



TREC Advisor

Texas Real Estate Commission ★ Volume 22, Number 2 ★ April 2011

Chairman John Eckstrum 2010 REALTOR of the Year

At the Texas Association of REALTORS’s annual winter meeting in February Chairman John Eckstrum received the coveted “REALTOR of the Year” award for 2010. John Eckstrum of Montgomery County is a native Texan and Real Estate Broker of 37 years.



John D. Eckstrum, Chairman

He is co-owner of FIRST GROUP, founded in 1974. Chairman Eckstrum specializes in commercial and industrial real estate in Montgomery County. John has a lifelong history of leadership in civic and professional organizations in the Montgomery County area. He was 2001 Chairman of the Texas Association of REALTORS. He currently serves on various committees for the Texas Association of REALTORS and the National Association of REALTORS.

Chairman Eckstrum is finishing his term as Chairman of the Texas Real Estate Commission. When asked about his experience in *Texas REALTOR Magazine* Eckstrum responded, “That was the greatest challenge of my life. I don’t know that you can prepare yourself to work in a state regulatory agency as a volunteer citizen. I had to learn a lot on the job. I am proud of what has been accomplished [at TREC].”

The Texas Real Estate Commission congratulates Chairman Eckstrum on this huge honor!

Legislative Update

The agency is watching 5 pairs of bills making their way through the legislative process. **The TREC housekeeping bill** has passed the full Senate and is awaiting action in the House. **The TALCB housekeeping bill** has passed the full House and is awaiting action in the Senate. **The agency SDSI bill** (Self-Directed, Semi-Independent) is awaiting action by the full Senate before it goes to the House for action. **The Appraisal Management Company (AMC) bill** is awaiting action by the full House before it goes to the Senate for action. **The inspector**

housekeeping bill is awaiting a hearing in the Senate Business and Commerce Committee. Each of these bills is important to closing loopholes, and strengthening and streamlining laws, rules and operations at the agency. **Read the *Insight* for details on the Inspector bill and the *Bulletin* for details on the AMC bill.**

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The agency exists to safeguard the public interest and protect consumers of real estate services. In accord with state and federal laws the agency oversees real estate brokerage, appraisal, inspection, home warranty and timeshare interest providers. Through education, licensing and regulation, the agency ensures the availability of qualified and ethical service providers, thereby facilitating economic growth and opportunity in Texas.



Official publication of the
Texas Real Estate Commission

Volume 22, Number 2
April 2011

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Governor

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TREC HOUSEKEEPING BILL UPDATE

With the 82nd Session of the Texas Legislature more than halfway through, the TREC housekeeping bill continues through the legislative process in both the Senate and the House. Senate Bill 747 and its companion, House Bill 1637, amend The Real Estate License Act (the Act) to provide additional education, experience and accountability standards for TREC licensees, as well as several cleanup provisions.

Education Improvement Measures

- Pre-license education requirements for a salesperson license would change from 210 total to 180 core hours .
- Related education requirements would no longer be required but the education requirements for the first renewal of a salesperson license would increase from 60 to 90 core hours.
- The total number of hours needed for the first renewal of a salesperson license would remain at 270 hours.
- The first time examination pass rate benchmark for pre-license education programs would change from 55% to an average percentage of examinees.
- An education program accredited by the commission would be required to meet or exceed the benchmark for each license category before the commission may renew the program's accreditation for that category.
- The commission would be authorized to deny accreditation of an education program if an applicant owns or controls, or has owned or controlled an educational program that has been revoked.
- Brokers who sponsor salespersons and any licensees, either brokers or salespersons, who are authorized by brokers to supervise other licensees would be required to take a 6 hour Mandatory Broker Responsibility course to renew a license.

Broker Accountability Measures

- A licensed business entity would be required to obtain errors and omissions insurance of at least \$1 million if the designated broker agent of the entity owns less than 10% of the entity.
- A business entity that receives compensation on behalf of a license holder would be required to be licensed as a broker.
- The bill eliminates the exception for licensure for a partnership or limited liability partnership acting through a partner who is a licensed broker.
- Any type of business entity that engages in real estate brokerage and that is required to be registered to do business in Texas with the Secretary of State would be required to be

licensed as a broker.

- The definition of “broker” would be amended to clarify the distinction between written price opinions routinely performed by brokers and appraisal of real property that requires licensure under Occupations Code Chapter 1103.
- The definition of “broker” would be amended to include a person who controls the collection or acceptance of rent from a single family residence, and such activity would therefore require licensure under the Act.
- An attorney licensed in a state other than Texas would need to be licensed in Texas if the attorney engaged in real estate brokerage in this state.

Experience Requirements for a Broker License

- An applicant for a broker license would need to have at least four years of active experience as a license holder during the preceding 5 year period before the date the application is filed.
- The bill would also authorize the commission to establish “active experience” by rule.

Housekeeping Measures

- The commission would be authorized to solicit and accept gifts, grants and donations.
- Applicants and licensees would be required to provide to the commission and notify the commission of any changes to the person’s current mailing address, telephone number and email address, if available.
- The period in which an applicant must satisfy an examination requirement would increase from six months to one year.
- The maximum period of time in which a person can late renew a license with monetary penalties would decrease from one year to six months.
- Fingerprinting and background checks would be required for an application for or renewal of an easement or right of way certificate.
- The bill would authorize the commission to take the same types of disciplinary action against educational programs accredited by the commission as it is authorized to take against other types of licenses regulated by the commission.

Whose Name Goes in the New Blank Line Entitled “Licensed Supervisor of Associate” on the Signature Page of the Contract Forms?

As the title implies, if the sponsoring broker has designated someone else to supervise the salesperson, such as a team leader or branch manager, then that licensee’s name and telephone number should be filled in. If the sponsoring broker has not designated someone else to supervise the day to day activity of the salesperson, then the broker’s name goes there. If the sponsoring broker is the firm itself and there is no designated supervisor, then the name of the designated broker for the firm should be used. Generally speaking, the supervisor must be a licensee and the designation as a supervisor must be in writing and maintained in the firm’s files.

Contract Concerning _____		(Address of Property) _____		Page 9 of 9 02-14-2011	
BROKER INFORMATION					
Other Broker Firm	License No. _____	Listing Broker Firm	License No. _____		
represents <input type="checkbox"/> Buyer only as Buyer's agent <input type="checkbox"/> Seller as Listing Broker's subagent		represents <input type="checkbox"/> Seller and Buyer as an intermediary <input type="checkbox"/> Seller only as Seller's agent			
Licensed Supervisor of Associate	Telephone _____	Licensed Supervisor of Associate	Telephone _____		
Associate	Telephone _____	Listing Associate	Telephone _____		
Other Broker's Address	Facsimile _____	Listing Broker's Office Address	Facsimile _____		
City _____	State _____	City _____	State _____	Zip _____	
Associate Email Address _____		Listing Associate's Email Address _____			
		Selling Associate	Telephone _____		
		Selling Associate's Office Address	Facsimile _____		
		City _____	State _____	Zip _____	
		Selling Associate's Email Address _____			
Listing Broker has agreed to pay Other Broker _____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.					
OPTION FEE RECEIPT					
Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.					
Seller or Listing Broker _____			Date _____		
CONTRACT AND EARNEST MONEY RECEIPT					
Receipt of <input type="checkbox"/> Contract and <input type="checkbox"/> \$ _____ Earnest Money in the form of _____ is acknowledged.					
Escrow Agent: _____			Date: _____		
By: _____		Email Address _____			
Address _____		Telephone (_____) _____			
City _____		State _____			
		Zip _____			
		Facsimile: (_____) _____			
TREC NO. 20-10					

From the Administrator...

Agency staff has overcome numerous hurdles in recent months and I am pleased to report that they continue to amaze me with their dedication to excellence above and beyond the minimum required levels of service. Facing daunting technology limitations which frustrate both our license holders and our staff, they provide exceptional personalized service to ensure timely completion of each request. We are still far slower than we are used to, but we get better each day. Please continue to work with us to serve you better.



Many staff had the chance to meet this week with representatives of Iron Data on needed improvements to the VERSA database program. This is a very important opportunity for us to shape the future development of the VERSA product, both in the short term - to remedy overly complex processes and procedures - and more importantly, in the medium and long term - to ensure efficient processes are integrated into future versions of the product and to identify specific modifications that will improve our effectiveness. A big "thank you" is given to all who made time to offer ideas in these detailed discussions.

The Commission will next meet on May 2 at 10 AM. By that time, we expect some of the legislative items to be passed and awaiting signature by the Governor. Needless to say, there will be a lot of rule updates that will become necessary as each law takes effect. To better prepare for this and to ensure it happens in a timely fashion, we will be recommending the creation of several working groups to ensure adequate input from stakeholders, including license holders, into these areas as we draft proposed rules. More details will follow announcing opportunities for participation.

The Inspector Committee met on April 1 and approved several items to recommend to the Commission. Also, our internal auditors will be conducting interviews on process and procedure changes - a "risk assessment" - to determine which areas will be recommended to the Commission for the annual audit. These items will be on the next agenda.

The Staff & Support Services division is working hard to ensure that we stay on track for our office move preparations. In May and June, staff will have the opportunity, in small groups, to explore parking options, tour the new location, get trained on the new phone system, have lunch in the cafe and scope out the hearing room and other amenities. That schedule will be announced later. As of now, the plan is as follows: the file room and supply room will begin to be relocated after July 4th. At close of business on July 14, we will shut down the computer network and begin the transfer of operations. The agency will be closed on Friday, although staff will be here for the major move of computers, furniture, files and boxes. The move will continue over the weekend until completed. The agency will reopen for business on Monday morning. At mid month, this should cause the least disruptions. Plan accordingly; more to follow.

Thanks for staying informed on all issues affecting our license holders and our agency. As always, we welcome your feedback, both positive and negative, of all we do.

RULES PROPOSED AT FEBRUARY 14, 2011 COMMISSION MEETING

At a meeting held on February 14, 2011, the Texas Real Estate Commission (TREC) took action to propose various amendments to the TREC Rules.

The commission proposed amendments to §533.1 regarding Definitions and §533.3 regarding Filing and Notice. The proposed amendment to §533.1 amends the definition of "last known mailing address" to "mailing address" to be consistent with other TREC rules. The proposed amendment to §533.3 clarifies that the Notice of Alleged Violation required by Occupations Code §1101.703 will be mailed to the respondent's mailing address.

The commission proposed amendments to §535.217 regarding Contact Information, to amend the title of the rule to add "Mailing Address and Other" and delete the term "permanent" from the rule to make it consistent with other TREC rules.

The commission left pending proposed amendments to §537.45 concerning Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract. The amendments to §537.45 adopts by reference Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract. Paragraph 2 of the notice would be amended to read: "(2) Buyer cannot obtain Credit Approval in accordance with the Third Party Financing Addendum for Credit Approval to the contract" to be consistent with a recent change to the title of TREC Form No. 40-4 Third Party Financing Condition Addendum for Credit Approval.

The Commission will consider these amendments for final adoption at its May meeting. The text of the amendments can be located on the TREC website.

Online Services Users Guide Updated

TREC has created a new and improved users guide to help you get registered on our website! All the steps to get you registered, add your license to your account and renew your license are included with easy to follow pictures and tips! **After you click the big yellow button that says "My License Online Services" at the top of our home page**, click on the link just below the "Home" button that says "Registration Help Guide". We hope this new and improved guide to our online services helps you get back to business as usual faster and easier.

As always be sure to check out our website for all the latest news and important information. TREC is still experiencing a very high call volume and a backlog on processing, and we appreciate your patience and understanding as we continue to transition.



TREC/TALCB Welcomes New Employees



Brian Coats

Brian Coats has taken a position as a staff attorney in TREC's Standards and Enforcement Services Division.

Previously Brian worked for the State of Florida, Department of Business & Professional Regulation, where he was attorney who advised and prosecuted cases for the Florida Construction Industry Licensing Board and Florida Real Estate Appraisal Board. Brian has a J.D. from Florida State University and a B.S. in Zoology from Texas A&M University. He was born and raised in Houston, Texas and is glad to be back in Texas! He enjoys running and playing tennis.



Jennifer Wheeler

Jennifer Wheeler is a new member of the Reception and Communication Services Division.

For the last three years Jennifer has worked as a Licensed Real Estate Salesperson representing both buyers and sellers in the Austin area. In 2006 and 2007 she worked as a Customer Service Representative for Alaska Power and Telephone in Skagway, Alaska. However, her most extensive professional experience has been serving as the business manager for a small local business here in Austin from 1996-2005.



Stephanie Limon

Stephanie Limon joined TREC's Education Department as an Administrative Assistant April 11.

Born in Austin, Stephanie lived in Colorado for a few years. She moved back to Texas, where she worked for DHL as a delivery driver. After leaving DHL, she worked for an independent company as an Administrative Assistant. She has been working on completing her Associate of Science Degree. Stephanie is married with a son (Brian) and two daughters (Hailey and Jade). Stephanie is very excited to be working at TREC!

TREC is Hiring!

Did you know TREC currently has open positions posted on our website? We are hiring for several positions and are looking for highly qualified individuals to join our TREC team! **Go to the TREC Website and click on the "Agency Info Tab" to review the postings and find out more!**

TREC Disciplinary Actions

March 2011



Kennerley, Sherry R.
(Austin); License #458816

Agreed 5 year suspension of salesperson license to be fully probated upon receipt of the requested criminal court documents and educational certificate, effective February 28, 2011; Agreed administrative penalty of \$8,000, entered February 28, 2011; procuring or attempting to procure a license under this chapter for the license holder or a salesperson by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license, in violation of Tex. Occ. Code §1101.652(a)(2); and failing to provide, within a reasonable time, information requested by the commission that relates to a form or informal complaint to the commission that would indicate a violation of this chapter, in violation of Tex. Occ. Code §1101.652(a)(6).

Crook, Barbara Jane
(Keller); License #487906

Agreed reprimand of salesperson license, entered February 28, 2011; Agreed completion of thirty (30) classroom hours in an agency law course on for before May 31, 2011, entered February 28, 2011; signing her client's, the buyers, signature on Amendments to a sales contract without Power of Attorney or designating that she was signing on behalf of the buyers, thereby conveying inaccurate information to the public with whom the licensee deals, in violation of 22 Tex. Admin. Code § 535.156(d); acting negligently or incompetently when she removed the refrigerator from a property after closing in contradiction to the agreement of the parties, in violation of Tex. Occ. Code §1101.652(b)(1). When new owner had water turned on the disconnected refrigerator water line caused extensive water damage in the property.

Morgan, Donald Wayne
(Austin); License #353314

Agreed reprimand of broker license, entered February 9, 2011; Agreed assessment of an administrative penalty of \$1,000, entered February 9, 2011; procuring or attempting to procure a license by careless misstatements of fact in applications for which the licensee is personally responsible but did not constitute an attempt to procure a license by fraud, in violation of Tex. Occ. Code §1101.652(a)(2).

Aker, Amy C.
(Austin); License #578453

Suspension of salesperson license until required information is received and administrative penalty is paid in full, effective February 1, 2011; Assessment of an administrative penalty of \$1,500, entered February 1, 2011; failure to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint, in violation of Tex. Occ. Code §1101.652(a)(6).

Dockery, Seth, III
(Dallas); License #469558

Suspension of broker license until payment in full of replacement fees and administrative penalty, effective February 28, 2011; Assessment of an administrative penalty of \$500, entered February 28, 2011; 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 TAC §535.2(a).

Talbert L. Davis
(Houston); License #542613

Agreed voluntary surrender of salesperson license, effective February 28, 2011; failing to comply with Texas Occupations Code, Chapter 1101, and the Rules of the Texas Real Estate Commission as required in his probationary Agreed Order dated March 5, 2010, and failing to fully cooperate with the Standards & Enforcement Services of the Commission prior to surrender of his real estate salesperson license in completing its investigation of any complaints filed against him.

Evans, David Lee
(Plano); License #521397

Suspension of broker license until payment in full of replacement fees and administrative penalty, effective February 1, 2011; Assessment of an administrative penalty of \$500, entered February 1, 2011; 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 §535.2(a).

Thomas, Tamara Davette
(Plano); License #548223

Suspension of salesperson license until payment in full or replacement fee and administrative penalty, effective February 1, 2011; Assessment of an administrative penalty of \$500, entered February 1, 2011; 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 §535.2(a).

Upcoming Meetings

Commission Meetings

May 2, 2011
At 10:00 a.m.
(Austin)

August 15, 2011
At 10:00 a.m.
(Austin –at new
location in SFA
building!)

Web site:
<http://www.trec.state.tx.us>
Phone
(5 1 2) 459-6544



TALCB Bulletin

Texas Appraiser Licensing and Certification Board * Volume 2, Number 2 * April 2011

Governor Appoints New TALCB Board Members

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Governor Rick Perry appointed new appraiser member Jamie S. Wickliffe, of Midlothian, to the Texas Appraiser Licensing & Certification Board (TALCB). In addition Governor Perry reappointed current board members Walker R. Beard, Sheryl R. Swift and Donna L. Walz, all with terms to expire January 31, 2013.

Jamie S. Wickliffe is the independent owner of Coldwell Banker Americana Realtors and J.S. Wickliffe & Co., a real estate appraisal firm. Wickliffe actively brokers and appraises real estate throughout the region and has held a general appraiser certification for almost 20 years. Jamie is a longtime volunteer in her community; she has served as President of the Midlothian Chamber of Commerce, President of the Ellis Hill Board of Realtors and served on the Midlothian City Council for 12 years.

Public member Donna Lee Walz has been reappointed for another term. Walz is from Lubbock and is a retired branch manager of Downey Savings and Loan. She is a past volunteer with the Buddy Holly Center in Lubbock. Walz received a bachelor's degree from Texas Tech University.

Public member Sheryl R. Swift, also reappointed, has been a state certified registered Texas assessor and collector since 2007. She is the deputy chief of operations for the Galveston County Tax Office where she supervises all fund related operations within the main and branch offices. Ms. Swift is responsible for training all management staff on the Operations team. She has been with Galveston County since December 2000.

Reappointed appraiser member Walker R. Beard has worked in commercial real estate since 2005. Walker has been in the appraisal business for almost twenty years and became a partner in Wilkinson, Pendergras & Beard, L.P. in 2003. Walker is a Designated Member of the Appraisal Institute, a Certified Commercial Investment Member and a Certified Property Member.

The Texas Appraiser Licensing and Certification Board has a challenging mission and these appointees will play a key role in protecting consumers of real estate related services in the state of Texas. The agency welcomes the contributions of these new and reappointed volunteer members.

RULES PROPOSED AT FEBRUARY 18, 2011 BOARD MEETING

The Texas Appraiser Licensing and Certification Board voted at its February 18, 2011, meeting to propose for revisions to 22 TAC Section 157.9, Notice of Hearing, of the Texas Administrative Code (the TALCB Rules). The proposed amendments would clarify that respondents who are not licensees of the Board or current applicants at the time of the hearing must be served with notice of a hearing in accordance with the Administrative Procedures Act and Rules of the State Office of Administrative Hearings. The amendments also repeal the requirement that initial complaint notices must be sent to respondents by certified mail, saving the agency approximately \$1,000 per year in postage costs.

The Board will consider these amendments for final adoption at their May meeting. You can find more information, including the text of the proposed amendments, on the TALCB website at www.talcb.state.tx.us.

...from the Commissioner



Douglas E. Oldmixon, Commissioner

TALCB SES Director Mark Mrnak and General Counsel Devon Bijansky attended the AARO (Association of Appraiser Regulatory Officials) Conference in San Antonio last weekend and Chairman Luis De La Garza was there as well. It was a great learning experience for all. Well attended by officials from many jurisdictions, the conference focused heavily on the Dodd-Frank regulatory reform bill signed into law in July 2010 and the interim final rules issued by the Board of Governors of the Federal Reserve System on October 28, 2010 and the resulting changes in the works.

The most informative part of the conference was several presentations from officials relating to the ramifications of additional responsibilities and powers given to the ASC and others under the Dodd-Frank law. Appraisal Management Company regulatory requirements, appraiser independence and market-based fees are all hot topics that are affected by changes stemming from the bill. Federal agencies still need to write the final rules required to implement all of these various changes, which will take some time yet.

Twenty-five states that have implemented AMC regulations under the guidance of the current law and rules will need to revisit their laws as the final rules are issued. We expect our AMC bill to be passed and Texas will be added to this list. The Board is seeking significant input from all affected parties on the guidance provided in the interim final rules, and your TALCB staff will be keeping a draft set of comments open as we move through the rule-making process after enactment of the bill.

The "Uniform & Equal Studies" working group met April 15th and will be reporting their findings and recommendations at the next Board meeting on May 20th. We thank them for the extra time and effort that they volunteered for this project.

As always, we will be staying on top of all law changes and inform you as they affect Texas appraisers. We look forward to your meaningful involvement as we move forward.

Calendar of Events

Board Meetings

**May 20, 2011
At 10:00 a.m.
(Austin)**

Web site:

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

Phone

(5 1 2) 4 5 9 - 2 2 3 2

Update on the AMC Bill in Texas

Senate Bill 734 and House Bill 1146 would amend Texas Occupations Code by adding Chapter 1104. As required by the Wall Street Reform and Consumer Protection Act, the new chapter provides for the registration and regulation of appraisal management companies (AMCs) operating in Texas, with limited exceptions (such as for very small AMCs and those subject to regulation by other state or federal regulators). The bill charges the Texas Appraiser Licensing and Certification Board (the Board) with administering the program and grants the authority to adopt rules necessary to implement the chapter.

Under the bill, an AMC seeking to become registered with the Board would need to establish that its owners and designated “controlling person” are of good moral character. It further establishes standards to which AMCs must adhere, including verifying that an appraiser to whom an assignment is given is duly licensed or certified and is competent to complete the assignment, ensuring that appraisals are conducted independently, and periodically reviewing the work of all appraisers on its panel to ensure compliance with federal and state required standards.

The bill includes provisions requiring AMCs to pay appraisers in a timely manner and to compensate appraisers at a reasonable and customary rate and requires that they separately report the fee paid to an appraiser and the fee charged by the AMCs. The bill further provides that an AMC that wishes to remove an appraiser from its panel for certain reasons must notify the appraiser of the removal and establishes a process by which an appraiser may, in certain cases, seek a review of that decision by the Board.

The bill creates a disciplinary process for registered AMCs, modeled after the Board’s process for appraisers, and outlines conduct for which the Board may seek the revocation, suspension, or censure of an AMC for misconduct. Such conduct includes making substantive modifications to an appraisal report, interfering with the independence of the appraiser, and influencing or attempting to influence the outcome of an appraisal. Administrative penalties of up to \$10,000 per violation may also be imposed, based on factors such as the seriousness of the violation, the history of previous violations, and remedial efforts.

The new law, if passed, takes effect on September 1, 2011. The Board must adopt rules implementing the chapter by December 31, 2011, and the registration requirement and administrative penalty provisions of the law do not become effective until March 1, 2012.

Stakeholders, including lenders and AMCs both large and small plus representatives of the Foundation Appraiser Coalition of Texas (FACT) and Commissioner Oldmixon met with Senate and House staff members in a series of detailed meetings to negotiate a compromise bill that addresses all of the issues of concern to both appraisers and AMCs. It appears that this effort has been successful and we await the consideration and expected passage of the final version of the bill.

The federal agencies overseeing these efforts are working to integrate all of the requirements in the federal law into existing oversight rules and processes. The Board will similarly work diligently to enact all of the rules necessary for effective regulation of AMCs and their interaction with appraisers. We expect an open working group process will be used to ensure consideration of all stakeholder issues.

Rick Perry
Governor

Board Members:

Luis F. De La Garza, Jr.
Chairman
LAREDO

Walker R. Beard
Vice-Chair
EL PASO

Sheryl R. Swift
Secretary
GALVESTON

Malachi O. Boyuls
DALLAS

Laurie Fontana
HOUSTON

Mark A. McAnally
DESIGNEE MEMBER

Shannon K. McClendon
DRIPPING SPRINGS

Jamie Wickliffe
MIDLOTHIAN

Donna L. Walz
LUBBOCK

TALCB Commissioner
Douglas E. Oldmixon

Desktop Publishing
Patricia Holder

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Inspector Insight

Texas Real Estate Inspector Committee * Volume 2, Number 2 * April 2011

Texas Real Estate Inspector
Committee

Inspector Insight
Volume 2, Number 2
April 2011

Fred Willcox
Chair
HOUSTON

Brian P. Murphy
Vice-Chair
ARLINGTON

Jill Frankel
Secretary
TEMPLE

Curtis Carr
BEAUMONT

Nancy Carroll
COLLEYVILLE

Greg Eakin
TEXARKANA

Brad R. Phillips
TEMPLE

Steven Rinehart
HARKER HEIGHTS

Nancy J. Schriedel
PLANO

Proposed Inspector Penalty Matrix

At its last meeting, the Texas Real Estate Inspector Committee (TREIC) voted to recommend to the Commission a schedule of administrative penalties (or a penalty matrix). The new rule, 22 TAC Section 535.219, Schedule of Administrative Penalties, would establish a penalty matrix for the assessment of administrative penalties for different violations of the statute and rules governing real estate inspectors. The TREIC's goal in developing the matrix was to bring greater consistency and predictability to the assessment of administrative penalties.

The matrix does not give the Commission greater authority to impose administrative penalties. Sections 1102.403 and 1101.702 of the Texas Occupations Code currently provide for administrative penalties of up to \$5,000 for violating any provision of Chapter 1102 or the TREC Rules. The matrix restricts the penalties in many cases to a smaller range and a lower maximum.

In voting to recommend the penalty matrix, the Inspector Committee sought to establish penalty ranges applicable to certain types of violations. For instance, under the matrix, a first-time violation of the requirement to notify consumers of the recovery fund would no longer qualify for a maximum penalty of \$5,000 but could instead be subject to a penalty of \$100 to \$1,500. Similarly, a negligent inspection or improper supervision could result in a penalty between \$500 and \$3,000. Likewise, the range of administrative penalties for unlicensed activity would be narrowed to a range of \$1,000 to \$5,000.

The specific dollar amount of any particular penalty would be based on consideration of criteria such as the nature and seriousness of the violation and efforts made to correct the violation. Repeat offenses could be subject to administrative penalties of up to two times the range for first-time violations, subject to the statutory limit of \$5,000 per violation. According to the language of the statute, ongoing violations (such as advertising violations) can result in penalties of up to \$5,000 per violation per day that the violation continues. Lastly, remember that all administrative penalties are deposited into the recovery fund for potential payment of claims against inspectors.

The penalty matrix will come before the Commission for possible proposal on May 2. The agency will endeavor to provide updates to inspectors and the public through the Insight and other means. You may track this issue on the TREC website at www.trec.state.tx.us.

Upcoming Meetings for the Inspector Committee

**May 4, 2011
9:00 a.m.**

**Standards of Practice Sub-
committee
By telephone**

**Texas Real Estate Inspector
Committee
June 24, 2011
10 a.m.
Austin**



Inspector Bill to be Considered

In the near future, it is likely that the Senate Business and Commerce Committee will hold a hearing on a substitute bill to SB 379. This is Senator Nichols original bill addressing E&O insurance. Other provisions have been requested and included to broaden the reach of the bill.

The background and purpose section of the bill analysis for C.S.S.B. 379 states that the bill: “addresses a variety of issues related to the issuance and renewal of a real estate inspector license and to management of the real estate inspection recovery trust account. The bill includes several ‘housekeeping’ items to improve the effectiveness and efficiency of the inspector licensing and regulatory program within the Texas Real Estate Commission.” It also “addresses the concern that the required pre-licensure education courses do not have sufficient field experience or emphasis on the Texas Standards of Practice. Lastly, it addresses a concern by many members of the inspection industry that it is an undue financial burden on inspectors, and provides inexplicably redundant coverage, to have both a recovery fund for consumer claims and a requirement that inspectors carry errors and omissions insurance.”

The bill would include several efficiency measures such as a requirement for applicants and licensees to provide email addresses, if available, to the commission to facilitate communication from the agency via email. For applicants who fail the exam 3 times, it would replace the 6 month waiting period with additional education requirements. It would provide for criminal history checks for license holders, consistent with almost all license holders in Texas who work in consumers’ homes. It would remove 2 specific pre-license course ambiguities, allowing the commission to specify certain courses in the Standards of Practice as well as increase the field experience requirements of certain coursework. It would expand the application period from 6 to 12 months and allow for a late renewal up to six months after expiration. It would delete the requirement to maintain E&O insurance, but instead expand the recovery fund to provide additional protections to consumers, eliminating redundancy in the law.

Representative Harless has a companion bill (HB 937) for consideration in the House. We encourage all who have an informed opinion on effective improvements in inspector industry regulation to make your positions known to Senator Nichols and Representative Harless. If you will share your thoughts with us also, the commission will be available as a resource witness in any hearing held on either of these bills and will ensure all reasonable consequences are fully considered. Thank you for your prompt attention to these important matters.

Draft Inspector Standards of Practice Commentary Published for Comment

The Texas Real Estate Inspector Committee has completed a preliminary draft of comments to the Standards of Practice for inspectors and is seeking input from the inspection industry and the public. The Standards of Practice, Sections 535.227-535.233 of the TREC Rules, outline the requirements inspectors must follow in performing an inspection. These comments are an attempt to further articulate or clarify the Standards. The Committee would like your input regarding the purpose of and uses for this “commentary”.

Provisions contained in a commentary can be statements of “official policy” if carefully written to state the specific conditions under which the policy applies. The Commission can (and currently does) offer this type of guidance in response to written inquiries from inspectors. Such questions and answers are found in the Frequently Asked Questions on the agency website.

Another legitimate use of a commentary is primarily educational, as broader examples posed to explore the potential application of the rule to various circumstances and conditions, such as instructors often use in teaching technical material. Some examples offered in this draft commentary may rise to this level of “unofficial” guidance of the type that instructors might use.

TREC invites licensees and the public to provide input regarding the draft commentary and to help identify areas of this document that are appropriate as official policy, would best be used as unofficial educational guidance, and which might be better addressed through revisions to the Standards of Practice themselves.

The draft commentary is expected to be on the inspector page of the TREC website by Friday, April 22.

