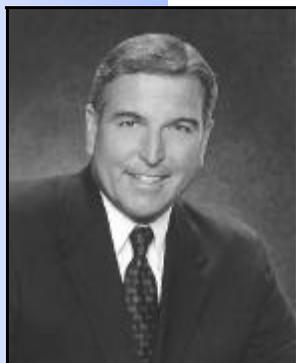




TREC Advisor

Texas Real Estate Commission ☆ Volume 11, Number 2 • June 2000

Michael Brodie Appointed Commission Chairman



Chairman Brodie has been a broker member of the Texas Real Estate Commission since 1997.

Commissioner Michael Brodie, from Plano, has been appointed by Governor George W. Bush as Chairman of the Texas Real Estate Commission (TREC).

With 27 years in the real estate business, Chairman Brodie brings depth of experience and knowledge concerning current regulatory issues and future trends. In a recent interview, Brodie said that he doesn't foresee any controversies at upcoming meetings, saying, "Nothing's glaring at this point." He added that TREC will continue to be open and accessible to the public. "We want the input of as many people as we can get," he said, "(in order to) know the pulse of the market."

Brodie has worked with the Keller Williams real estate company for six years and prior to that, was with Re/Max Preston Road North. He is co-founder of the Keller Williams' Preston Road office, co-owner of the company's North California region. In 1997, he received the Keller Williams President's Award, and has been previously honored over several years as both a National Top Ten Producer and Office Top Producer.

His long list of professional accom-

plishments include having been past President of the Collin County Association of Realtors, and in 1995, President of the Texas Association of Realtors. He has also held positions as a Director of the National Association of Realtors (NAR), regional Vice President of NAR Region Ten, National President of the Residential Sales Council, and as a past Chairman of Realtors National Marketing Institute.

Chairman Brodie has been a broker member of the Texas Real Estate Commission since 1997. The first Commission meeting at which he presided was held on May 8th, however his term as Chairman officially began March 28th. Commissioner Jay Brummett, of Austin, concluded a five year term as Chairman and will continue to serve as a broker member of the Commission.

This article is based in-part on excerpts used by permission from a news story by Business Writer Nancy Smith, published in the Plano Star Courier.



Conference Attendees

TREC to Host Real Estate Conference

On June 22-24, the Texas Real Estate Commission will serve as host for the 2000 Southern District Conference of the Association of Real Estate License Law Officials (ARELLO) to be held at the Radisson Hotel & Suites in Austin. Registration for the three-day conference at \$165 per person is open to all who are interested in learning about the latest developments in the real estate industry.

Among the many topics to be covered in speeches and workshops are cross-border (Mexico-US) transactions, Internet regulation, fee for service and one-stop shopping, affinity programs and referral fees,

new directions in timeshares, and ethics and the real estate profession.

Participants will have an opportunity to visit with many of the outstanding leaders in real estate today, including:

- Cesar Paredes Guerra (former President AMPI, the Mexican association of real estate professionals);
- Noted real estate textbook authors Dr. Deborah Long and Charles Jacobus;
- Dr. Malcolm Richards and Dr. Mark Dotzour of the Real Estate Center at Texas A&M University;
- John Borger, Vice President of Cendant Mobility and Cris Collie, Executive Vice President of the

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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

Official publication of the
Texas Real Estate Commission
Volume 11, Number 2 • June 2000

State of Texas
George W. Bush
Governor

Commission Members:

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Chairman
Broker member

Chris T. Folmer
Vice-Chairperson
Broker member

Kay Sutton
Secretary
Broker member

James N. Austin, Jr.
Broker member

Jay C. Brummett
Broker member

Ramon "Mick" Cantu
Public member

Maria Gil
Public member

Lawrence D. Joki
Broker member

Deanna Mayfield
Public member

TREC Administrator
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TREC Fax (512) 419-1623



March 27, 2000

Final action was taken at the March 27, 2000 Commission meeting to amend several sections of rules pertaining to standard contract forms, mandatory continuing education (MCE), and real estate inspection standards.

This action included changes to 22 TAC Chapter 537 by revising eight contract forms as proposed by the Broker-Lawyer Committee. Contract revisions include the addition of two statutory notices, date line corrections, and restoration of §537.11 which permits licensees to use new forms as they are being replaced.

Sections 22 TAC 535.71-535.73 were amended, effective June 1, 2000, pertaining to new MCE rules covering curricula, classroom procedures, and the approval process for education providers. Effective September 1, 2000, the standards of practice for inspectors, 22 TAC §§535.222, will be repealed and replaced by new §§535.227-535.231 (see related article, page 4).

An amendment to 22 TAC §535.64 was proposed relating to disclosure of financial information for currently accredited schools that apply for another five-year accreditation. Under the proposed rule, detailed financial information would be required only if the school cannot provide a \$10,000 security bond or other allowable collateral, or if there are unsatisfied final money judgments against the applicant. New schools will still be subject to providing required financial information under the amended rule.

A motion was adopted to propose certain amendments and repeals for consideration regarding 22 TAC §§535.91-535.95, 535.101, 535.111-535.113, 535.121, and 535.122. These rules pertain to license renewals, place of business, fees, inactive licenses and change of sponsorship under provisions of The Texas Real Estate License Act. Authorization was also given to initiate a rule making process by proposing amendments to 22 TAC §§537.11, 537.30, 537.31, 537.33, 537.42, 537.46, and repeal of 22 TAC §537.24, concerning standard contract forms. This proposal would adopt two revised new home contract forms and three revised addenda, as well as repeal one existing addendum. Commissioners plan to consider all of these proposals at their next meeting scheduled for May 8th.

In other action, payment of four real estate

recovery fund claims was authorized. Commissioners also agreed to begin studying 22 TAC §§535.131-535.192 as part of TREC's ongoing comprehensive rule review process. These sections refer to portions of The Real Estate License Act addressing various topics such as unlawful conduct, eligibility for licensure, initiation of TREC investigations, and penalties for unlicensed activity.

May 8, 2000

At the May 8th Commission meeting, TREC's Strategic Plan for 2001-2005 was adopted. The plan includes a number of recommendations for changes in rules or statutes received at the three public forums held by the Commission in March. These include possible changes involving licensing procedures, education requirements, communications improvements, and enforcement policies.

Discussions resumed from the previous meeting regarding proposed changes to Commission rules that concern license renewals, change of sponsorship, and other notifications to TREC found in 22 TAC §§535.91-122. Also discussed were pending amendments concerning standard contract forms, as well as an amendment to 22 TAC §§535.64 pertaining to disclosure of financial information under reaccreditation procedures for real estate education providers. All of these proposals are expected to be considered for final action at the Commission's June meeting.

Final action may also occur in June on a newly proposed amendment to 22 TAC §535.51 that would require license applicants to have required education credits evaluated prior to filing an application.

Commissioners agreed to propose amendments and repeals of 22 TAC §§535.131 - 535.192, governing procedures for disciplinary actions, hearings, unlicensed activity, non-resident broker activity, and suits for compensation. Additionally, authorization was given to file a notice of intent to review rule provisions 22 TAC §§535.205-226, relating to inspectors.

A Commission resolution was adopted by acclamation commending Jay Brummett in honor of his recently completed five year term as TREC Chairman, and in recognition of his continuing service as a member of the Commission.

Four claims were also authorized for payment, one from the real estate recovery fund and three from the real estate inspection recovery fund.

TREC Adopts Strategic Plan For 2001-2005

ON MAY 8, 2000, the Texas Real Estate Commission adopted its Strategic Plan for the years 2001-2005 after receiving public and licensee input at three public forums held in Dallas, Houston and Austin during the month of March. The plan was submitted to state government officials - including the Governor, Lieutenant Governor, Comptroller and Speaker of the House of Representatives - on June 1, 2000 and outlines some of the major goals of the agency over the next five years. Top priority will be placed on enhancements in real estate education, licensing, enforcement, and communications with licensees and the public.

Many of the comments received at TREC's public forums placed a priority on real estate education. While the Commission is not a direct provider, one of its fundamental obligations is the education of real estate applicants and licensees. Over the past year, TREC has reviewed and revised its rules on core and continuing education, including provisions relating to providers, instructors, and courses. As part of an on-going process, TREC will be reviewing the current educational requirements for salesperson and broker applicants as well as the scope and composition of continuing education for real estate and inspector licensees.

The Commission anticipates accepting license renewals and original applications online via the Internet with the availability of payment by credit or charge card or by bank draft. Over the next four years, TREC will include numerous other transactions among those which can be accomplished through access to the Internet.

TREC's commitment to the firm, fair and consistent resolution of complaints may require an enhancement of staff support for the enforcement division. A change in The Real Estate License Act will be sought to allow TREC to take meaningful action against unlicensed persons and to allow for an expedited administrative penalty process.

Communications with the public and licensees will be enhanced by a commitment to provide additional consumer-oriented materials on the TREC website, increase use of e-mail messaging to licensees, encourage use of the TRECfax system of automatic delivery of forms and materials, and distribute a periodic consumer-oriented column to newspapers. In addition, the Commission will attempt to ensure the availability of bilingual staff in licensing and enforcement to assist with public inquiries. Additional resources will be required to ensure the prompt and effective response to telephone inquiries to the Commission.

While some of the items outlined in the Strategic Plan can be undertaken through staff or Commission action, others will require additional appropriations or statutory changes. Thus, many of the items discussed in the agency's Strategic Plan are likely to become part of TREC's legislative proposals to the 77th regular session of the Texas Legislature.



At its meeting on May 8th, Commissioners passed a resolution commending Jay Brummett for his five years as Chairman and presented him with an engraved gavel.

TREC to Host Real Estate Conference

Continued from page 1.

Employee Relocation Council;

- Abraham Tieh, President of the National Association of Exclusive Buyer Agents, Larry Lyngstad, President of ARELLO, and Benny McMahan, President of the Texas Association of Realtors;
- Mark Stauffer, Assistant General Counsel of Marriot International, and Tom Franks, Executive Vice President of Silverleaf Resorts.

Texas Land Commissioner David Dewhurst, whose office is responsible for the Texas Veterans Land programs, will give the opening conference address on Thursday, June 22nd. In addition to the many educational sessions, a number of networking events will take place and the closing banquet on Saturday night will be at the University of Texas Club located in the Darrell Royal-Texas Memorial Stadium.

Registration at \$165 per attendee may be made by calling 512-465-3900 or by going to www.arello.org and selecting Meetings, Southern District Conference, where a registration form can be located.

Calendar of Events

Commission Meetings:

June 22, 2000
August 14, 2000

ARELLO Southern District Conference

June 22-24, 2000

Web site:

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

TRECFax: (512) 419-1623
Phone: (800) 250-TREC (8732)
or (512) 459-6544



The inspector is generally required to report as in need of repair all inspected parts, components, or systems that are not functioning as well as those that the standards specifically require the inspector to report as in need of repair.

New Standards of Practice to Take Effect September 1, 2000

TREC HAS ADOPTED NEW 22 TAC §§535.237-535.231, replacing the current Standards of Practice. Because TREC rules permit inspectors to provide a higher level of service than those imposed by the current standards, inspectors may begin following the new rules immediately as to provisions which require actions in addition to those specified in the current rule. Many of the changes are clarifications which will not affect the way inspections are performed or reports are written.

The new rules divide the Standards of Practice for inspectors into five sections to make the standards easier to read and to cite. These sections track the content of the current standards of practice, listing the systems, components and items in a home the inspector must include in an inspection unless the inspector's client agrees to limit the scope of the inspection. The new rules continue to establish the minimum standards for an inspection performed by a licensed inspector. They also contain a number of substantive changes recommended by the Texas Real Estate Inspector Committee or by individual inspectors.

Changes to the standards include the following (this list is not intended to be exhaustive).

§535.227. Standards of Practice: General Provisions

Definitions of terms such as "determine" and "observe" have been eliminated if the common use of the term is sufficiently clear.

Language under §535.227(b), Scope, no longer requires specific hazardous conditions listed in the standards to be reported as in need of repair. Rather, the inspector is generally required to report as in need of repair all inspected parts, components, or systems that are not functioning as well as those that the standards specifically require the inspector to report as in need of repair.

Language is added to clarify that the standards do not require the inspector to address life expectancy, future life or performance of any components, or to determine insurability or warrantability of any component.

If an additional license is required to conduct some part of the inspection, the inspector must obtain the additional license.

§535.228. Standards of Practice: Inspection Guidelines for Structural Systems.

Language is added to clarify that the required opinion as to the performance of the foundation must be in writing, and that if §535.223 applies, the inspector must use the TREC standard inspection report form.

The inspector must report general indications of foundation movement, such as visible sheetrock cracks, brick cracks, out-of-square door frames or floor slopes.

The inspector is not required to enter a crawl space or any area where headroom is less than 18 inches and the width of the access opening is less than two feet.

Spaces between intermediate balusters, spindles, or rails for steps, stairways, balconies, and railings which permit passage of an object greater than four inches in diameter must be reported as in need of repair.

The absence of safety glass in hazardous locations is specified as a condition to be reported as in need of repair.

In homes having burglar bars, the absence of functional keyless burglar bars in appropriate areas or inoperable windows at burglar bar locations of sleeping rooms and other locations must be reported as in need of repair.

The inspector is required to report built up creosote in visible areas of the fireplace's firebox and flue as in need of repair.

The inspector is required to report as in need of repair a roof covering that is not appropriate for the slope of the roof, missing or inappropriate fasteners or missing or improperly installed roof jacks, flashing and counterflashings, and to report evidence of previous repairs to flashing, skylights or other roof penetrations.

The inspector is required to report the lack of, or inappropriate installation of, roof components such as purlins, struts, collar ties or rafter ties, where necessary, and to report excessive deflections or depressions in the roof's surface as in need of repair.

§535.229. Standards of Practice: Inspection Guidelines for Mechanical Systems: Appliances, Cooling Systems, Heating Systems, Ducts, Vents and Flues, and Plumbing Systems

The inspector must report as in need of repair the absence of an anti-tip device for an electric or gas range.

Where possible, the inspector must report as in need of repair bathroom exhaust vent pipes that do not terminate outside the structure.

The requirement of determining that water heaters are sufficiently elevated from the lowest garage floor elevation is extended to enclosures which open into a garage.

The failure of a garage door to reverse automatically is to be reported as in need of repair.

Please turn to page 5.



Education Rules Require 100% Attendance

THE RULES OF THE COMMISSION impose a general standard of 100% attendance in both pre-licensing and continuing education (MCE) courses. However, this 100% attendance standard is administered differently in these two types of courses. In pre-licensing courses, if a student misses a portion of a class, the Rules allow for makeup work to satisfy the attendance requirement. For those courses offered by Commission-accredited real estate schools, the makeup requirements are very specific. A student may complete makeup work if he or she misses no more than 1/3 of the scheduled in-class instruction time. A student who misses more than 1/3 of the class must be dropped from the class. All makeup work must be completed within 90 days of the last day of the class, and the student is not eligible to take the course final examination until all makeup is completed. Makeup work may consist of attendance in the corresponding class sessions in a subsequent offering of the same course, or the supervised presentation by audio or video recording of the class sessions missed. No other makeup methods are acceptable.

For MCE courses, there is no provision in the Rules that would allow for the completion of makeup work in Commission-approved MCE courses. Consequently, MCE providers are compelled to impose stringent attendance standards, and may not award MCE credit to a student who misses any portion (even a matter of minutes) of an MCE class. MCE providers are charged with the responsibility of enforcing the atten-

dance standard, and have developed various procedures for handling this issue. Some address attendance issues on a case-by-case basis, while others adhere to a blanket policy of "100% attendance, no exceptions." Whatever the provider's individual procedure may be, students should be aware that the Commission's Rules obligate providers to take a strict approach.

Education Evaluations to be done in Advance of Application for Licensure

CURRENTLY, education evaluations are often done in conjunction with the filing of original salesperson or broker license application. A proposal is before the Commission on June 22, 2000 that will require all education evaluations to be filed and completed successfully in advance of the application process. This evaluation must result in all requirements being met before a salesperson or broker original license application can be submitted.

The applicant can request an Education Evaluation form from TREC or download the form from the TREC web site. The \$15.00 fee is submitted with this form along with copies of college transcripts or course completion certificates. This evaluation fee is good for one year, during which time applicants can submit additional certificates until all requirements are met.

The applicant can request an Education Evaluation form from TREC or download the form from our web page.

New Standards of Practice Effective September 1, 2000

Continued from page 4.

The inspector is required to address an expanded list of specific components and conditions with regard to cooling systems, including the blower fan, pipes, termination of drain lines, safety pan and others.

The inspector is required to address an expanded list of specific conditions with regard to ducts and vents, including damaged ducting or insulation or improper routing.

An inspector must report a shower enclosure that leaks as in need of repair.

An inspector must report a missing or inoperative mechanical drainstop as in need of repair.

§535.230. Standards of Practice: Inspection Guidelines for Electrical Systems.

The inspector is required to address an expanded list of specific conditions with regard to the electrical system, including proper identification of conductors, compliance of GFCID's with the current edition of the National Electric Code, improper use of extension cords and others.

The absence of trip ties installed on labeled 240 volt circuits in main or subpanels must be reported as in need of repair.

Inspectors are not required to determine the accuracy of breaker labeling.

§535.231. Standards of Practice: Optional Systems

Inspections of outbuildings as regards deficiencies in electrical, plumbing, heating, ventilation or air-conditioning systems are to be conducted in accordance with the standards of practice applicable to the main structure.

The inspector is required to report the type of pump and storage equipment for private water wells.

The inspector must report the proximity of any known sewer system to a water well.

Inspections of pool heaters are to be conducted in accordance with the standards of practice for a heating system.

The section on built-in security and fire protection equipment has been deleted.

Got A Question About A Relocation Company?

Through a link maintained on the TREC web site, licensees may directly access The Real Estate Coalition for Cooperative Business Practices (the Coalition) of the Employee Relocation Council. By clicking on "The Interchange" on the Coalition's website at <http://coalition.erc.org>, licensees may raise concerns about their dealings with a relocation company and send a message to the appropriate company for response.



Disciplinary Actions

February - April 2000

Alam, Omar Jamil (Austin); license #365452

Agreed 30-day suspension of salesperson license fully probated for 6 months, effective February 15, 2000; Agreed administrative penalty of \$7,500.00, entered February 4, 2000; procuring or attempting to procure a real estate license by making a material misstatement of fact in an application for a real estate license, by failing to disclose prior unlicensed brokerage activity, in violation of Section 15(a)(2) of The Texas Real Estate License Act (TRELA); continuing to engage in real estate brokerage activity after his license was placed on inactive status, in violation of Section 1(b) of TRELA.

Beakley, Darrell Glenn (Kerrville); license #363467

Revocation of salesperson license, effective March 20, 2000; failing to timely 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 22 TAC Section 535.91(a) of the Rules of the Texas Real Estate Commission (the Rules).

Black, Virginia Jeanette (Granbury); license #255167

Agreed reprimand of broker license, entered April 7, 2000; Agreed administrative penalty of \$500.00 entered April 7, 2000 while acting in her role as the designated officer of a corporate broker, failing to take all reasonable steps to verify the competence, veracity, and integrity of a builder who defrauded the corporation's client after the client had employed the builder based on the representations made by the corporation's sponsored salesperson, thereby acting negligently or incompetently in violation of Section 15(a)(6)(W) of TRELA and 22 TAC § 535.156 and §535.157 of the Rules.

Breault, Joseph Len (Wichita Falls); license #201694

Agreed reprimand of broker license, entered March 21, 2000 while ultimately providing information required by the Commission, failing to do so within the time period specified by the Commission, in violation of 22 TAC Section 535.91(a) of the Rules.

Carroll, Robert Lee (Houston); license #435663

Agreed reprimand of salesperson license, entered February 24, 2000; Agreed administrative penalty of \$200.00, entered February 24, 2000; failing to complete mandatory continuing education hours and pay the \$200.00 fee within the 60-day period provided by 22 TAC Section 535.92(h) of the Rules.

Cervenka, Judy Anne Trevino (Houston); license #416893

Agreed reprimand of salesperson license, entered March 7, 2000; Agreed administrative penalty of \$500.00, entered March 7, 2000; attempting to negotiate a transaction directly with the seller after being informed of the seller's exclusive agency with another broker, in violation of Sections 15(a)(6)(N) & (W) of TRELA.

Chavet, Patricia May (Coppell); license #411185

Agreed reprimand of broker license, entered February 11, 2000; Agreed administrative penalty of \$200.00, entered February 11, 2000; failing to complete mandatory continuing education hours within the 60-day period provided by 22 TAC Section 535.92(h) of the Rules.

Connell, Melisa Jean (Lubbock); license #455582

Revocation of salesperson license, effective April 17, 2000; 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 22 TAC Section 535.91(a) of the Rules.

Crow, Gerald Keith (Dallas); license #126707

Agreed reprimand of broker license, entered February 16, 2000; Agreed administrative penalty of \$2,600.00, entered February 16, 2000; continuing association and sharing of commissions with a formerly sponsored salesperson after expiration of license in violation of Sections 15(a)(6)(F) and 15(a)(6)(S) of TRELA.

Darwin, Casey Diana (Dallas); license #460246

Revocation of salesperson license, effective March 20, 2000; failing to timely 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 22 TAC Section 535.91(a) of the Rules.

Davis, Sylvia Castillo (San Antonio); license #415297

Agreed reprimand of salesperson license, entered February 24, 2000; failing to timely 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 22 TAC Section 535.91(a) of the Rules.

DeGeurin, Helen Earline (Houston); license #204038

Agreed reprimand of broker license, entered March 28, 2000; Agreed administrative penalty of \$500.00, entered March 28, 2000; conducting business through an unlicensed corporation, in violation of Section 15(a)(6)(F) & (S) of TRELA; handling trust funds in a bank account not designated to hold such funds, in violation of 22 TAC Section 535.159(h) of the Rules.

Ecrette, Joe D. Jr. (Houston); license #3066

Agreed 30-day suspension of inspector license, effective March 1, 2000; acting as a professional inspector while license was lapsed, in violation of Section 23(c)(1) of TRELA.

Engstrom, Kelly Ann (Dallas); license #435790

Revocation of salesperson license, effective April 10, 2000; failing to complete mandatory

continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC Section 535.92(h) of the Rules.

Evans, Gerald Kevin (Arlington); license #432350

Agreed 12 months suspension of broker license probated for 18 months, effective April 13, 2000; Agreed administrative penalty of \$500.00, entered April 13, 2000; submitting a fraudulent invoice to obtain a referral fee from an apartment complex; receiving a referral fee from the apartment complex for referring a tenant to the apartment complex when the broker did not make the referral; and failing to refund the fraudulently obtained referral fee to the apartment complex within thirty (30) days of its demand for refund, thereby violating Sections 15(a)(6)(E), (V), and (W) of TRELA.

Farabee, Russell Luther (Dallas); license #392631

Agreed reprimand of broker license, entered February 4, 2000; continued association and sharing of commissions with a salesperson after the expiration of the salesperson's license, in violation of Sections 15(a)(6)(F), 15(a)(6)(S), and 15(a)(6)(W) of TRELA; procuring or attempting to procure a real estate license for a salesperson by making a material misstatement of fact in an application for a real estate license, by failing to disclose the salesperson's prior unlicensed brokerage activity, in violation of Section 15(a)(2) of TRELA; continued association and sharing of commissions with a salesperson after the salesperson's license was placed on inactive status, in violation of Sections 15(a)(6)(F), 15(a)(6)(S), and 15(a)(6)(W) of TRELA; maintaining more than one place of business without obtaining a branch office license, in violation Section 12(b) of TRELA.

Finley, Mari Jane (Fort Worth); license #344044

Agreed reprimand of broker license, entered March 10, 2000; while acting as the designated officer for Home Edition Realtors, Inc., allowing the company to employ and share commissions with an unlicensed salesperson for 30 listing and sales transactions conducted while the salesperson was unlicensed, in violation Sections 15(a)(6)(F) and 15(a)(6)(W) of TRELA.

Garcia, Candido, Jr. (San Antonio); license #320196

Agreed reprimand of broker license, entered March 28, 2000; Agreed administrative penalty of \$500.00, entered March 28, 2000; failing to follow up with buyer's agent regarding buyer's application for loan assumption and using a promulgated temporary lease form for a period beyond the 90 days permitted by the form, in violation of Section 15(a)(6)(W), of TRELA and 22 TAC Section 537.11(d) of the Rules.

Granbury Real Estate Professionals, Inc. (Granbury); license #292492

Agreed reprimand of broker license, entered April 7, 2000; Agreed administrative penalty of \$500.00, entered April 7, 2000; while acting

through its designated officer, failing to take all reasonable steps to verify the competence, veracity, and integrity of a builder who defrauded the corporation's client after the client had employed the builder based on the representations made by the corporation's sponsored salesperson, thereby acting negligently or incompetently in violation of Section 15(a)(6)(W) of TRELA and 22 TAC § 535.156 and §535.157 of the Rules.

Guerrero, Joe A. (San Antonio); license #440360

Revocation of salesperson license, effective March 20, 2000; failing to timely 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 22 TAC Section 535.91(a) of the Rules.

Gutierrez, Veronica Michelle (Fort Worth); license #411077

Revocation of salesperson license, effective February 7, 2000; under false pretenses obtaining monies from buyers in excess of what was called for in their contracts and converting the funds to her own use and benefit, in violation of Section 15(a)(6)(E) (4 counts), Section 15(a)(6)(V) (4 counts) and Section 15(a)(6)(W) of TRELA.

Harvard, Jack Charles (Plano); license #416417

Revocation of broker license, effective March 27, 2000; Committing federal criminal offenses of bank fraud, bank bribery, conspiracy to commit bank fraud, misapplication of bank funds, false entry in bank books, making obligations without authority, and aiding and abetting such offenses in violation of 4(a) of Article 6252-13c of TRELA.

Home Edition Realty, Inc. (Fort Worth); license #441200

Agreed reprimand of broker license, entered March 10, 2000; Agreed administrative penalty of \$6,000.00, entered March 10, 2000; employing and sharing commissions with an unlicensed salesperson for 30 listing and sales transactions conducted while the salesperson was unlicensed, in violation Sections 15(a)(6)(F) and 15(a)(6)(W) of TRELA.

Howell, Ray Phelps (Austin); license #294276

Revocation of salesperson license, effective March 27, 2000; failing to complete mandatory continuing education hours and pay the \$200.00 fee within the 60-day period provided by 22 TAC Section 535.92(h) of the Rules.

Ivanosky, Donna (Rockport); license #451963

Agreed reprimand of salesperson license; entered April 14, 2000; Agreed administrative penalty of \$250.00, entered April 14, 2000; failing to carefully review information that incorrectly listed the year built in marketing and advertisements used for the sale of real property in violation of §15(a)(6)(W) of TRELA.

Jackson, Laura Elizabeth (Granbury); license #435114

Agreed 6 months suspension of salesperson license probated for 12 months, effective April 7, 2000; Agreed administrative penalty of \$1,000.00, entered April, 2000; failing to take all reasonable steps to verify the competence, veracity, and integrity of a builder who de

frauded her sponsoring broker's client after the client had employed the builder based on the representations made by the salesperson, thereby acting negligently or incompetently in violation of Section 15(a)(6)(W) of TRELA and 22 TAC § 535.156 and §535.157 of the Rules.

Johnson, Rodger Alton (Irving); license #196669

Agreed reprimand of broker license, entered April 21, 2000; Agreed administrative penalty of \$200.00, entered April 21, 2000; failing to complete mandatory continuing education hours within the 60-day period provided by 22 TAC Section 535.92(h) of the Rules.

Junewick, Laurie Ann (Pinehurst); license #415348

Revocation of salesperson license, effective March 27, 2000; 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 22 TAC Section 535.91(a) of the Rules.

Justiniano, Jorge (El Paso); license #373110

Agreed reprimand of broker license, effective April 5, 2000; Agreed administrative penalty of \$250.00 entered April 5, 2000; failing to obtain the written consent of all parties to act as an intermediary in violation of §15C(h) of TRELA; failing to notify the Commission in writing within 30 days after he began using an assumed name in violation §535.154(c) of the Rules & 15B(b) of TRELA.

Klinefelter, Jean B. (Mesquite); license #309743

Agreed reprimand of broker license, entered March 27, 2000; while ultimately providing information required by the Commission, failing to do so within the time period specified by the Commission, in violation of 22 TAC Section 535.91(a) of the Rules.

Knowles, Jerry L. Jr. (Houston); license #434181

Revocation of salesperson license, effective April 3, 2000; payment of \$27,552.74 made by the Texas Real Estate Commission from the Real Estate Recovery Fund toward satisfaction of a judgment against Jerry L. Knowles, Jr. in violation of Section 8(i) of TRELA.

L A & N Interests, Inc. (Houston); license #423067

Agreed reprimand of broker license, entered March 9, 2000; Agreed administrative penalty of \$250.00, entered March 9, 2000; sponsored and associated agents representing both buyer and seller without the use of an intermediary relationship or dual agency, in violation of Section 15(a)(6)(W) of TRELA.

Landon, John Michael (Dallas); license #306447

Revocation of broker license, effective April 10, 2000; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC Section 535.92(h) of the Rules.

Markwardt, Greg Dean (China Spring); license #1473

Agreed reprimand of inspector license, entered March 2, 2000; repayment of \$9,152.05 to the Real Estate Inspection Recovery Fund toward satisfaction of a judgment against Greg Dean Markwardt paid on his account by the Inspection Recovery Fund, in violation of Section 23(o)(10) of TRELA.

McIlwain, Clinton W. (Houston); license #3670

Agreed reprimand of salesperson license, entered April 27, 2000; Agreed administrative penalty of \$250.00, entered April 27, 2000; improperly using Texas Real Estate Commission promulgated inspection report form required by 22 TAC 535.223(b) in violation of Section 23(i)(7) of TRELA.

Mercer, Larry (Houston); license #258611

Agreed reprimand of broker license, entered March 9, 2000; Agreed administrative penalty of \$250.00, entered March 9, 2000; representing seller while an associated agent represents buyer without the use of an intermediary relationship or dual agency, in violation of Section 15(a)(6)(W) of TRELA.

Miller, John Charles (Austin); license #432906

Agreed 180 days suspension of broker license probated for 270 days, effective April 24, 2000; giving a check to his principal with the intent to dishonor it, thereby engaging in conduct which constitutes dishonest dealings, bad faith, or untrustworthiness in violation of §15(a)(6)(V) of TRELA.

Musick, Debi Travis (Humble); license #289854

Revocation of salesperson license, effective March 20, 2000; 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 22 TAC Section 535.91(a) of the Rules.

Onyekwelu, Chidike C. (Houston); license #423217

Agreed reprimand of salesperson license, entered March 27, 2000; Agreed administrative penalty of \$250.00, entered March 27, 2000; substituting different tenants for a lease with application documents filled out by a prior client, in violation of Section 15(a)(6)(O) of TRELA.

Parrish, Eric Ross (Sherman); license #376653

Agreed 6 month suspension of salesperson license fully probated for 12 months, effective March 23, 2000; Agreed administrative penalty of \$1,000.00, entered March 23, 2000; failing to submit buyer's written offer to his client, the seller, while attempting to purchase the same property for himself; altering the buyer's written offer by substituting his name for the seller's name; misrepresenting to the buyer that he had submitted the buyer's offer to the seller but that the seller had rejected it; in violation of Sections 15(a)(3), 15(a)(6)(V), and 15(a)(6)(W) of TRELA and 22 TAC §531.1, 531.2, and 535.156 of the Rules.

Pendleton, Kathryn Ann (Austin); license #274786

Agreed reprimand of broker license, entered March 16, 2000; Agreed administrative penalty of \$500.00, entered March 16, 2000; marketing real property and providing financial and other information regarding the property without the knowledge and consent of the owner or the owner's authorized agent, in violation of Sections 15(a)(6)(O) and 15(a)(6)(W) of TRELA.

Pickens, John Jacob (Austin); license #390246

Agreed reprimand of salesperson license, effective April 21, 2000; Agreed administrative penalty of \$200.00 entered April 21, 2000; failing to complete mandatory continuing education hours and pay the \$200.00 fee within the 60-day period provided by 22 TAC Section 535.92(h) of the Rules.

Ramirez, Roy (Austin); license #464529

Revocation of salesperson license, effective April 17, 2000; conviction of the criminal offense of bribery of a public official, in violation of Section 53.021, Texas Occupations Code.

Reza, Jesus (El Paso); license #112031

Revocation of salesperson license, effective March 27, 2000; failing to complete mandatory continuing education hours within the 60-day period provided by 22 TAC Section 535.92(h) of the Rules.

Rogers, William Douglas (Onalaska); license #156685

Agreed 12-month suspension of broker license, effective March 1, 2000; probated for 10 months effective April 30, 2000; receiving profits from timber sold and removed from a client's property and failing to account to or remit the funds to the owner, in violation of Sections 15(a)(6)(H), (E) & (W) of TRELA.

Rothchild Realty, Inc. (Katy); license #361449

Agreed reprimand of broker license; entered March 14, 2000; Agreed administrative penalty of \$500.00, entered March 14, 2000; continuing to market a property after termination of authority as an agent, in violation of Section 15(a)(6)(O) of TRELA.

Rumfolo, Marilu (Houston); license #268951

Revocation of salesperson license, effective February 7, 2000; failing to complete mandatory continuing education hours within the 60-day period provided by 22 TAC Section 535.92(h) of the Rules.

Sosa, Mario Alberto (El Paso); license #467890

Agreed administrative penalty of \$250.00, entered April 10, 2000; failing to timely notify his new sponsoring broker of his probationary real estate salesperson license in violation of the terms and conditions of the order granting him the license.

Sukarez, Antonio E. (Houston); license #404

Agreed reprimand of professional inspector license, entered February 9, 2000; Agreed administrative penalty of \$250.00, entered February 9, 2000 failing to report defects in a cooling system and in ducts, vents and flues as required by 22 TAC 535.222(f)(C) and (G) of the Rules.

Terren Commercial Brokerage, Inc. (Dallas); license #400580

Agreed reprimand of broker license, entered February 4, 2000; Agreed administrative penalty of \$3,000.00, entered February 4, 2000; continued association and sharing of commissions with a salesperson after the expiration of the salesperson's license, in violation of Sections 15(a)(6)(F), 15(a)(6)(S), and 15(a)(6)(W) of TRELA; procuring or attempting to procure a real estate license for a salesperson by making a material misstatement of fact in an application for a real estate license,

by failing to disclose the salesperson's prior unlicensed brokerage activity, in violation of Section 15(a)(2) of TRELA; continued association and sharing of commissions with a salesperson after the salesperson's license was placed on inactive status, in violation of Sections 15(a)(6)(F), 15(a)(6)(S), and 15(a)(6)(W) of TRELA; maintaining more than one place of business without obtaining a branch office license, in violation Section 12(b) of TRELA.

Tijerina, Edella Jo (Kaufman); license #235450

Agreed reprimand of broker license, entered March 31, 2000; while ultimately making payments to the Commission of amounts due for a dishonored check and the related check processing fee, failing to do so within the time periods required, in violation of Section 15(a)(4) of TRELA and 22 TAC Section 535.2(b) of the Rules.

Toth, Julia Kim (Granbury); license #452392

Agreed 6 months suspension of salesperson license, probated for 12 months, effective April 7, 2000; Agreed administrative penalty of \$1,000.00, entered April 7, 2000; failing to take all reasonable steps to verify the competence, veracity, and integrity of a builder who defrauded her sponsoring broker's client after the client had employed the builder based on the representations made by the salesperson, thereby acting negligently or incompetently in violation of Section 15(a)(6)(W) of TRELA and 22 TAC § 535.156 and §535.157 of the Rules.

Uhr, Mark Foshag (Rockport); license #338312

Agreed reprimand of broker license, entered April 21, 2000; Agreed administrative penalty of \$500.00, entered April 21, 2000; failing to notify the Commission in writing within 30 days after he began using an assumed name in business other than the name in which he is licensed depositing real estate brokerage commissions and fees into his corporation's account prior to the corporation obtaining a broker license in violation of 15(a)(6)(F) of TRELA.

Virgil Trower and Associates (Odessa); license #247221

Agreed reprimand of broker license, entered March 9, 2000; 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) of TRELA; failing to pay the returned check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 TAC Section 535.2(b) of the Rules.

Wall, Richard Young (Houston); license #453987

Agreed reprimand of salesperson license, entered March 9, 2000; Agreed administrative penalty of \$250.00, entered March 9, 2000; representing buyer while an associated agent represents seller without the use of an intermediary relationship or dual agency, in violation of Section 15(a)(6)(W) of TRELA.

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TREC Adopts Strategic Plan For 2001-2005

See page 3

Property Management Issues

A VARIETY OF ISSUES are raised by the term "property management." Some types of property management require a real estate license while others do not, depending upon the services provided. There are also various license exemptions that may apply in the property management context. This article is an attempt to sort out the issues as to when a real estate license is required to provide property management services and provide some context under which the various exemptions to licensure apply.

The Real Estate License Act (the Act) defines real estate brokerage activity to include renting or leasing, offering to rent or lease, or negotiating the rental or lease of real property for an owner for a fee. Further, the Act provides that procuring or referring prospective tenants for a fee are real estate brokerage activities that require a real estate license. The Rules of the Real Estate Commission (the Rules) further clarify that "a person who manages real property or collects rentals for an owner of real property and for valuable consideration must be licensed if the person also rents or leases the property for the owner." Thus, the Act and Rules clearly state that a real estate license is required when a person for a fee, rents or leases property, procures tenants for a property, or refers prospective tenants unless a specific exemption applies.

Various types of property managers qualify under an exemption or are not required to maintain a license. If a property manager merely keeps books, maintains the property, or collects rent, a real estate license is not re-



"a person who manages real property or collects rentals for an owner of real property and for valuable consideration must be licensed if the person also rents or leases the property for the owner."

quired because these activities are not defined as real estate brokerage activities in the Act. A license is required only if there is some aspect of renting or leasing property combined with property management or rent collection.

An on-site property manager at an apartment complex qualifies for an exemption to licensure under section 3(7) of the Act. It is important to note, however, that this on-site exemption does not apply to on-site managers of condominiums or town homes. Further, while an on-site apartment manager may be exempt, a person who supervises the actions of the on-site manager is required to maintain a real estate license if the person being supervised is providing a service which would otherwise require a license but for the exemption. The exemption does not extend to an on-site manager's supervisor. Thus, if the actions of the on-site manager include renting, leasing, or procuring tenants, the supervisor, if not

independently qualified under an exemption, would need to be licensed. If, on the other hand, the on-site manager merely maintains the property or collects rent, a person supervising or directing such actions would not need to have a real estate license.

Section 3(9) exempts the employees of a property owner who rent or lease real property owned by an employer. An attorney general opinion construing other provisions of the Act further concluded that a real estate license is not required for an individual employed by a person for the purpose of buying or selling real property on behalf of the person. Thus, if the property manager is an employee of the property owner, no license is required of the employee. Factors considered in determining employment status are whether federal income tax and social security taxes are withheld from the employee's salary. An independent contractor, therefore, is not considered an employee for purposes of this exemption.

A property manager may therefore operate without a real estate license under certain conditions. If, however, the manager's duties include some aspect of renting or leasing or procuring or referring prospective tenants, then the manager should have a license, unless the manager falls under one of the license exemptions.

