting listing details, in violation of §1101.652(b)(2) of the Texas Occupations Code; failing to provide copies of documents executed by clients upon request, in violation of §1101.652(b)(28) of the Texas Occupations Code; failing to use TREC promulgated form 15-4 - Seller's Temporary Lease per §1101.155 of the Texas Occupations Code, in violation of §1101.652(a)(8) of the Texas Occupations Code; and failing to timely provide information to TREC upon request in violation of §1101.652(a)(6) of the Texas Occupations Code.

Berry, Russell
(Euless); License #509898

Agreed reprimand of broker license, entered February 4, 2010; Agreed administrative penalty of \$2,500, entered February 4, 2010; In 2003, 2004, 2005, 2006 and 2007, Russell Berry (Respondent) filed applications with the Commission in which he was aware of wrongfully answering the questions related to his past 2 criminal offenses. The past 2 offenses were the type that the Commission may consider when determining a person's fitness for licensure and Respondent's false responses on his applications deprived the Commission of an opportunity to make an inquiry into his fitness as required by §1101.354(2) of the Texas Occupations Code. The Respondent procured a license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in his 5 applications filed in the years noted above, in violation of §1101.652(a)(2) of the Texas Occupations Code.

Bachmann, Anthony Alexander
(El Paso); License #548713

Revocation of salesperson license, effective February 2, 2010; failing to provide, with 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

Calendar of Events

Commission Meetings

May 17, 2010
At 10:00 a.m.
(Austin)

Broker-Lawyer
Committee Meeting
April 29-30, 2010
(Austin)

Inspector Committee
Meeting
April 26, 2010
11:00 a.m.
(Austin)

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

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

REMINDER

Licensees who choose to renew active but do not complete the education or pay the deferral fee within 60 days will no longer be referred to Standards and Enforcement Services 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.

Powe, Roderick L.
(Dallas); License #422158

Revocation of broker license, effective February 2, 2010; failing to provide, with 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

Alanis, Landry
(Little Elm); License #538783

Agreed revocation of salesperson license fully probated for 9 years, effective February 1, 2010; procuring a license by making a material misstatement of fact regarding his criminal history in his original application of July 11, 2005, in violation of §1101.652(a)(2) of the Texas Occupations Code; procuring a license by making a material misstatement of fact regarding his criminal history in his Late Renewal of Real Estate Salesperson License of October 17, 2007, in violation of §1101.652(a)(2) of the Texas Occupations Code; failing to inform the commission, not later than the 30th day after the date of the entry of a plea of guilty to a criminal offense, in violation of §1101.652(a)(9) of the Texas Occupations Code.

Londow, Richard Christopher, Jr.
(Houston); License #452933

Revocation of salesperson license, effective February 17, 2010; 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)

Johnson, Latifha Jamelia
(Flower Mound); License #471250

Revocation of salesperson license, effective February 12, 2010; 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 2 TAC §534.2(a)

Jones, Andrea Yvette
(Frisco); License #527566

Agreed revocation of salesperson license fully probated for 1 year, effective February 11, 2010; Agreed administrative penalty of \$500, entered February 1, 2010; 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)

Stern, Joseph Alexander
(Plano); License #602800

Agreed probationary salesperson license issued, fully probated for 2 years, effective February 22, 2010; repeated offenses over a period of time and failure to comply with the court-ordered terms and conditions of supervision. These offenses are directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under §1101.354(2) of the Texas Occupations Code

Wiseman, Robert Lee, Jr.
(Houston); License #602631

Agreed probationary salesperson license issued, fully probated for 2 years, effective February 17, 2010; applicant pled nolo contendere to two criminal offense and guilty to one criminal offense. These offenses are directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated evidence that Applicant possesses the requisite honesty, integrity and trustworthiness to qualify to be licensed as a real estate salesperson under §1101.354(2) of the Texas Occupations Code

Marin, Roy Anthony
(San Antonio); License #602581

Agreed probationary salesperson license issued, fully probated for 2 years, effective February 16, 2010; applicant pled guilty to two criminal offenses. These offenses are directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated evidence that Applicant possesses the requisite honesty, integrity and trustworthiness to qualify to be licensed as a real estate salesperson under §1101.354(2) of the Texas Occupations Code

Belmeyer, John Lyle
(Dallas); License #602434

Agreed probationary salesperson license issued, fully probated for 2 years, effective February 9, 2010; applicant pled nolo contendere to two criminal offenses. These offenses are directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated evidence that Applicant possesses the requisite honesty, integrity and trustworthiness to qualify to be licensed as a real estate salesperson under §1101.354(2) of the Texas Occupations Code

Williams, Steven Mark
(Wichita Falls); License #209738

Agreed probationary broker license issued, fully probated for 1 year, effective February 4, 2010; applicant pled guilty to a criminal offense. This offense is directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated evidence that Applicant possesses the requisite honesty, integrity and trustworthiness to qualify to be licensed as a real estate salesperson under §1101.354(2) of the Texas Occupations Code

Valentine, Tiffany Mario
(Richmond); License #602405

Agreed probationary salesperson license issued, fully probated for 1 year, effective February 3, 2010; applicant pled guilty to a criminal offense. This offense is directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated evidence that Applicant possesses the requisite honesty, integrity and trustworthiness to qualify to be licensed as a real estate salesperson under §1101.354(2) of the Texas Occupations Code

Nuckolls, Katherine Danielle
(Hutto); License #602193

Agreed probationary salesperson license issued, fully probated for 2 years, effective February 3, 2010; applicant pled nolo contendere to two criminal offenses and guilty to one criminal offense. These offenses are directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated evidence that Applicant possesses the requisite honesty, integrity and trustworthiness to qualify to be licensed as a real estate salesperson under §1101.354(2) of the Texas Occupations Code

Rules Reminder for BPOs and other “Evaluations”

With the increasing demand for Broker Price Opinions performed by holders of TREC-issued Broker or Sales licenses, for a separate fee, it is important that all license holders understand the legal requirements for performing such work. TREC Rule 535.17 says:

(a) A salesperson may make, sign, and present real estate appraisals for the salesperson's sponsoring broker, but the salesperson must submit appraisals in the broker's name and the broker is responsible for the appraisals.

(b) Texas Occupations Code, Chapter 1101 (the Act) does not apply to appraisals performed by the employees of a financial institution or investment firm in connection with a contemplated loan or investment by their employers.

(c) Except as provided by this section, appraisals of real property performed in this state by Texas real estate licensees must be conducted in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect at the time the appraisal is performed. If a real estate licensee, for a separate fee, provides an opinion of value or comparative market analysis which does not conform with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, the licensee shall also provide the person for whom the opinion or analysis is prepared with a written statement containing the following language: "THIS IS AN OPINION OF VALUE OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have *not* followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."

(d) The statement required by subsection (c) of this section must be made part of any written opinion or analysis report and must be reproduced verbatim.

(e) The exception allowed by subsection (c) of this section does not apply to a transaction in which the Resolution Trust Corporation or a federal financial institutions regulatory agency has required compliance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.

What this means is that all appraisals done in Texas, whether federally related or otherwise, must be USPAP compliant, whether done by an Appraiser or a Broker. The only exception is an appraisal or evaluation by an employee for his employer (banks, developers, investors, etc). Brokers in Texas are currently allowed to do any evaluation for a separate fee that is NOT an appraisal if they include the required disclaimer. That is the current state of the laws and rules in Texas.



TALCB Bulletin

Texas Appraiser Licensing and Certification Board * Volume 1, Number 2 * March 2010

*See
From the
Commissioner on
Page 2*

TALCB Staff Assists in Mortgage Fraud Case

The Texas Appraiser Licensing and Certification Board (TALCB)'s Standards and Enforcement Services Division (SES) regularly receives requests for assistance in ongoing state and federal mortgage fraud investigations. HB 716 (80th legislative session) created the Texas Residential Mortgage Fraud Task Force, of which TALCB is a member. TALCB's SES Division regularly provides assistance to the Texas State Attorney General, county district attorneys' offices, the Federal Bureau of Investigation, Texas Department of Public Safety, and the Department of Housing and Urban Development's Office of Inspector General, among others. In late 2007, the Collin County District Attorney's Office contacted TALCB SES and requested assistance with several mortgage fraud cases in which appraisers were alleged to be involved. TALCB SES Investigator Jack McComb was already investigating regulatory complaint cases involving some of these same real estate appraisers. TALCB's assistance to Collin County led to the conviction of several of the appraisers.

Now the Federal Bureau of Investigation's Dallas Division and the U.S. Attorney for the Eastern District of Texas have announced that a federal grand jury has returned a massive indictment against forty individuals in connection with a major East Texas mortgage fraud scheme. The federal indictment includes many of the same individuals for which TALCB SES had assisted Collin County. Included in the indictment are four former TALCB licensed or certified real estate appraisers: Elizabeth Altizer, Pamela Ford, Joshua Melton, and William Doug Mitchell. TALCB revoked all four of these individuals' licenses or certifications in 2008 and 2009. Elizabeth Altizer, Joshua Melton and William Doug Mitchell received final orders of revocation and Pamela Ford voluntarily surrendered her license. None are eligible to seek reapplication as real estate appraisers in Texas.

"I am very pleased that action is being taken by law enforcement authorities when it appears criminal conduct is occurring in real estate and mortgage transactions," TALCB Chairman James Ratliff commented. Deloris Kraft-Longoria, TALCB SES Division Director adds, "we have been working cases on these individuals for many years in cooperation with our law enforcement partners. Unfortunately, appraisal fraud is an integral part of the mortgage fraud schemes that we see all too often at TALCB. In addition to revocation of their credentials as real estate appraisers, these individuals will now face criminal charges for their conduct."

These former real estate appraisers and others charged in the indictment now face various federal criminal charges in connection with the mortgage fraud scheme, including charges of mail fraud, money laundering and conspiracy. (<http://dallas.fbi.gov/dojpressrel/pressrel10/dl031610.htm>) According to the indictment, "the purpose of the scheme was to defraud lending institutions by convincing them to approve mortgage loans for residential properties for which the property values had been fraudulently inflated." An indictment is a formal accusation of criminal conduct returned by a grand jury and the individuals charged are presumed innocent until proven guilty at a future date in federal court.

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...from the Commissioner

TALCB has been a flurry of activity since our last meeting. At the Strategic Planning public input sessions last month, and online, we received a great deal of input regarding the increasing role of Appraisal Management Companies (AMCs) in controlling the assignment and exercising quality control over appraisals. This level of influence is inconsistent with the lack of any regulation of AMCs and allows an opportunity for undue influence in a field that is otherwise highly regulated. Suggestions for appropriate regulation were offered and examples of many other states were suggested.

On a related topic, with the increasing demand for Broker Price Opinions performed for a separate fee by holders of Broker or Sales licenses, it is important that all license holders understand the legal requirements for performing such work, so we have published a reminder of the applicable rules in this issue of the Advisor. Appraisers should read it to refresh yourself as well on the distinctions. It appears some clarification might be needed in the definitions to assist in ensuring compliance. I welcome your thoughts on the issue.

Of course our biggest task is to be fully prepared for the Appraisal Subcommittee audit visit May 18-21, culminating in the next Board meeting on the last day. Members of the Peer Review Committee are helping out greatly by working on assigned cases in a timely manner. Thank you to these volunteers. That really helps keep the volume of all cases moving along so that the only major obstacles to meeting our one year target are those types of cases we have little or no control over, both "Requests For Assistance" from the Mortgage Fraud Task Force or other agencies, or delays related to getting hearings set on a firm schedule at the State Office of Administrative Hearings (SOAH).

TALCB Standards and Enforcement staff are earning high marks for assists with other agency's federal criminal investigations and will be major participants in the AARO Mock Trail session in San Diego in early May. We are proud, and you should be too.

Douglas E. Oldmixon
TALCB Commissioner



Calendar of Events

Board Meetings

**May 21, 2010
At 10:00 a.m.
(Austin)**

Web site:

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

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