

# TREC *Advisor*

Texas Real Estate Commission ★ Volume 10, No. 1 • March 1999

## ATTENTION Real Estate Licensees May Renew Before Completing MCE

**I**S YOUR LICENSE ACTIVE OR INACTIVE? Have you completed the required hours of MCE to renew your license? What will happen to salespersons whom you sponsor if you don't get your MCE on time? The answers to these questions are extremely important and may save you \$200.00.

At its September 1998 meeting, the Commission passed a rule that will affect each licensee subject to MCE.

This new rule affects licenses expiring March 31, 1999 and beyond. It imposes a \$200.00 fee for licensees who renew their licenses in an active status but fail to get their MCE requirement satisfied prior to the expiration date of the license being

renewed. Further, the new rule requires the MCE to be completed and the \$200.00 fee paid within 60 days of the expiration date of the license. If the licensee does not pay the fee and complete the required MCE, the licensee will be subject to disciplinary action.

If a licensee waits until the last few days of the renewal period to renew a license, there may not be time for the notice of MCE deficiency to reach the licensee. If the licensee requests to renew the license in an active status, the MCE hours will be required. If the required hours are not taken by the expiration date of the license being renewed, then the licensee will be subject to the \$200.00 fee.

### *How to avoid paying this fee*

Get your MCE hours completed well in advance of your expiration date. Hours may be completed at any time within your license period. For example, if your license expires on June 30, 1999, you can complete your MCE classes anytime between July 1, 1997 and June 30, 1999. Please note that the classes must be completed by June 30, 1999.

Another way of avoiding the fee would be to renew in an inactive status. However, if you intend to become active again the MCE hours will be required prior to filing either a Change of Sponsorship or Broker Request to go Active.

## Letter Opinion Issued By Office of Attorney General

A LETTER OPINION ISSUED by the Office of the Attorney General on December 18, 1998 provides an interpretation of The Real Estate License Act (TRELA) of interest to employees acting to acquire or dispose of real property on behalf of their owners. Letter Opinion No. 98-119, available on the TREC web site, concludes that the licensing and registration requirements of TRELA do not apply to employees of corporations and other business entities acting on behalf of their employer in transactions in which the employer is a principal. If the corporation or other business entity is acting as an agent for a third person, however, the employee who performs brokerage services must be licensed as a broker or salesperson, registered easement or right-of-way agent or exempt from the licensing or registration requirements of TRELA. TREC sought the opinion in 1997 in response to requests from easement and right-of-way registrants and others who questioned whether TRELA applied to employees.

## TREC Amends Advertising Rule to Include Internet

TREC HAS NOW ADDRESSED the use of the Internet and electronic communications such as email in its rules. An amendment to 22 TAC §535.154 effective March 15, 1999, provides a general definition of "advertisement" and requires specific disclosures in advertising conducted on the Internet or by electronic communications. A broker or salesperson who advertises on the Internet will be required to indicate on each page of the web site in which an advertisement appears that he or she is a licensed broker or agent, thereby complying with Section 16(a)(6)(P) of TRELA. If the name or assumed name of a salesperson appears on the page, the name of the salesperson's sponsoring broker also must appear. If the advertisement is made by an electronic communication such as e-mail or an email discussion group, these disclosures are required in the communication and in any attachment which is an advertisement. For example, if the email attachment is an informational brochure for a home for which a salesperson is the identified contact person, the name or assumed name of the salesperson's sponsoring broker would also have to appear. If the communication is directed to a

member of the public who has previously agreed for the licensee to provide brokerage services, however, the disclosures would not be required.

The final version of the rule also clarifies requirements for the use of assumed names by licensees and establishes a specific time for them to notify TREC. Within 30 days after a broker, or a salesperson sponsored by the broker, starts or stops using a name in business, other than the name in which the person is licensed, the broker must notify TREC in writing. If the notice from the broker indicates that only a salesperson's name or assumed name is to be used, the rule obligates TREC to respond and advise the licensee that use of the name would violate the rule. The text of the amended rule is available on the TREC web site.

### Inside this issue...

Meeting Highlights	2
Legislative Update	4
Examination Update	8

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



TEXAS REAL ESTATE COMMISSION

# Meeting Highlights

*December 7, 1998*

MEETING ON MONDAY, December 7, 1998, the Texas Real Estate Commission (TREC) revised and updated various rules. Changes were made to TREC Rule Chapter 533 which establishes procedures for addressing disputed complaints or contested enforcement cases, as well as for the development of any new or amended rules needed in the future. Thirty rules (§§533.1-533.30) in this chapter were repealed and replaced by only nine new, simplified rules (§§533.31-533.39).

Action on the review of rules in Chapter 537 was deferred. These rules refer to required use of standard contract forms and professional agreements that are developed by the TREC Broker-Lawyer Committee. Final action was taken, however, to specifically amend 22 TAC §§537.11, 537.26 and 537.27 in order to promulgate two revised temporary residential lease forms.

In other action, it was agreed that authority should be requested during the upcoming session of the Texas Legislature to allow TREC to impose fines or other penalties upon unlicensed individuals who do not cease and desist from engaging in unlicensed real estate business activities.

Action was taken to counteract purported misuse of standard promulgated real estate contract forms by non-licensees.

Commissioners directed that a notice be printed on each form, as well as published in the agency's Advisor newsletter and posted on the TREC web site, to advise the public that standard contract forms are intended for use by trained and qualified real estate licensees. This action would alert consumers to the technical and legal nature of contractual agreements, and suggest that they confer with licensed real estate professionals or legal counsel before signing any contracts.

Two payments from the Real Estate Recovery Fund were authorized. As part of TREC's commemorative activities in observance of its 50<sup>th</sup> anniversary as a state agency, congratulatory resolutions were approved honoring a number of real estate brokers who have been licensed to practice within Texas for at least 50 years.

Possible future rule changes were discussed regarding 22 TAC §§535.71, 535.72, and 535.92 that relate to attendance reports for mandatory continuing education (MCE) courses. This proposal would eliminate current use of computer-scanned course completion cards submitted by individual students, and replace them with a single student roster to be filed with TREC by MCE providers. Specific language to amend 22 TAC §535.154 was also considered to clarify that real estate advertising

*Continued on next page.*

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State of Texas  
**George W. Bush, Governor**

Commission Members:

**Jay C. Brummett**  
 Chairman  
 Broker member

<b>Deanna Mayfield</b> Vice-Chairperson Public member	<b>Chris T. Folmer</b> Secretary Broker member
<b>C. Michael Brodie</b> Broker member	<b>Pete Cantu, Sr.</b> Broker member
<b>Maria Gonzalez-Gil</b> Public member	<b>Mitchell Katine</b> Public member
<b>Hazel W. Lewis</b> Broker member	<b>Kay Sutton</b> Broker member

TREC Administrator  
**Wayne Thorburn**

Desktop Publisher  
**Dan White, Jr.**

The TREC Advisor (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 TREC Advisor 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 \$3.00 for two years. Single issues are \$1.00. To order a subscription or a single issue write to: TREC Advisor, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. For information regarding TREC, contact:

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## No Changes Made In Commission Officers

IN KEEPING WITH STATUTORY provisions of The Real Estate License Act (TRELA), two officers of the Real Estate Commission were elected during its meeting on Monday, February 22<sup>nd</sup>. Both officers who presently serve as Vice Chairperson and Secretary were elected to serve for an additional year-long term. The Vice Chairperson is Deanna Mayfield, a public member of the Commission who is from San Angelo. Christine T. Folmer of El Paso, who is a broker member, was

reelected as Secretary.

Under terms of TRELA (Article 6573a, V.T.C.S., Section 5 (a)), a Vice Chairperson and Secretary must be chosen from among the nine members of the Commission at a regular meeting held in February of each year. The Chairman of the Commission is appointed by the Governor. Chairman Jay Brummett, Austin, serves in that capacity at the pleasure of the Governor as a broker member of the Commission.

through the Internet or by other electronic means is subject to the same requirements as any other method of communication.

An additional item slated for review and discussion at the next meeting will be draft guidelines pertaining to payment of "after-the-fact" referral fees. A second issue for consideration will be whether it is advisable to impose a limitation upon the number of times license applicants can re-take a real estate exam that they have initially failed to pass.

*January 11, 1999*

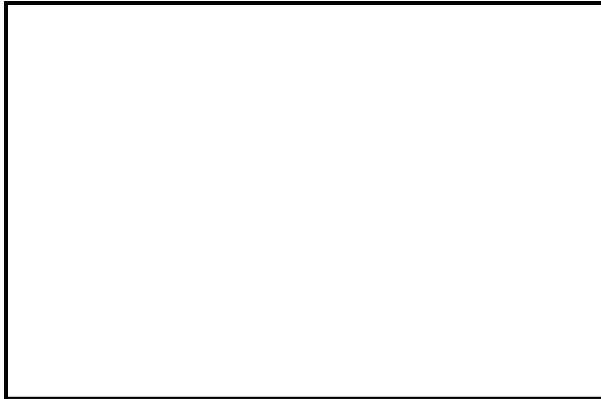
During the Commission meeting on January 11, 1999, members continued to refine their proposed rule governing real estate advertising by way of the Internet. Further deliberation is also planned regarding potential educational criteria or limits on the number of attempts allowed for applicants to pass real estate licensing examinations within a certain time period. With reference to "after-the-fact" referral fees, Commissioners will continue their review, including any new information from the Association of Real Estate License Law Officials (ARELLO) which is also considering the issue from a nationwide perspective.

A Texas Attorney General's opinion was discussed regarding whether licensing and registration requirements of article 6573a, V.T.C.S., apply to persons who acquire or dispose of real estate on behalf of their employers. On a related topic, possible statutory language was examined to clarify existing exemptions from real estate licensing requirements for certain types of property transactions involving mineral interests associated with oil and gas production.

Rule amendments were adopted on 22 TAC §§535.71, 535.72, and 535.92 to streamline reporting requirements for attendance at MCE courses. These changes require use of a single attendance roster form, effective March 1, 1999.

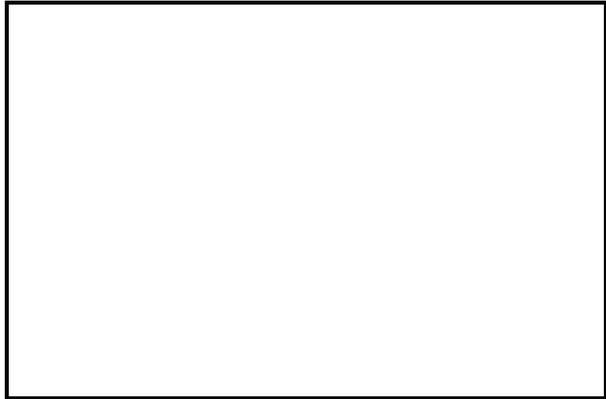
Three individuals were appointed to the Texas Real Estate Inspector Committee for six year terms, effective February 1, 1999. Newly appointed inspectors are Jim Havens of Houston and Fred Buck from San Antonio. Current committee member Larry Foster of Austin was reappointed.

Commissioners authorized filing a notice of intent to review Chapter 541,



**50 Years in Business: Plaque recipients J.O. Daughtry and Glover C. Tunnell, center, stand with Chuck Gregory, left, and Jay C. Brummett, right, at Tyler luncheon on Wednesday February 24, 1999.**  
(Photo courtesy Tyler Morning Telegraph/David Branch Photographer)

**Brian Francis, Assistant Administrator, congratulates 50 year honoree Chester D. Ralston while Mrs. Ralston and Dudley Clanahan, President of Greater McAllen Association of Realtors join in the festivities in McAllen on January 20, 1999**



concerning criminal offense guidelines, as part of its comprehensive rule review plan. One payment from the Real Estate Recovery Fund was approved.

*February 22, 1999*

Final approval was given at the Commission's February 22<sup>nd</sup> meeting to rules on real estate advertising over the Internet, by E-mail, and similar means of electronic communication. (Please see related story, cover page.)

Commissioners agreed to seek legislative approval to allow optional rule-making authority for placing limits on the number of real estate license examinations that can be taken by applicants within a specified length of time. The proposal would also allow a person to file another application to retake a licensing exam without regard to limits or required waiting periods if additional specified courses of study are completed by the individual. Statutory exam limitations for the licensing of real estate inspectors currently exist. These inspector provisions would, however, be made consistent with brokers and salespersons by allowing test limits to be implemented at

the discretion of TREC under its proposed rule-making authority.

As part of TREC's comprehensive rule review process proposed amendments to 22 TAC Chapter 537 were considered. The proposed amendments would clarify how forms may be electronically reproduced. Two revised forms submitted by the Broker-Lawyer Committee are also being proposed for adoption.

Additional rule review consideration was given to Chapter 54, governing criminal offense guidelines. Final deliberation is anticipated on these sections at the Commission's next meeting on April 12<sup>th</sup>. Authorization was also given to file a notice of intent to review 22 TAC §§535.1-535.53, concerning various provisions of The Real Estate License Act, including requirements for licensure and Commission procedures and jurisdiction.

In further action, two payments, and a partial repayment on a previous case, were approved from the Real Estate Recovery Fund, along with one payment from the Real Estate Inspection Recovery Fund. Future Commission meeting dates were set for April 12, June 7, and August 2, 1999.

# Legislative Update

THE BILLS LISTED IN THE FOLLOWING CHART are currently being monitored by the Texas Real Estate Commission. Each bill if passed could potentially impact real estate licensees and the way they conduct their day-to-day operations. As of the date of this publication none of the bills have become law. Full text of the bills is available from Texas Legislature Online at <http://www.capitol.state.tx.us/>



Bill Number/ (Companion)	Sponsor/ Author	Caption	Summary
HB 1948	Staples	Relating to regulation of sale and inspection of real estate	Allows a person to file for an original salesperson's license on inactive status without a sponsoring broker. Authorizes TREC to prescribe the content of the core real estate courses. Eliminates specific date for determining whether the balance of the real estate recovery fund and the real estate inspection recovery fund are sufficient. Eliminates requirement that claimants show the judgment is not subject to a stay or discharge in bankruptcy. Increases maximum fee for transcript evaluation from \$15 to \$20. Removes inconsistent language which appears to restrict who may file a complaint; clarifies that reprimands and administrative penalties also may be imposed for violations listed in Section 15(a). Clarifies that Internet advertising is subject to the advertising requirements of Section 15(a)(6)(P). Permits the members of the Commission to authorize staff to file complaints and act against licensees who fail to complete MCE or pay the additional fee under the rule relating to renewal without timely completion of MCE or who fail to provide information in connection with a renewal application. Authorizes the Commission to assess administrative penalties not to exceed \$1000 a day against any person who Act or a rule or order adopted by the Commission. Authorizes the Commission to charge a fee not to exceed \$20 for the for change of name, return to active status, or change in sponsorship for inspectors. Increases inspector continuing education.
H.B. No. 1015	Culberson	Relating to the repeal of certain professional fees and taxes.	Eliminates occupational tax on brokers and other professionals.
S.B. No. 164	Carona	Relating to the inactive status of, and related fees and taxes applying to, persons licensed to practice or engage in certain occupations and professions.	Eliminates occupational tax for inactive brokers and other professionals.
H.B. No. 29	Goolsby	Relating to the statute of limitations for bringing an action for the specific performance of a real estate sales contract.	Provides one year statute of limitation period for bringing suit to enforce real estate sales contract.
H.B. No. 1017/ (S.B. No. 434, Brown)	Yarbrough	Relating to the disclosure of certain information by a property owners' association.  liable for a debt or claim not disclosed in the certificate.	Requires subdivision owners' association to provide resale certificate with specific content upon request of an owner and provides remedies for the owner if the association fails to timely furnish the information. Purchasers, lenders, and title companies are not
H.B. No. 1052	Brimer	Relating to creating a real estate broker's lien on commercial real estate.	Permits licensed real estate brokers and licensed or certified appraisers to place a lien on commercial real estate to secure payment of written commission agreements signed by a buyer, seller, landlord or tenant. Provides the required contents of the commission agreement and notice of lien and establishes procedures for filing, enforcing, or releasing the lien.
H.B. No. 1193	Telford	Relating to licensing and the regulation of manufactured housing.  are conducted on behalf of a person for whom the real estate licensee is acting as a real estate broker.	Exempts licensed real estate brokers and salespersons from holding a license as a manufactured housing broker or salesperson if the negotiations for the manufactured home
S.B. No. 166/ (H.B. No. 896, Haggarty)	Carona	Relating to the meaning of a tenant turnover date in connection with requirements for security devices for residential rental property	Clarifies when landlord's obligation under Property Code to rekey or change security devices commences.
S.B. No. 167/ (H.B. No. 637, Goolsby)	Carona	Relating to requiring a seller of real property to deliver notice to the purchaser regarding the potential for annexation of the property.  contract up to seven days after the transfer.	Requires seller to provide buyer with a statutory notice that property located outside a city's corporate boundaries may be included in the city's extraterritorial jurisdiction or be subject to annexation. Failure to provide the notice permits buyer to terminate the
S.B. No. 319	Ellis	Relating to disclosure notices required for the sale of certain residential real property.  owner of the property is subject to mandatory membership in an owners' association.	Requires residential seller to provide buyer with a statutory notice that failure to pay certain financial obligations may cause loss of the property through foreclosure. If the the seller must provide a statutory notice
		relating to the restrictive covenants and  Deceptive Trade Practices Act (DTPA) and rescind the contract.	assessments. Failure to give either notice entitles the buyer to bring suit under the
S.B. No. 436	Nixon	Relating to disclosure required in certain offers by mail to purchase mineral interests.  the owner has conveyed the mineral interest to the purchaser. Permits rescission up to	Requires a person making an offer by mail to purchase a mineral interest to include with the offer a statutory notice that by signing and delivering the instrument of conveyance, five years later if the notice was not given
		and the owner was 65 or older.	

# Education Notes: Variety of MCE Courses Available

OVER THE PAST FEW YEARS the education staff have received some complaints about the "same old tired" MCE courses being taught year after year. Some courses have been around for a while. The providers have updated them when the laws or contract forms changed, but the main theme of the course has stayed the same.

TREC has approved a vast array of new courses in the last year. The courses have dealt with commercial, property management, apartment management, finance, safety in commercial buildings, residential, farm and ranch, and other issues such as ethics, agency, and contracts.

Some of the most interesting courses are single course offerings, meaning that the providers offer the course only once. The titles of some recent courses are: Deed Demons: Divorce and Death; Disaster Planning..When (Not If) The Worst Happens; Polishing the Pro; Who's Going to Turn Out the Lights Five Years From Now; Rooftops, Risers and Harmonics. These are just a few of the courses that have been given in the past year.

Examples of courses that are 2-year courses are: Manufactured Housing Appraisal; The Changing Real Estate Landscape: Texans at an Economic Crossroad; Small Hotel & Motel Valuation; Property Managers Guide to Commercial Real Estate Law; Commercial Agency: Practical Applications; Real Estate Assistants; Homepath Advisor; Internet 101; Internet Made Easy; Farm and Ranch Update; At Home With Diversity; and, many more. A variety of courses are available.

It is up to the licensee to determine the availability of courses that may be of interest. A licensee should check with MCE providers to see what is available and when.

**We have approved a vast array of new courses in the last year. Planning is the key. Start looking for courses early in your license period.**



The metropolitan areas will naturally have a greater variety of courses. However, there are beginning to be a variety of alternative delivery method courses available so that licensees in rural areas will have access to more types of courses.

Planning is the key. Start looking for courses early in your license period. The providers need to know how many students are interested in the classes. Lack of enrollment may cause a provider to cancel a class. Check with all the providers in your area you might find a course offering that is just what you are looking for.

The trade associations offer courses that not only satisfy the MCE requirements but also may count toward designations. For example, there are appraisal courses, CRS courses, BOMA, IREM, SIOR, Commercial Investment (CCIM), International Right of Way, Apartment Associations, TAR, GDAR,

SABOR, ABOR.

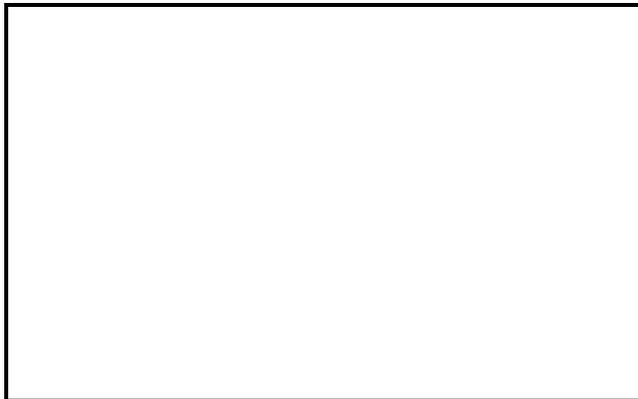
When it comes down to it, there are a variety of courses available that cover all the real estate fields. The only way to find that special course is to seek it out. If you start looking for a course the week before your license expires, do not expect to have a wide range of topics from which to choose. It is your choice to take something beneficial and relevant or to take something just to get the hours.

On January 11, 1999, the Commission passed a new rule to streamline the MCE course completion reporting process. The new process phases out the use of the Scantron cards and uses a much easier document that may be forwarded to the TREC Education Section by fax or by mail. The new process will speed up the time it takes to process course credit documentation.

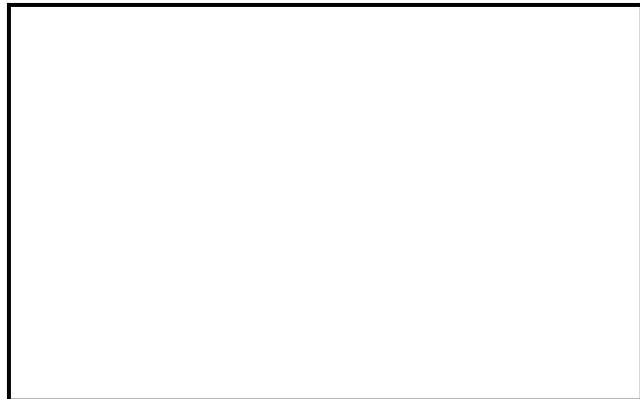
At the completion of an MCE course the student prints and signs the student's name and gives his or her license number on the new roster form, instead of completing a Scantron card. The school will either fax the roster to the education staff or place it in the mail. The new process is easier and faster for the provider, student and the commission.

As a student you can help with this process: sign the roster only once, print and sign your names legibly, and most importantly, use your license number, not your broker's number or another person's number. If we cannot read the name or the number, the commission cannot give credit for the course.

A list of MCE providers can be obtained from the TREC web site and from TRECfax.



Administrator Wayne Thorburn presents certificate of recognition to William Murfee and Louis Murfee at Lubbock Association of Realtors luncheon on January 22, 1999



Commissioner Deanna Mayfield presents a 50 year resolution to Lydale Barth and a congratulatory letter from Governor George W. Bush. The presentations took place at a reception in San Angelo on January 29, 1999.

# Disciplinary Actions

## October 1998 through January 1999

**Ali, Manzoor (Houston); license #447709** Revocation of salesperson license, effective January 21, 1999; procuring a real estate license by fraud, misrepresentation or deceit and making a material misstatement of fact in an application for a real estate license, in violation of Section 15(a)(2) of The Real Estate License Act (TRELA)

**Bergmann, Billie Jo (Boerne); license #280180** Agreed 2 month suspension of salesperson license probated for one year, effective November 13, 1998; failing to disclose unlicensed activity in a late license application, in violation of Section 15(a)(2) of TRELA; failing to note that material information in a contract is not completed correctly, in violation of Section 15(a)(6)(W) of TRELA

**Cahill, Jack T. (Corpus Christi); license #328706** Agreed reprimand of salesperson license, entered January 28, 1999; failing within a reasonable time to make repayment to the Commission for a check that was returned due to insufficient funds, in violation of Section 15(a)(4) and Section 15B(b) of TRELA; failing to pay the returned check processing fee required by the Commission within 15 days after the Commission has mailed the request for said fee, in violation of 22 TAC 534.2 (b) of the Real Estate Commission Rules (the Rules) and Section 15B(b) of TRELA

**Cervenka, Judy Anne Trevino (Houston); license #416893** Agreed reprimand of salesperson license, entered November 18, 1998; using funds procured from another to obtain a real property interest for herself thus engaging in a misrepresentation or dishonest or fraudulent action when selling, buying, trading or renting real

property in her own name, in violation of Section 15(a)(3) of TRELA

**Dillon, Eric Eugene (Waco); license #3299** Agreed reprimand of inspector license, entered November 19, 1998; Agreed administrative penalty entered November 19, 1998; failing to include in written inspection report information regarding the condition of the rafters comprising the roof structure, as observed from inside the attic, in violation of 22 TAC 535.222(e)(2)(E) (i)(IV) and (V) of the Rules and Section 23(l)(7) and Section 23(l)(3) of TRELA failing to state in written report the approximate depth of the insulation observed in the attic; in violation of 22 TAC 535.222(e)(2)(E)(i)(VII) of the Rules and Section 23(l)(7) and Section 23(l)(3) of TRELA; failing to inspect the electrical panel and connections contained in the breaker box, and failing to inspect the wiring to the air conditioner, in violation of 22 TAC 535.222 (g)(2)(A)(i)(IV), (V) and (VI) of the Rules and Section 23(l)(7) and Section 23(l)(3) of TRELA failing to state in written report that the electrical panel and connections contained in the breaker box were not inspected because the breaker box was painted shut; in violation of 22 TAC 535.222(c) of the Rules and Section 23(l)(7) and Section 23(l)(3) of TRELA

**Fincher, Estelle M** Agreed reprimand of salesperson license, entered October 28, 1998; Agreed administrative penalty entered October 28, 1998; failing to provide buyers with a copy of the Seller's Disclosure of Property Condition to sign, in violation of Section 15(a)(6)(W) of TRELA

**Fry, Michael Joseph (Seabrook); license #314799** Agreed 8 months and 10 days fully probated suspension of broker license, effective January 1, 1999; conviction of a felony offense of false statement to a federally insured financial institution, aiding and abetting, in violation of Section 4(a) of Article 6252-13c of TRELA

**Garcia, Arnold J. (Austin); license #438921** Agreed reprimand of salesperson license, entered November 12, 1998; Agreed administrative penalty entered November 12, 1998; acting as a real estate salesperson while on

inactive status and not properly sponsored by a real estate broker, in violation of Section 1(b) of TRELA

**Howald, Joel Carter (Austin); license #242060** Revocation of broker license, effective November 30, 1999; failing within a reasonable time to make good a check issued to the Commission in violation of Section 15(a)(4) of TRELA; failing to pay the returned check processing fee within 15 days after the Commission has mailed the request in violation of 22 TAC 535.2(b) of the Rules

**Jackson, Joseph Patrick (Houston); license #2601** Agreed reprimand of inspector license, entered November 10, 1998; acting in a dual capacity as an inspector and as the sponsoring broker for a salesperson in the same real estate transaction, in violation of Section 23(1)(5) of TRELA

**Kautz, Paul Roland, Jr. (Arlington); license #102243** Agreed reprimand of broker license, entered December 9, 1998; charging a leasing fee to a property owner which was in excess of the amount to which he was entitled under his property management and leasing agreement with the owner, in violation of Section 15(a)(6)(W) of TRELA

**Meredith Development Incorporated (Austin); license #405772** Agreed revocation of broker license, fully probated for three years and six months, effective November 2, 1998; payment of \$36,000.00 made by the Texas Real Estate Commission from the Real Estate Recovery Fund toward satisfaction of a judgment against Meredith Development Incorporated, in violation of Section 8(i) of TRELA

**Parsons, Joy Arnell (Alpine); license #149519;** Agreed fully probated 9 month suspension of broker license, effective October 2, 1998; Agreed administrative penalty entered October 2, 1998; failing to provide buyers the Information About Brokerage Services form, in violation of Section 15C(d) of TRELA; acting negligently by not clearly explaining the terms in sales transactions to buyers and sellers, in violation of Section 15(a)(6)(W) of TRELA

**Shaw Smith, Mary E. (Austin); license #323083:** Revocation of broker

Name	Lic. Exp. Date
Company	
Street	
City, State	



AS A SERVICE to our licensed subscription holders, we have included your license expiration date in the upper right hand

## Comments Invited on Standards of Practice

THE TEXAS REAL ESTATE INSPECTOR Committee is reviewing the Standards of Practice, 22 TAC §535.222, to determine whether the committee should recommend changes to TREC. At the committee's last meeting in Austin on February 5, 1999, members reviewed draft amendments concerning the scope of the inspection and the structural system.

Review of the standards is expected to continue at the committee meeting scheduled for April 16, 1999. Interested persons should submit their suggestions or comments to The Texas Real Estate Inspector Committee, c/o TREC Office of General Counsel, P. O. Box 12188, Austin, Texas 78711-2188.

At the February meeting, the committee members elected their officers

for 1999. Larry Foster (Austin) is Chairperson. Mort Jacobs (San Antonio) is Vice-Chairperson, and Mike Crow (Arlington) is Secretary. The other members of the committee are Phillip Watkins (Waco), Linda McCracken (Kingwood), Frederick Willcox, III (Houston), Allan L. MacGillivray (Del Rio), Fred Buck (San Antonio) and Jim Havens (Houston).

license, entered October 1, 1998; allowing the occurrence of an insufficient balance in a bank account holding funds belonging to others, and failing to ensure prompt accountings to the owners of properties being managed, in violation of Section 15(a)(6)(E) of TRELA; failing to include all rental monies collected on behalf of a property owner in accountings submitted to him, in violation of Section 15(a)(6)(Q) of TRELA; failing to ensure that property management records were maintained correctly in the face of continuing problems in the management of property, in violation of Section 15(a)(6)(V) of TRELA; allowing property management records and accounts to be maintained in such a way that the interest of the client was compromised, in violation of Section 15(a)(6)(W) of TRELA (2 counts); failing to ensure that funds due to the owners were remitted during the time the property management corporation was licensed, and taking no action to refund or account for monies retained after the corporation's license expired, in violation of Section 15(a)(6)(E) of TRELA; refusing to ensure that the property management corporation acceded to the demands of property owners that funds be transferred to a different property manager in order to protect their interests, in violation of Section 15(a)(6)(V) of TRELA

**Silva, Mark A. (Austin); license #363834** Revocation of salesperson license, effective January 25, 1999; failing to provide information to the Commission in response to the Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of Section 15B(b) of TRELA and 22 TAC 535.91(a) of the Rules

**Smith, Tracy Von (Austin); license #374856** Agreed reprimand of salesperson license, entered December 9, 1998; failing within a reasonable time to make repayment to the Commission for a check that was returned due to insufficient funds, in violation of Section 15(a)(4) and Section 15B(b) of TRELA; failing to pay the returned check processing fee required by the Commission within 15 days after the Commission has mailed the request for said fee, in violation of 22 TAC Rule 534.2(b) of the Rules and Section 15B(b) of TRELA

**Spencer School of Real Estate, Inc. (Houston) #990001211** Withdrawal of accreditation effective December 17, 1998; the financial condition of the school was insufficient for continuing operation, which constituted cause for withdrawal of the accreditation pursuant to 22 TAC 535.66(o) of the Rules; failing to maintain financial records sufficient to reflect at any time the financial condition of the school, in violation of 22 TAC 535.66(nn) of the Rules failing to obtain Commission approval for a change in ownership of the school prior to the institution of the change, in violation of 22 TAC 535.66(g) of the Rules; failing to provide a complete response to the Commission's request for information within 15 days of receipt of the request, in violation of 22 TAC 535.66(ss)(4) of the Rules (2 counts); utilizing an instructor for a course who had not been approved by the Commission to teach the course, in violation of 22 TAC 535.66(k) of the Rules

**Terrell, Nelda Sue (Pointblank); license #433050** Agreed reprimand of salesperson license, entered January 11, 1999; acting as a real estate agent at a time when her license was expired and failing to disclose such activity in her renewal application, in violation of Section 1(b) and Section 15(a)(2) of TRELA

**Thomas, Clara Elizabeth (Austin); license #445053** Agreed reprimand of salesperson license, entered January 19, 1999; received funds from a client to be held in trust, and placed the funds in her own personal checking account rather than

depositing the funds in an escrow account maintained by her sponsoring broker; in violation of Section 15(a)(6)(Y) and Section 15(a)(6)(W) of TRELA, and 22 TAC 535.159(f) of the Rules failed; to remit funds being held in trust for a client within a reasonable time after the client demanded the return of the funds, in violation of Section 15(a)(6)(E) and Section 15(a)(6)(W) of TRELA, and 22 TAC 535.146(b) of the Rules

**Washington, Nathaniel (Houston); license #439023** Agreed reprimand of salesperson license, effective October 14, 1998; Agreed administrative penalty entered October 14, 1998; licensee advertised as a "Realtor" when not authorized to do so in violation of 22 TAC 535.154(a) the Rules

**Ybarra, Dela Marie (Houston); license #451515** Revocation of salesperson license, effective December 15, 1998; misrepresenting that certain monies were needed for an appraisal and converting the monies to her own use, in violation of Section 15(a)(6)(V) of TRELA; failing within a reasonable time to properly account for or remit money coming into her possession which belongs to others, in violation of Section 15(a)(6)(E) of TRELA

**Zetsche, Benjamin Bailey (Austin); license #364972** Revocation of salesperson license, effective January 21, 1999; failing to provide information to the Commission in response to the Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of Section 15B(b) of TRELA and 22 TAC 535.91(a) of the Rules

## Enforcement Notes: Clarification to All Parties in a Transaction

ONE ISSUE THE ENFORCEMENT DIVISION deals with repeatedly involves potential violations of Section 15(a)(6)(D) of TRELA, for a real estate agent "failing to make clear to all parties to a transaction, which party the licensee is acting for." Other possible violations that may occur relative to this are failing to provide information about brokerage services under Section 15C(d), or failing to obtain the written consent of all parties to act as an intermediary in a transaction under Section 15C(h).

It is usually some variation of the following: A broker obtains a listing agreement with a seller and becomes the seller's agent. Then, one of the broker's salespersons signs the buyer to a representation agreement under which the broker, through that salesperson, becomes the buyer's agent. If the buyer expresses an interest in the listed property, there is the potential for a conflict of interest because the broker and salesperson have become agents of both parties.

Under this scenario, the broker may attempt to resolve the potential conflict by entering into an intermediary relationship with the principals involved. The broker must obtain the written consent of the parties under Section 15C, and may then appoint different associates to act for the parties.

The broker sometimes attempts to resolve the problem by noting on the sales contract that the broker repre-

**You should clarify who represents whom and the parameters of that agency relationship at the outset of the relationship.**

sents both seller and buyer as an intermediary, but fails to obtain written consent of all parties to act as an intermediary or explain how the fiduciary relationships established with the initial listing agreement and buyer's representation agreement have changed.

The lesson of this story is: licensees who find themselves in a situation like this should clarify who represents whom and the parameters of that agency relationship at the outset of the relationship. Licensees should be sure to always provide the information about brokerage ser-

### *Calendar of Events*

**Next Commission meetings tentatively set for :**

April 12, 1999  
June 7, 1999  
August 2, 1999

**Inspector Committee meetings tentatively set for:**

April 16, 1999  
June 4, 1999  
August 6, 1999

**Broker-Lawyer Committee**  
June 10-11

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vices as required under Section 15C(d). If the relationship changes to that of an intermediary, the licensees must obtain the written consent of all parties and clearly explain how that alters the original relationship with the clients.

## Examination Update

NAI-BLOCK HAS CHANGED its name to Experior as a result of a merger between NAI-Block and ITC, an insurance testing firm.

Another examination item development workshop will be held on April 8 in conjunction with the Texas Real Estate Teachers Association (TRETETA) conference in Houston. For item writing, anyone with an interest in real estate may attend. You may not be associated with a school that has an examination preparation class to

participate in item review.

For more information please contact Experior at (801) 355-5009. These examination development workshops are the heart of what makes the Texas real estate examinations work. Please consider becoming involved.

The San Antonio examination site is moving to Park Oaks Shopping Center 16640 San Pedro Ave., San Antonio, TX 78232. The new site will be operational on March 18, 1999.