



TREC Advisor

Texas Real Estate Commission * Volume 16, Number 1 * January 2005

New Legal and Ethics Requirements Go Into Effect January 1, 2005

The rules change the process by which MCE courses and instructors are approved and require all real estate licensees to attend a three hour legal update course and a three hour legal ethics course to fulfill the six legal hours of MCE to renew an active license under the Real Estate License Act (the Act).

The following is a summary of the most significant changes to the Texas MCE rules:

- The new rules require all licensees to take a three hour legal update course and a three hour legal ethics course created for and approved by TREC to satisfy the 6 legal hours of mandatory continuing education required by Occupations Code §1101.455.
- Instructor applicants must satisfy the agency as to the applicant's honesty, trustworthiness and integrity. Providers will be responsible for ensuring that instructors are competent to teach a particular subject.
- Instructors who teach the legal courses must be certified to teach the courses by attending an instructor training course offered by the Real Estate Center at Texas A&M University.
- Instructors must be pre-approved by TREC prior to attending the instructor training course and obtaining certification to teach the required courses.
- The required legal update and ethics courses will be revised and replaced at the end of every odd numbered year (3 years for the first set of courses, every 2 years after).
- The required courses may be modified by certified instructors to supplement the courses with additional material, to create distance learning legal courses, or to combine the legal courses with elective courses.
- Elective courses to be used as credit for the remaining 9 hours required by §1101.455 of the Act must be presentations of relevant issues that impact the practice of real estate or which increase or support the development of skill and competence; a provider must include a statement with the course registration that describes the objective of the course and explains how the subject matter is related to activities for which a real estate license is required.
- Providers are required to register all courses they offer with the TREC Education Department.
- A provider who offers a required legal course must provide the students with the required course materials in print or electronic format.
- Core and continuing legal education courses may be accepted for satisfying MCE elective credit only.
- Distance learning courses may be registered to satisfy elective and required legal credit subject to certain conditions. A distance learning course to be used as credit for a required legal course must include a final exam.
- Proctored video presentations for both elective and legal credit are acceptable; however, for legal credit, the video presentations must have a certified instructor available as necessary for questions and must include a final examination.
- The percentage of time permitted to be taught by a guest speaker was increased from 25% to 50%.
- For elective courses and courses which do not include legal credit hours, a provider may grant partial credit to a student who attends less than the complete course registered with TREC. If a student is away or late for any portion of a 50 minute class hour the student may not receive credit for that hour. The student will receive credit for any other full hours of that course that the student attends.
- Licensees on active status will be required to take the required legal update and legal ethics courses for their next and all subsequent renewals of their license after January 1, 2005. Thus a licensee may, but is not required to attend the required legal courses for his or her first renewal after the effective date, but the licensee is required to take the courses for the next and all subsequent renewals.
- For licenses granted after the effective date, the licensee must attend the required courses to renew a license on active status.
- As of January 1, 2005, a licensee on inactive status who wishes to return to active status, and who is not subject to annual education requirements, must take the new legal courses if the licensee has not satisfied the previous MCE requirements prior to January 1, 2005.
- The effective date for partial credit and professional credit designation courses is January 1, 2005.
- Distance learning courses may be offered for required legal course credit on or after July 1, 2005.
- The effective date for the streamlined instructor application process and course registration process was September 1, 2004.



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TEXAS REAL ESTATE COMMISSION

Meeting Highlights

December 6, 2004

The Texas Real Estate Commission held its regularly scheduled meeting at the TREC headquarters in Austin, Texas on Monday, December 6, 2004. Chairman John Walton presided.

During staff reports, Linda Bayless, Director of Enforcement, introduced a new employee, Chris Thornton who will be the new investigator for the San Antonio area.

Denise Whisenant, education coordinator for the Real Estate Center at Texas A&M reported on the instructor training seminars developed by TREC in cooperation with the Real Estate Center. Three sessions had been held in November and December so that instructors of the new mandatory legal and ethics courses could obtain certification. A total of 400 people attended the sessions.

The Commission approved draft legislation to amend the Real Estate License Act. Staff will be seeking sponsorship for the bill.

Staff reported that they had not received any response from the Office of the Attorney General concerning the Opinion Request submitted by TREC in July 2004.

The Commission approved requests for the submission of resumes and references by individuals desiring to serve on the Inspector Committee and the Mortgage Broker Advisory Committee. The terms of three members of the Inspector Committee will expire in February 1, 2005 and the term of the member appointed by TREC to the Mortgage Broker Advisory Committee will expire January 31, 2005.

The next meetings of the Commission will be February 21, 2005 and April 18, 2005.

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.

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Texas Real Estate Commission

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January 2005

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The TRECAdvisor (ISSN 1047-4579) is published by the Texas Real Estate Commission (TREC) as an educational service to licensees in the state of Texas. The purpose of the newsletter is to promote a better understanding of the Real Estate License Act and to inform all licensees of changes affecting laws and practices in the real estate industry. The TRECAdvisor is funded through legislative appropriations and subscriptions collected from TREC licensees. The official text of TREC rules is filed with the Office of the Secretary of State, Texas Register. TREC encourages reproduction of this newsletter with the appropriate acknowledgments. Subscriptions are available for \$4.00 for two years. Single issues are \$1.00. To order a subscription or a single issue write to TRECAdvisor, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. For information regarding TREC, contact:

Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188
(512) 459-6544 or (800) 250-TREC
<http://www.trec.state.tx.us>

INSPECTOR COMMITTEE APPOINTMENTS

On February 1, 2005 the terms of office for three members of the Texas Real Estate Inspector Committee will expire. These are appointments for a period of six years.

It is the intention of the Texas Real Estate Commission to appoint individuals to these three positions at its meeting on February 21, 2005. Individuals wishing to be considered for one of these appointments should submit a letter requesting consideration along with a resume and any letters of recommendation addressed to:

Chairman
Texas Real Estate Commission
Texas Real Estate Inspector Committee
P.O. Box 12188
Austin, TX 78711-2188

no later than January 31, 2005. All such information shall be provided to members of the Texas Real Estate Commission for their review and consideration prior to the Commission meeting on February 21, 2005.

MORTGAGE BROKER ADVISORY COMMITTEE APPOINTMENT

On January 31, 2005 the term of office for one member of the Mortgage Broker Advisory Committee appointed by the Texas Real Estate Commission will expire. This is an appointment for a period of three years.

It is the intention of the Texas Real Estate Commission to appoint an individual to this position at its meeting on February 21, 2005. Individuals wishing to be considered for the appointment should submit a letter requesting consideration along with a resume and any letters of recommendation addressed to:

Chairman
Texas Real Estate Commission
Mortgage Broker Advisory Committee
P.O. Box 12188
Austin, TX 78711-2188

no later than January 31, 2005. All such information shall be provided to members of the Texas Real Estate Commission for their review and consideration prior to the Commission meeting on February 21, 2005.

"Fast Track" Professional Inspector Education Hours Increased as of January 1, 2005

The Texas Real Estate Commission adopted a rule to increase core inspection classroom hours required to become licensed as a Professional Real Estate Inspector through the "fast-track" method effective January 1, 2005. The "fast-track" method allows one to apply for a Professional Real Estate Inspector license without practical experience but by completing a certain number of core inspection classroom hours (where no experience in the industry is required). Currently, the requirement is 188 Core inspection classroom hours, 8 of which must be in the Standards of Practice and 20 hours of course credit each in structural, mechanical (including appliances, plumbing, and HVAC components) and electrical systems found in improvements to real property.

The rule revisions replace the requirement for the 20 hours of course credit each in structural, mechanical and electrical systems with 320 additional hours in specific core inspection courses as defined in the rules. Effective January 1, 2005, Professional Inspectors applying under the "fast-track" method must complete a total of 448 Core inspection hours. The breakdown of the additional 320 hours, including required courses, subjects and subtopics is detailed in the rules which are posted on the TREC website and the Texas Register.

Real Estate Center Schedules Next Instructor Training Session

The Real Estate Center at Texas A&M will be providing an instructor training session for persons wishing to be certified as instructors of the mandatory 3 hour legal & 3 hour ethics courses. The session will be May 23-24 in College Station. There is a \$40 fee for each course. To become a certified instructor you must: be previously approved as a TREC instructor or apply to become approved by filing a MCE Instructor Application form with the \$25 fee; attend a train-the-trainer workshop given by the Real Estate Center. To register visit <http://recenter.tamu.edu/register>; and receive a certification letter from TREC upon successful completion of the train-the-trainer workshop. See the TREC website www.trec.state.tx.us or the Real Estate Center web site www.recenter.tamu.edu for more information.

Your License is Just a Click Away

In August of 2000, the Texas Real Estate Commission became the first state agency to provide online license renewals. In the last four years the Commission has worked continuously to improve its web site and the services that are offered there.

It is now possible to file and pay for the following licenses online:

- **BROKER**
Original Application, Timely Renewal or Late Renewal for an Individual
Original Application or Timely Renewal for a Corporation
Timely Renewal for a Limited Liability Company
- **SALESPERSON**
Original Application or Timely Renewal of a Two Year License
- **INSPECTOR**
Timely Renewals of Professional, Real Estate and Apprentice Inspector Licenses
- **EASEMENT OR RIGHT-OF-WAY**
Timely Renewals of Business and Individual ERW Licenses



Go to the TREC web site www.trec.state.tx.us and make your next renewal online.



Disciplinary Actions October-November 2004

Consumer Complaints

Schomp, Wanda Kay
(Killeen); license #212628

Agreed 6-month suspension of broker license, fully probated for 1 year, effective October 1, 2004; agreed administrative penalty of \$2,000, entered September 24, 2004; failing to monitor and train a sponsored salesperson, who failed to properly handle property management accounts and activities and money belonging to others, in violation of §1101.652(b)(1) of the Texas Occupations Code; failing to properly maintain escrow accounts and records, failing within a reasonable time properly to account for or remit money coming into the hands of a sponsored salesperson, and commingling of funds by a sponsored salesperson, in violation of §1101.652(b)(9) and (10), Texas Occupations Code; allowing an unlicensed person to perform brokerage activity while associated with a sponsored salesperson, in violation of §1101.652(b)(26) of the Texas Occupations Code; allowing the brokerage firm to pay a commission or fees to an unlicensed person for compensation for services as a real estate agent, in violation of §1101.652(b)(11) of the Texas Occupations Code; failing within a reasonable time to provide documents and information requested by the Commission as a result of a formal complaint to the Commission, in violation of §1101.652(a)(6) of the Texas Occupations Code; and allowing a sponsored salesperson to conduct brokerage activities under business names that had not been filed with the Commission, in violation of 22 TAC §535.154(c)

Kapsidelis, James N.
(San Antonio); license #201014

Agreed reprimand of salesperson license, entered October 14, 2004; agreed administrative penalty of \$500, entered October 14, 2004; failing to pay security deposit to new owner who had purchased property from landlord from whom she had previously leased property, in violation of Sections 15(a)(6)(E) and (W) of the Real Estate License Act [Sections 1101.652(b)(1)(9) and (10) of the Texas Occupations Code, effective June 1, 2003]

Shipler, Steven T.
(Plano); license #453759

Agreed 6-month suspension of salesperson license fully probated for 2 years, effective November 22, 2004; agreed administrative penalty of \$4,000, entered November 22, 2004; procured a real estate license by making a material misstatement of fact in the application by failing to disclose the fact he had continued to act as a real estate salesperson after the expiration of his license, in violation of §1101.652(a)(2) of Texas Occupations Code; acted as a real estate broker or salesperson without first obtaining a real estate license, in violation of §1101.351 of Texas Occupations Code

Administrative Complaints

Hightower, Christopher Paulus
(Austin); license #474373

Agreed reprimand of salesperson license, entered October 6, 2004; agreed administrative penalty of \$250, entered October 6, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

Funk, Helen Marie
(Greenville); license #449791

Revocation of salesperson license, effective October 13, 2004; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(c) of the Rules of the Texas Real Estate Commission

Baker, John Kelly
(Houston); license #407566

Revocation of broker license, effective October 28, 2004; failing within a reasonable time to make good a check issued to the Commission and pay the processing fee, in violation of §1101.652(a)(4) of the Texas Occupations Code

McCarver, Lori Kathleen
(Dallas); license #406881

Agreed reprimand of salesperson license, entered November 2, 2004; agreed administrative penalty of \$250, entered November 2, 2004; failing to complete mandatory continuing education hours within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

Calendar of Events

Commission Meetings:

February 21, 2005
(Austin)

April 18, 2005
(Austin)

Broker-Lawyer Committee Meetings:

January 13-14, 2005
(Austin)

Inspector Committee Meetings:

January 12, 2005
(Austin)

March 18, 2005
(Austin)

Web site:

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

Phone

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

**Tevis, Thomas Wayne
(Dallas); license #476288**

Agreed reprimand of salesperson license, entered November 9, 2004; agreed administrative penalty of \$250, entered November 9, 2004; failing to pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Steward, Sharon Annette
(Dallas); license #476824**

Agreed reprimand of salesperson license, entered November 10, 2004; agreed administrative penalty of \$250, entered November 10, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Lemp, Craig Nolan
(Dallas); license #416369**

Agreed reprimand of broker license, entered November 12, 2004; agreed administrative penalty of \$250, entered November 12, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Pflugger, Michael Carl
(Spicewood); license #412206**

Agreed reprimand of broker license, entered November 16, 2004; agreed administrative penalty of \$250, entered November 16, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Murillo, Nancy Belen
(Plano); license #475682**

Revocation of salesperson license, effective November 19, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Keating, Kristin Elizabeth
(Austin); license #473716**

Revocation of salesperson license, effective November 19, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Walker, Aleen Thornburg
(Houston); license #235133**

Agreed reprimand of broker license, entered November 23, 2004; agreed administrative penalty of \$250, entered November 23, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Destin, Robert Lee
(Baytown); license #389885**

Revocation of salesperson license, effective November 29, 2004; failing within a reasonable time to make good a check issued to the Commission and pay the processing fee, in violation of §1101.652(a)(4) of the Texas Occupations Code

**Biggs, Douglas Robert
(Houston); license #283542**

Revocation of salesperson license, effective November 29, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Knust, Margo L.
(Conroe); license #483334**

Revocation of salesperson license, effective November 29, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Lang, Roger Ewald
(Redlands, CA); license #457257**

Revocation of broker license, effective November 29, 2004; failing within a reasonable time to make good a check issued to the Commission and pay the processing fee, in violation of §1101.652(a)(4) of the Texas Occupations Code

Enforcement Questions and Answers

These and other questions and answers may be found on TREC's web site at
<http://www.trec.state.tx.us>

Q. Please clarify the difference between a trust account and an operating account? Is a designated property management account considered an operating account and is it a violation for a licensee to maintain such an account to receive and disburse rent payments?

A. The Texas Real Estate Commission has jurisdiction over property management companies if the company leases real properties for others for compensation or with the expectation of compensation. [§1101.002(1) Tex. Occ. Code (Vernon 2003).] §535.146(a) of The Rules of the Commission (Rules), defines "trust account", for the purposes of that section, as including "any trust, escrow, custodial, property management account, or other account in which a licensee holds money on behalf of another person. The important aspect of a "trust account" is that the account is to contain money belonging to others. A real estate licensee must not commingle his or her own money with trust account money or treat trust account money as if it is the licensee's own. [Please see the Rules, §535.146(f).] "Operating account" money is money that belongs to the licensee (or the management company). The "operating account" is the money that the licensee or management company owns and then uses to pay the office's electric bill, the bookkeeper's wages, the rent for the company's office space, the licensee's own personal compensation, etc. §535.146(g) of the Rules provides that a licensee must pay himself or herself out of the trust account within 30 days of when he or she acquires ownership of any money in the trust account. Here is an example: If the licensee's management fee is 10% of each month's rent that is collected, and the tenant pays \$500 rent by a personal check to the licensee (as property manager) on the first day of the month, then the entire \$500 rent check would be deposited into the licensee's trust account. Within 30 days of receiving that \$500 rent, the licensee must pay himself or herself \$50 out of the trust account (the monthly management fee for that occupied rental unit). The \$50 could be paid into the licensee's operating account or directly to the licensee. (To leave the licensee's earned money in the trust account for longer than 30 days would be considered commingling. Just like a licensee may not use the "trust account" money of others, the licensee also may not "hide" his or her own money within the trust account or "mix" the money.) A trust account must be established by a broker, not a salesperson. Any money received by a real estate salesperson which is to be held in trust pursuant to a real estate transaction must be delivered to the salesperson's sponsoring broker to be deposited in accordance with the agreement of the principals in the transaction. [Rules, §§535.159(a), (b) and (f).] A broker may, but is not required to, maintain separate trust accounts for earnest money deposits, security deposits received for the management of rental property, or for any other money received in trust. [Rules, §535.159(g).] If a broker maintains a trust or escrow account, that account must be identified as such. [Rules, §535.159(h).] (Additional examples: The Internal Revenue Service might want to freeze the licensee's bank accounts for back taxes, or individuals might have money judgments against the licensee that they are trying to collect. It must be clear to others that the "trust account" money is not the licensee's money, and is not available to pay the debts of the licensee.) A licensee maintaining a trust account must retain for a period of four years a documentary record of each deposit or withdrawal from the account. [Rules, §535.146(b).] (That includes records regarding money taken out to pay service providers, such as for carpet cleaning, lawn maintenance, make-ready work, plumbers, painters, electricians, utility bills on vacant units, etc.) If a broker is not meticulous and organized in how the business is handled, the broker and any salespersons involved may find themselves trying to defend against a complaint filed with TREC, and possible disciplinary action against their licenses.

FOR YOUR OWN GOOD... CHECK THE EXPIRATION DATE OF YOUR LICENSE

It is your responsibility to ensure that your license is renewed in a timely manner. Any education you might require must be completed before your license expiration date if you want to maintain an active real estate license, unless you pay an additional \$200 fee and complete your MCE within 60 days of the expiration date of your license.

Renewal forms are sent out to all licensees and may also be obtained on our web site. The Texas Real Estate Commission is not responsible for U.S. Postal Service delivery or knowing where to find you if you have moved and have not filed a change of address with our office. Failure to receive a renewal notice does not provide a valid excuse for not renewing your license.

Have a Safe and Happy New Year!