



TREC Advisor

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.

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TREC Announces Move to Central Austin

The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board are pleased to announce their move in July to the Stephen F. Austin state office building located at 1700 North Congress Avenue in Austin.

When asked about why TREC is making the move now, Administrator Oldmixon responded “The agency has been long overdue for this change. After 30 years in aging quarters in a mixed commercial neighborhood, we will be consolidating to a newly refurbished space in the Capitol complex. Our online access capabilities and phone services will improve dramatically with the new location and that alone is enough to make the move. In addition, access to other state agencies that we interact with on a regular basis will be greatly improved. We are really looking forward to these changes.”



The agency will begin moving its file room on July 5 and will temporarily shut down its online services on July 14 after 5pm. TREC and TALCB will be closed to the public on Friday, July 15 to move all staff offices, equipment and supplies to the new location. TREC and TALCB’s phones and online services will be unavailable from July 15 to the 17. At mid-month and over a weekend, this should cause the least disruption for the public and license holders. The agency will reopen for business on Monday, July 18 on the fourth floor at the new Congress Avenue address.

All license holders who are due for renewal prior to July 31 are strongly encouraged to complete their renewal process online no later than July 14. Renewals can be done online at the TREC or TALCB website by clicking on the yellow “My License Online Services” button at the top of the home page.

For more information and regular updates please go to the Texas Real Estate Commission website at www.trec.state.tx.us.

Important Dates to Remember

- Real Estate Commission Closed to the Public—July 15
- Commission Meeting—August 1st (In new building)

Changes Made at the Commission

Governor Rick Perry made four appointments to the Texas Real Estate Commission. Avis Wukasch, currently serving as a broker member of the commission with a term to expire January 31, 2013, was appointed to serve as the Chair. Governor Perry also appointed broker member Bill L. Jones and public member Weston Martinez, and reappointed broker member Troy Alley, all three with terms to expire January 31, 2017.



Avis Wukasch, Chair

Avis Wukasch is a real estate broker and team leader with Keller Williams Realty in Round Rock. She earned a B.S. in political science from the University of Texas at Austin in 1975 and became a Texas real estate licensee in 1978. Ms. Wukasch served as a broker member of the Texas Real Estate Commission Broker Lawyer Committee (serving as co-chair in 2004 and 2005). Ms. Wukasch is certified to teach mandatory continuing education for Texas real estate licensees and pre-licensure classes on agency, marketing, law and contracts. She also served as the 2007 Chairman of the Board for the Texas Association of Realtors.

Bill L. Jones of Belton is a Century 21 broker/owner since 1976. Mr. Jones served as the 2010 Chairman of the Board for the Texas Association of Realtors. Jones is currently serving as a federal political coordinator for the National Association of Realtors and is a member of the Realtor Commercial Alliance and the Institute of Real Estate Managers. He is a founder and member of Friends Feeding Friends Food Drive benefitting the Capitol Area Food Bank and Belton/Temple Habitat for Humanity. Mr. Jones attended the University of North Texas.



Bill L Jones

Troy C. Alley, Jr. is the Executive Vice President of Con-Real, Inc., where he is responsible for brokerage, leasing, and other real estate services. He is a member of the Appraisal Institute, the Dallas Board of Realtors and the Texas Association of Realtors, and a guest lecturer at University of Texas at Arlington's real estate program. Mr. Alley received a bachelor's degree from the University of Arkansas, a master's degree from Southern Methodist University and completed advanced work at the Massachusetts Institute of Technology in real estate development.



Troy Alley

Weston Martinez has over 15 years of corporate business experience with AT&T and is also the President of Alamo Grass & Landscaping Services, LLC. Mr. Martinez formerly served as Vice-Chair for the Alamo Community Colleges Citizens Bond Oversight Committee. He is a member of the San Antonio Rotary Club, volunteer for the San Antonio Children's Shelter and the AT&T Telephone Pioneers. Mr. Martinez is a Texas Certified Mediator who has a Bachelor's Degree from Wayland Baptist University.



Weston Martinez

From the Chairman ...



Avis Wukasch, Chair

In a very pleasant surprise, Governor Perry has appointed me as the new Chair of the Commission and for this I am truly grateful. John Eckstrum has been a great friend and mentor as Chair and we will miss him. At the same time the, Governor appointed another capable friend Bill Jones as a new broker member, reappointed Troy Alley

as a very experienced broker member and appointed Weston Martinez as a new public member. I look forward to working with the current and new members as together we lead this great agency into a new era of effectiveness. The next two years offers us the opportunity to implement some significant improvements we have been planning for some time.

The legislative session was a very productive one for the agency, and two of three measures sought by us and the professional associations of our license holders were successful. We very much appreciate the close working relationship we enjoyed and maintained during the session with the Texas Association of REALTORS and especially key members of the House and Senate, that enabled us to achieve our objectives.

SB 747 by Senator Carona and others implements many improvements that resulted from our 2010 rule review, strategic planning and agency working groups composed of a wide mix of industry professionals, agency staff and association leaders. SB 1000 by Senator Eltife and others grants the agency "self-directed, semi-independent" status. This allows the agency much more flexibility as it gains control over certain fees it collects, and the expense budget is set by the Commission. Only seven other state agencies have achieved this level of "independence" and TREC is the largest one to date. In the short run, we can expect a modest increase in some fees to build a small operating reserve and fund the two year transition, but in the long run, the funds it collects will stay in the agency to improve its operations. We anticipate significant improvements resulting from this change.

To assist in the transition and implementation of the changes contained in these two laws, we have appointed two new advisory working groups to make recommendations to the Commission. This cooperative arrangement has served us well in the past two years and we look forward to making it even better as we move ahead to meet our new challenges.

Wishing you all the best as summer gets in full swing. Be safe, stay cool, pray for rain and have a great selling season. Happy Birthday to the USA!

TREC and TALCB Announce new Texas.gov domain names

The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board have updated their website domains. Effective immediately, the new website names are www.trec.texas.gov and www.talcb.texas.gov.

These "easy to remember" website addresses will be the permanent home for the agency's websites consistent with the state of Texas government website standards for state agencies. The previous website addresses, www.trec.state.tx.us and www.talcb.state.tx.us, will remain operational for a year-long transition period.

In addition to the website domain name change, all of the agency's email addresses have been updated to also reflect the new **Texas.gov** domain. All emails directed to staff members of the agency can be sent to firstname.lastname@trec.texas.gov or firstname.lastname@talcb.texas.gov.

The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board continuously strive to improve communications and accessibility for license holders and for the public. These changes to the website domain and emails are two of many improvements planned for the coming year.

TREC and TALCB continue preparations for moving to the Stephen F Austin building in downtown Austin on July 15. Official announcement of new phone numbers will be made in connection with the move. News and important notices about the move are posted regularly on the agency's updated website homepage at www.trec.texas.gov in the "Hot Topics" section.

TREC Housekeeping Bill Update

Senate Bill 747, the TREC housekeeping bill, will become law on September 1, 2011. The following provisions of the bill go into effect on September 1.



All business entities will be required to obtain errors and omissions insurance of at least \$1 million if the designated agent of the entity (an active broker in good standing) owns less than 10% of the entity.

A business entity that receives compensation on behalf of a license holder is required to be licensed as a broker. This requirement is already in the rules.

Any type of business entity that engages in real estate brokerage, with a “domestic entity” or “foreign entity” as defined by section 1.002 business occupations code, will be required to be licensed as a broker, including a partnership.

The definition of “broker” is amended to clarify the distinction between written price opinions routinely performed by brokers and the appraisal of real property that requires licensure under Occupations Code Chapter 1103.

A person who controls the collection or acceptance of rent from a single family residence for a third party will be required to have a broker or sales license.

An attorney licensed in a state other than Texas will need to be licensed in Texas if the attorney engages in real estate brokerage in this state.

Applicants will 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 an application for a license remains open and in which an applicant must satisfy an examination requirement will increase from six months to one year.

The maximum period of time in which a person can late renew a license with monetary penalties decreases from one year to six months. If a license has been expired for six months or longer, the license may not be renewed, a new application must be filed.

The commission will be able to impose the same types of disciplinary action against educational programs accredited by the commission as it imposes against other types of licenses regulated by the commission.

The commission will be authorized to deny accreditation of an education program if an applicant owns or controls, or has previously owned or controlled, an educational program that has been revoked.

More information and a copy of the bill’s text can be found at the Texas Legislature online website; www.capitol.state.tx.us/Home.aspx

TREC Welcomes New Employees



Yan "Sunny" Sun

Sunny was born in China and got his Bachelor's of Science in Electrical Engineering. Sunny worked for the Chinese Department of Transportation for 5 years before he moved to the US in 1999. After receiving his Master's of Science in Computer Science he, worked for several companies before he was hired by The Texas Department of Transportation. Sunny was a systems analyst at TX DOT and worked on web application for the past 4 years before joining TREC's Information Technology Division.

Sunny has two children, Raymond and Melinda. Raymond is 8 and Melinda who is 6. Sunny's wife works for Texas State University.



Narcissa Pena

Prior to joining The Texas Real Estate Commission, Narcissa Pena worked as an Administrative Assistant with the Texas Department of Family and Protective Services and The Office of the Attorney General and looks forward to continuing to serve the State of Texas. She joins TREC in the Reception and Communication Division.

Originally from New Jersey her family moved to Austin when she was 2 years old, where she grew up and attended Becker Elementary school and later graduated from Anderson High. Narcissa is married and has 3 girls and enjoys spending time with family and friends and considers herself a Texas native.



Elizabeth Dorsey

Elizabeth Dorsey joins the Texas Real Estate Commission in the Standards and Enforcement Division as a Legal Assistant. Beth travelled extensively throughout Europe and the United States growing up as an Army brat. She is a graduate of the University of Texas in Austin and received her paralegal certificate from George Washington University in Washington, DC. She has worked for AT&T and IBM.

She is happy to be back in Texas and lives in southwest Austin.

Proposed Rule Actions from May 2, 2011 Commission Meeting

Chapter 535, General Provision

• Subchapter Q. Administrative Penalties

22 TAC §535.191-proposes amendments to §535.191, concerning Schedule of Administrative Penalties. Section 535.191 is amended to add additional provisions that apply to the schedule and to move an existing provision that should more appropriately fit under a different range. *Earliest possible date of adoption, August 1, 2011.*

• Subchapter R. Real Estate Inspectors

22 TAC §535.219-proposes new §535.219, concerning Schedule of Administrative Penalties. The new section establishes a penalty matrix for the assessment of administrative penalties for different violations of the statute and rules governing real estate inspectors. The matrix was drafted in accordance with §1102.403 of the Texas Occupations Code (relating to administrative penalties imposed against inspectors) and Chapter 1101, Subchapter O (relating to administrative penalties assessed by the Commission). As such, the highest category of administrative penalties provides for a maximum penalty of \$5,000 per violation, and each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty. *Earliest possible date of adoption, August 1, 2011.*



Chapter 537, Professional Agreements and Standard Contracts

22 TAC §537.20, §537.28, §537.30, §537.31, §537.32, and §537.37-proposes amendments to 22 TAC §537.20, concerning Standard Contract Form TREC No. 9-8, Unimproved Property Contract; §537.28, concerning Standard Contract Form TREC No. 20-9, One to Four Family Residential Contract (Resale); §537.30, concerning Standard Contract Form TREC No. 23-10, New Home Contract (Incomplete Construction); §537.31, concerning Standard Contract Form TREC No. 24-10, New Home Contract (Completed Construction); §537.32, concerning Standard Contract Form TREC No. 25-7, Farm and Ranch Contract; and §537.37, concerning Standard Contract Form TREC No. 30-8, Residential Condominium Contract (Resale). The amendments propose to adopt by reference six revised contract forms for use by Texas real estate licensees.

- ◆ The amendments to Contract Form TREC No. 9-9, Unimproved Property Contract are the same as those proposed for Form TREC No. 20-10. Also, typographical errors in paragraph 7 are corrected.
- ◆ The amendments to Contract Form TREC No. 20-10, One to Four Family Residential Contract (Resale) would revise paragraph 15 to delete subparagraph 15B. This change to all six of the forms was adopted on an emergency basis at the February meeting of the Commission with an effective date of March 1, 2011.
- ◆ The amendments to Standard Contract Form TREC No. 23-11, New Home Contract (Incomplete Construction) are the same as those proposed for Form TREC No. 20-10.
- ◆ The amendments to Contract Form TREC No. 24-11, New Home Contract (Completed Construction) are the same as those proposed for Form TREC No. 20-10. Also, typographical errors in paragraph 7 are corrected.
- ◆ The amendments to Contract Form TREC No. 25-8, Farm and Ranch Contract are the same as those proposed for Form TREC No. 20-10.
- ◆ The amendments to Contract Form TREC No. 30-9, Residential Condominium Contract (Resale) are the same as those proposed for Form TREC No. 20-10.

Earliest possible date of adoption, August 1, 2011

View text of proposed rules at http://www.trec.state.tx.us/formslawscontracts/rules_codes/trecrules.asp

Comments on proposed rules may be submitted to TREC by mail at TREC, P.O. Box 12188, Austin, TX 78711-2188 or by e-mail to general.counsel@trec.texas.gov

Adopted Rule Actions from May 2, 2011 Commission Meeting

Chapter 533, Practice and Procedure

22 TAC §533.1, §533.3- TREC adopts amendments to 22 TAC §533.1, concerning Definitions, and §533.3, concerning Filing and Notice, without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1467). The amendment to §533.1 amends the definition of "last known mailing address" to "mailing address" to be consistent with other TREC rules. The 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. No comments were received on the rules as proposed. *Effective date of adoption, May 29, 2011*

Chapter 535, General Provision

• Subchapter R. Real Estate Inspectors

22 TAC §535.217 adopts amendments to 22 TAC §535.217, concerning Contact Information, without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1468). The amendment to §535.217 amends the title of the rule to add "Mailing Address and Other" and deletes the term "permanent" from the rule to make it consistent with other TREC rules. No comments were received on the rule as proposed. *Effective date of adoption, May 29, 2011*

Chapter 537, Professional Agreements and Standard Contracts

22 TAC §537.45, §537.46 -adopts amendments to §537.45, concerning Standard Contract Form TREC No. 38-2, Notice of Buyer's Termination of Contract, without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 707). The proposed amendments to §537.46, concerning Standard Contract Form TREC No. 39-6, Amendment to Contract, are not adopted and are withdrawn. No comments were received on the rules as proposed. *Effective date of adoption, May 29, 2011*

5-2-09(1)
PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)
NOTICE OF BUYER'S TERMINATION OF CONTRACT
CONCERNING THE CONTRACT FOR THE SALE OF THE PROPERTY AT _____
(Street Address and City)
BETWEEN THE UNDERSIGNED BUYER AND _____ (SELLER)
Buyer notifies Seller that the contract is terminated pursuant to the following:
 (1) the unrestricted right of Buyer to terminate the contract under Paragraph 23 of the contract.
 (2) Buyer cannot obtain Credit Approval in accordance with the Third Party Financing Addendum for Credit Approval to the contract.
 (3) the Property does not satisfy the lenders' underwriting requirements for the loan under Paragraph 4A(1) of the contract.
 (4) Buyer elects to terminate under Paragraph 8 of the Addendum for Property Subject to Mandatory Membership in a Property Owners' Association.
 (5) Buyer elects to terminate under Paragraph 7B(2) of the contract relating to the Seller's Disclosure Notice.
 (6) Other (identify the paragraph number of contract or the addendum): _____
NOTE: Release of the earnest money is governed by the terms of the contract.
Buyer _____ Date _____ Buyer _____ Date _____
This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transaction. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin TX 78711-2108, (512) 459-6544 (http://www.trec.state.tx.us) TREC No. 38-2. This form replaces TREC No. 38-2.



Congratulations to our Outstanding Performer for the Quarter Barbara Kolb!

During our transition to VERSA and with the demands of this legislative session, Barbara's accounting expertise, her willingness to go above and beyond, and positive outlook and attitude has allowed the Staff Support and Services Division (SSS) to manage a huge volume of work with timeliness and accuracy. High praise indeed...thank you so much, Barbara!

TREC Disciplinary Actions

Radke, Steven Kelley (Austin); License #546693 Agreed 10 year suspension of salesperson license fully probated for 10 years, effective April 25, 2011 entering a plea of guilty or nolo contendere to a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, in violation of Tex. Occ. Code §1101.652(a)(1); and failing to notify the Commission, not later than the 30th day after the date of a final conviction or the entry of a plea of guilty or nolo contendere, that the person has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud, in violation of Tex. Occ. Code §1101.652(a)(9).

Selinski-Davis, Diane Mary (College Station); License #n/a Agreed administrative penalty of \$5,000.00, entered April 28, 2011; Agreed to cease and desist all activities for which a person is required to first hold a real estate broker or salesperson license acting, engaging in and representing that she was a real estate licensee without first holding an active license or a license issued by the Texas Real Estate Commission by acting as a property manager that included leasing services for others, in violation of Tex. Occ. Code §1101.351.

Havran, Eugene H. (Arlington); License #212255 Agreed reprimand of broker license, entered April 28, 2011 acting incompetently in property management, in violation of Tex. Occ. Code §1101.652(b)(1); failing within a reasonable time to properly account for or remit money received by license holder that belongs to another, in violation of Tex. Occ. Code §1101.652(b)(9); commingling money belonging to another with license holder's own money, in violation of Tex. Occ. Code §1101.652(b)(10); and, advising a person regarding the validity or legal sufficiency of an instrument, in violation of Tex. Occ. Code §1101.654(a)(2).

Newton, Dawna Marie Dunn (Fort Worth); License #499592 Revocation of salesperson license, effective April 25, 2011; Assessment of an administrative penalty of \$15,000.00, entered April 25, 2011 failing to timely provide information and documentation requested by the Commission relating to a complaint, in violation of Tex. Occ. Code §§1101.652(a)(5)&(6); failing to provide all parties the Information About Brokerage Services Form, in violation of Tex. Occ. Code §1101.558, failing to obtain the written consent from each party for her sponsoring broker to act as an intermediary, in violation of Tex. Occ. Code §1101.559, failing to provide on behalf of her broker written notice of appointment to all parties, in violation of Tex. Occ. Code §1101.560, and accepting compensation for a real estate transaction from a person other than her broker, in violation of Tex. Occ. Code §1101.651(b); acting negligently or incompetently by drafting, negotiating, and signing 6 leases when she was not authorized by her sponsoring broker and did not have a PMA or POA from the owner, in violation of Tex. Occ. Code §1101.652(b)(1); including lease terms not authorized by the owner in violation of Tex. Occ. Code §1101.652(b)(20); failing within a reasonable time to properly account for or remit money she received, in the course of property management that belonged to the owner, in violation of Tex. Occ. Code §1101.652(b)(9) and 22 Tex. Admin. Code §535.146; commingling money that belonged to another with her own money, in violation of Tex. Occ. Code §1101.652(b)(10); failing to deposit money she received as escrow agent in a real estate transaction in a custodial or trust or escrow account maintained for that purpose, in violation of Tex. Occ. Code §1101.652(b)(30) and 22 Tex. Admin. Code §535.159.

TREC Disciplinary Actions

Mason, Andrea Marie (Plano); License #557513 Agreed voluntary surrender of salesperson license, effective March 31, 2011 while conducting property management, acting negligently or incompetently in managing, not properly documenting management agreements with owners, not keeping clients informed of occupancy of properties, not accounting for security deposits, and not utilizing funds provided for property maintenance, in violation of Tex. Occ. Code §1101.652(b)(1); and, by commingling money belonging to another with license holder's own money, which must be maintained in a trust account, in violation of Tex. Occ. Code §1101.652(b)(10).

Arterburn, Tony Edward, Jr. (Rowlett); License #538505 Agreed 6 month suspension of salesperson license fully probation for 1 year, effective April 27, 2011 acting negligently or incompetently by not taking affirmative steps to disable his web site that advertised properties for sale or rent without the knowledge and consent of the owners, in violation of Tex. Occ. Code §1101.652(b)(1); and creating a misleading impression that he was a real estate broker in web site advertising, in violation of Tex. Occ. Code §1101.652(b)(23).

Dunn, Wynona Gail (Euless); License #196894 Revocation of broker license, effective April 20, 2011; Assessment of an administrative penalty of \$60,000.00, entered April 20, 2011 while conducting property management, failing to properly supervise a sponsored agent in managing, not properly documenting management agreements with owners, and not keeping clients informed of business closure, in violation of Tex. Occ. Code §1101.652(b)(1); by engaging in conduct that is dishonest or in bad faith in failing to keep principals informed of financial difficulties of business or inability to pay monies owed, in violation of Tex. Occ. Code §1101.652(b)(2); failing within a reasonable time to properly account for or remit money received by license holder that belongs to another held in trust, in violation of Tex. Occ. Code §1101.652(b)(9); commingling money belonging to another with license holder's own money, not maintaining a trust account, and paying operating expenses or making withdrawals for other than proper disbursements, in violation of Tex. Occ. Code §1101.652(b)(10); by publishing or causing to be published advertising that misleads by failing to notify the commission of starting usage of a name in business within 30 days, in violation of Tex. Occ. Code §1101.652(b)(23); and failing to provide information within a reasonable time requested by the commission relating to a complaint, in violation of Tex. Occ. Code §1101.652(a)(6).

Ferrari, Stephen J. (San Antonio); License #2994 Agreed reprimand of professional inspector license, effective April 19, 2011; Agreed administrative penalty of \$1,500.00, entered April 19, 2011 procuring a license by making material misstatement of fact regarding a 2006 and 2009 criminal offenses in his 2006, 2008 and 2010 renewal applications, in violation of 22 Tex. Admin. Code §535.208(f); failing within 10 days to provide information requested by the Commission in the course of an investigation of a complaint, in violation of 22 Tex. Admin. Code §535.224(b)(3).

Texas Premier Apartments, LLC (Houston); License #606867 Agreed administrative penalty of \$2,000, entered April 18, 2011 procuring or attempting to procure a license under this chapter for the license holder or 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).

TREC Disciplinary Actions

Holder, Barbara (Houston); License #383293 Agreed reprimand of salesperson license, entered April 14, 2011; Agreed completion of a thirty (30) hour agency law course, entered April 14, 2011 acting negligently or incompetently, while acting as a broker or salesperson, in violation of Tex. Occ. Code §1101.652(b)(1).

Sample, Conetra Antionette (Arlington); License #n/a Agreed administrative penalty of \$1,000.00, entered April 14, 2011. Order to cease and desist from engaging in all activities for which a person must first hold a real estate broker or salesperson license engaging in unlicensed real estate brokerage by using the business name Realistic Real Estate Solutions, and negotiating and signing a rental agreement as the property manager for property she treated as her own, but was not the record title owner, in violation of Tex. Occ. Code §1101.351(a).

Jorgensen, Ted Eugene (Dallas); License #450127 Agreed reprimand of broker license, entered April 14, 2011; Agreed administrative penalty of \$5,000.00, entered April 14, 2011 failing to obtain consent of all parties to act as an intermediary prior to or in conjunction with the transaction and failing to state the source of any compensation to the broker, in violation of Tex. Occ. Code §1101.559(a)(1); acting as an intermediary when also seller unable to be impartial, in violation of Tex. Occ. Code §1101.559(c); and, acting negligently or incompetently in oversight of sponsored agent, in violation of Tex. Occ. Code §1101.652(b)(1).

Prime Realtors Property Management, LLC (Arlington); License #562557 Revocation of broker license, effective April 5, 2011; Assessment of an administrative penalty of \$60,000.00, entered April 5, 2011 while conducting property management, filing within a reasonable time to properly account for or remit money received by license holder that belongs to another held in trust, in violation of Tex. Occ. Code §1101.652(b)(9); commingling money belonging to another with license holder's own money, not maintaining a trust account, and paying operating expenses or making withdrawals for other than proper disbursements, in violation of Tex. Occ. Code §1101.652(b)(10); engaging in conduct that is dishonest or in bad faith, in violation of Tex. Occ. Code §1101.652(b)(2); and failing to provide information within a reasonable time requested by the commission relating to a complaint, in violation of Tex. Occ. Code §1101.652(a)(6).

Vu, Hoang Thien (Houston); License #578472 Agreed voluntary surrender of salesperson license, effective April 4, 2011 procuring a license under this chapter by making a material misstatement of fact in license renewal applications subsequent to the felony convictions, in violation of Tex. Occ. Code §1101.652(a)(2); failing to provide, within a reasonable time, information requested by the Petitioner that relates to a formal or informal complaint to the Petitioner that would indicate a violation of this chapter, in violation of Tex. Occ. Code §1101.652(a)(6); and failing to notify the commission, not later than the 30th day after the date of a final conviction for the felony, in violation of Tex. Occ. Code §1101.652(a)(9).

TREC Disciplinary Actions

Salazar, Daniel Lara Jr. (San Antonio); License #502383 Revocation of broker license, effective March 10, 2011 automatic revocation of license by operation of law upon imprisonment following a felony conviction, felony community supervision revocation of parole, or revocation of mandatory supervision, pursuant to Tex. Occ. Code §53.021(b) and in accordance with the Opinion No. GA-0064 of the Attorney General of Texas.

Rhodes, Teresa Jeanette (Athens); License #526646 Suspension of salesperson license until payment is made in full of replacement fees and administrative penalty, effective April 12, 2011; Assessment of an administrative penalty of \$500.00, entered April 12, 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 Tex. Admin. Code §535.2(a).

Bustoz, Frank (Austin); License #612340 Agreed probationary license issued for 2 years, effective April 11, 2011 commission of an offense that directly relates 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 Tex. Occ. Code §1101.354(2).

Winchester, Earl Wayne (New Caney); License #436269 Agreed probationary salesperson license issued for 2 years, effective April 21, 2011 commission of an offense that 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 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).

Parsons, Bobbie, Jr. (Fort Worth); License #20153 Agreed probationary professional inspector license issued for 2 years, effective April 22, 2011 commission of an offense that is directly related to the duties and responsibilities of the occupation of a licensed professional inspector 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 Tex. Occ. Code §1102.109(4).

Lafferty, Carolyn Marie (McKinney); License #611495 Agreed probationary salesperson license issued for 1 year, effective April 28, 2011 commission of an offense that 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 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).

GDA Property Management, LLC (Austin); License #9000454 Agreed probationary broker license issued for 1 year, effective April 28, 2011; Agreed administrative penalty of \$1,000.00, entered April 28, 2011 engaging in unlicensed real estate brokerage activities through its owner, a duly licensed real estate broker, and in so doing, demonstrated lack of good judgment and trustworthiness that is a requirement for a license under Tex. Occ. Code §1101.354(2). Applicant presented sufficient other evidence of honesty, trustworthiness and integrity that satisfied the Commission as required under Tex. Occ. Code §1101.354(2) and the issuance of a probationary license was appropriate.

TALCB Bulletin



TALCB was created by an act of the Texas Legislature in 1991 to license, certify and regulate real estate appraisers in Texas under state and federal laws.

Inside this issue: From the Chairman (Page 1) Rules Update (Page 2) Provisional License Repealed (Page 2) AMC Working Group Appointed (Page 2)



Luis De La Garza, Jr.

From the Chairman ...

At the Board's May meeting, we welcomed a new appraiser member to the Board, Jamie Wickliffe of Midlothian, an experienced and capable appraiser and civic leader. We look forward to her continued contributions as we manage the changes facing us.

The legislative session was very productive for the Board, and both measures sought by us and the appraiser professional associations were successful. We were very pleased with the close working relationship we maintained during the session with the Foundation Appraisers Coalition of Texas (FACT) and especially with key members of the House and Senate, that enabled us to achieve these important objectives.

HB 2375 by Representative Hamilton and others implements many improvements that resulted from our 2010 rule review and strategic planning, along with ideas from association leaders and agency staff. Because a drafting oversight made the law effective immediately upon signature, we called an "emergency" meeting on June 22nd to address a few key rule changes needed for compliance.

Notably, the category of "provisional" license is abolished. Those few currently holding this license will be valid until expiration, but no new licenses will be issued nor renewed

in this category. HB 1146 by Representative Kuempel and others establishes a mechanism for registering and regulating appraisal management companies, a needed tool and goal confirmed by the Dodd-Frank federal law. To assist in the transition and implementation of the changes contained in these two laws, we have appointed two new advisory working groups to make recommendations to the Board. This cooperative tool has served the agency well in the past two years and we hope to make it even better as we move ahead to meet these new challenges.

Notably, SB 1000 by Senator Eltife and others grants the agency, including TALCB, "self-directed, semi-independent" status. This allows much more flexibility as the agency gains control over certain fees it collects, and the expense budget is set by the Board and Commission. Only seven other state agencies have achieved this level of "independence" and TREC is the largest one to date. In the short run, we can expect a modest increase in some fees to build a small operating reserve and fund the two year transition, but in the long run, the funds it collects will stay in the agency to improve its operations. We anticipate significant improvements resulting from this change.

Wishing you all the best as summer gets in full swing. Be safe, try to stay cool, and hope for rain. Happy Independence Day to us all!

TALCB Adopted Rules

The Texas Appraiser Licensing and Certification Board voted at its May 20, 2011, meeting to adopt amendments to Section 157.9, Notice of Hearing, of the Rules of the Texas Appraiser Licensing and Certification Board. The amendments 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.

You can find more information, including the text of the amendments, on the TALCB website at www.talcb.texas.gov.

Signing of TALCB Cleanup Bill Marks End of Provisional Licensure

With the Governor's signature on May 27, House Bill 2375 (the TALCB cleanup bill) became immediately effective. Although the bill introduces a variety of changes to appraiser regulation, perhaps the most significant change was the repeal of provisional licensure. Pursuant to the bill, as of May 27, TALCB can no longer issue or renew provisional licenses. Appraisers who currently hold provisional licenses may continue to work under them but only have until their current expiration date to complete all of their hours and upgrade to a license or certification. Otherwise, they must find a sponsor or cease performing appraisals.

Appraisal Management Company (AMC) Working Groups Appointed

With HB 1146 becoming effective September 1, 2011 the board has appointed an advisory working group to make recommendations for rules needed to enforce the new law. A mix of appraisers and AMC representatives will work to recommend rules and policies for consideration and possible action by the Board at future meetings.

Important Dates to Remember

Real Estate Commission Closed to the Public—July 15

Board Meeting—August 19th (In new building)

Inspector Insight



Inside this issue:

From the Chairman (Page 1) Proposed Inspector Penalty Matrix (Page 2 and 3)

From Chairman Fred Willcox...

The Inspector Committee met on April 1 and had a full agenda of items to consider. Our new members earned immediate respect by fully engaging on all issues.

Looking forward, our education providers will need to revise their course offerings to meet the newly designated hours per topic requirements for pre-licensure education that become effective September 1, 2011. After that date, inspectors will need to have taken a new 6 hour course in Texas Standards of Practice/Legal/Ethics Update in order to renew a license. These six hours will be counted as part of the 32 hours of continuing education currently required for each renewal. Both of these initiatives are very positive changes for our industry. Our education subcommittee has begun work on curriculum guidance for the educators to ensure key items are included.

The proposed penalty matrix has been a hot topic for discussion and many misunderstandings among inspectors. See the article in this issue of the Insight for explanation of the most common errors. The

matrix will be addressed at the next Committee meeting. Also, the initial draft of a commentary on the Standards of Practice was recently offered for consideration. The Committee is seeking your input on the direction this effort might take that would be helpful to inspectors. The input period is still open so we encourage your participation.

The legislative session was a bit of a disappointment for inspectors as none of the items we were monitoring that would affect inspectors made it out of committee. In fact, none even received a hearing in the relevant committees. The several industry trade groups of inspectors in Texas failed to present a united front on these matters. More importantly, by appearing divided, the groups offered lawmakers an easy basis on which to ignore the issues entirely. The Committee hopes that this barrier can be overcome in future sessions.

However, the Commission was given "self-directed, semi-independent" status by passage of SB 1000. Only seven other agencies have been given this status. We look forward to learning of all the new flexibilities the agency might enjoy because of this new law.

Important Dates to Remember

Real Estate Inspector Committee Meeting—June 24

Real Estate Commission Closed to the Public—July 15

The Committee will be meeting next on June 24th. We plan to have open hearings on the way inspections are performed and will continue to seek to improve our profession. Stay tuned for more developments.

The Proposed Inspection Penalty Matrix

At its May 2nd meeting, and on the advice of the Inspector Committee, the Commission proposed a penalty matrix for inspectors. The proposed text of §535.219 which contains the penalty matrix for inspectors can be found on the TREC web site (www.trec.texas.gov) under proposed rules. Many inspectors have responded with concern that the matrix appears to mark a shift in enforcement or an effort to increase the amount or frequency of administrative penalties. Here are some of their questions, and TREC's responses.

Is TREC doing this to try to put home inspectors out of business?

TREC is absolutely not trying to put inspectors out of business. In fact, the Inspector Committee (which is composed of six inspectors and three public members) developed and recommended the matrix in a desire for consistency and fairness for inspectors facing administrative penalties (fines). Currently, the sole guidance regarding administrative penalties is in the statute, which provides for administrative penalties of up to \$5,000 per violation for *any* violation, no matter how minor. The matrix is a tool to guide the Enforcement Division regarding more appropriate administrative penalties and to reduce the risk of unreasonable inconsistent fines in similar cases.

Don't you realize the matrix will cause inspection fees to increase?

There is no reason that should happen. As indicated above, the current maximum administrative penalty for any violation is \$5,000. In essence, the matrix forces TREC to lower the maximum penalty for many types of violations.

If the matrix is adopted, can TREC suddenly start imposing fines without giving inspectors an opportunity to defend themselves?

No. The process for imposing an administrative penalty or disciplinary action will not change. The inspector always has the right to respond to any complaint and present his side of the story, to negotiate an agreed resolution of a case, or to proceed to a hearing before a neutral ALJ (administrative law judge) if an agreement cannot be reached.

Why isn't the bottom of each range \$0, so the agency has the option of not imposing a fine when appropriate?

It is. The language of the proposed rule reads, "the Commission *may* impose..." which means that, in every case, the agency has the discretion *not* to impose an administrative penalty.

Does the "per violation per day" language mean that an inspector can be fined the amount in the matrix every day until TREC finishes its action against the inspector?

No. In most cases, the "per day" language does not act to multiply the inspector's exposure. For instance, an error in performing an inspection occurs once (on the day of the inspection). Only certain types of continuing violations would qualify to be multiplied by the number of days the violation was ongoing. Using advertising on one's website that violates the TREC rules would be considered an ongoing violation, so the inspector could be assessed an administrative penalty per day if the advertisement remains. Also, this is the current law provision regarding fines for ongoing violations, and does not provide any new authority for greater penalties on inspectors.

The Proposed Inspection Penalty Matrix Cont'd...

Is this an effort to raise more money for the agency?

No. As discussed above, the matrix would not increase the penalties imposed, as the agency currently has authority to impose penalties of up to \$5,000 for any violation, no matter how minor. And fines go into the Recovery Fund for consumers, not the agency's operating account.

Is there a penalty matrix for brokers and salespeople?

Yes. There is also a penalty matrix for appraisers (governed by the Texas Appraiser Licensing and Certification Board, an independent subdivision of TREC), and many other licensing agencies in Texas use them as well.



Wouldn't it be better to base any fines on a proportion of the dollar value of what the inspector missed versus what he or she properly reported?

The statute that provides the basis for the matrix (Section 1101.702(c) of the Texas Occupations Code) does not authorize the agency to use such a speculative calculation, which would be virtually impossible to evaluate in most cases. (How would you calculate the value of all items inspected and reported correctly?) However, when determining the appropriate fine for a given case, the agency will continue to take into account factors such as the seriousness of the violation within the context of the whole inspection – as it does now.

To see the full document please go to www.trec.texas.gov and click on the inspector information tab.

Did you know you the TREC website has a tool for consumers that allows the public to search for an inspector by City?



Every single Texas Real Estate Inspector is listed on the TREC website. Members of the public can search for inspectors by name or by city with this convenient tool. Go to www.TREC.Texas.gov to test it out yourself!

The TREC website has many great tools for inspectors and members of the public alike. Check out the website regularly for all the latest goings on at the Texas Real Estate Commission.