



# TREC Advisor

Texas Real Estate Commission ★ Volume 21, Number 5 ★ July 2010

## September 1, 2010 New Rules Go Into Effect

*At the February 8, 2010 meeting of the Texas Real Estate Commission, the Commission adopted amendments to §535.61, concerning Examinations; §535.62 concerning Acceptable Courses of Study; and §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors which will become effective on September 1, 2010.*

- The amendments to **§535.64** establishes a **broker pre-license examination passing score of at least 75%** and a **salesperson pre-license examination score of at least 70%**.
- The amendments to **§535.62** and **§535.64** define **how TREC-approved proprietary schools' passage rates are calculated and published by the commission** and implement the statutory requirement that schools demonstrate a 55% examination passage rate to renew their accreditation. The amendments allow schools that offer correspondence courses in association with accredited colleges or universities to issue certificates of completion in the name of the TREC-approved school and to count the examination passage rates of students in those courses toward the school's overall passage rate.
- New **§535.93** permits a person with an expired salesperson or broker license to **renew** the previous license **effective from its expiration date** if the application to renew was filed **less than one year** from the expiration of the previous license. The new rules require the commission to renew the license in an active status except as provided by the section.

In order to renew a salesperson's expired license on active status, a salesperson applicant must provide certification of sponsorship for the period from the day after the license expired to the day the license issued, and for the period beginning on the day after the renewal license is issued, and otherwise comply with the section.

If Mandatory Continuing Education (MCE) requirements are not met prior to the previous license expiration date, an applicant who wishes to renew the license on active status must pay an additional \$200 fee and complete the MCE not later than the 60<sup>th</sup> day after the expiration of the previous license.

If the application to renew is filed more than 60 days but less than one year after the previous license expired and MCE requirements were not met before the license expired, the applicant must pay a \$200 MCE deferral fee, a \$250 late reporting fee, complete the MCE, and if a salesperson, provide certification of sponsorship for the period in which the license was expired to the day the license issued, and for the period beginning on the day after the renewal license is issued.

*Rules were adopted at the May 17, 2010 meeting of the Texas Real Estate Commission that amended Chapter 539, Rules Relating to the Residential Service Company Act which will also become effective on September 1, 2010.*

- The amendments to **§539** adopt a **new title for 22 TAC Chapter 539** and a **new Subchapter E**, concerning Disclosures
- New **§539.41** requires a licensed residential service company to **include a disclosure** in its residential service contracts if the **company pays persons other than a residential service company employee** for the sale, advertising, inspection or processing of residential service contract.
- The amendments to **§539.51** adopt amendments **correcting typographical errors** in the existing rules to better reflect the statutory reference.
- The amendments to **§539.61** adopt a **revised application form** that has been streamlined and changed to provide consistency with other TREC forms. **The form also allows the end user to fill the form out electronically.**
- The amendments to **§539.71** adopt a **revised Residential Service Company Bond form** and an **Application to Approve Evidence of Coverage/Schedule of Charges form**. **The forms allow the end user to fill the form out electronically.**
- The amendments to **§539.91** adopt a revised **Annual Report**. The form is changed to detail payments to real estate brokers, insurance agents, mobile home dealers or non-RSC employees for selling, advertising, inspection, or processing of residential service contracts. **It also allows the end user to fill the form out electronically.**

The amendments to **§539.137** adopt a revised **Mid-year Report**. The form is changed to detail payments as the Annual Report does and allows the end user to **fill the form out electronically.**

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**NEW LATE RENEWAL RULE FOR THOSE FILING WITHIN A YEAR OF LICENSE EXPIRATION DATE EFFECTIVE SEPTEMBER 1, 2010.**



## TEXAS REAL ESTATE COMMISSION

### Meeting Highlights

TREC meeting minutes can be found on the TREC web site at [www.trec.state.tx.us](http://www.trec.state.tx.us)

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

## Minimum Brokerage Services in Texas

Under what circumstances may a listing broker licensed in Texas, permit offers to be sent by a buyer's broker directly to the listing broker's principal? Conversely, under what circumstances may a buyer's broker transmit an offer directly to a principal who is represented by a listing broker? These issues arise in at least two common situations.

First, there are a growing number of Measured Service Brokers (MSBs) - that is those brokers who offer a veritable "menu" of services to their clients, and the client may contract to purchase one or more broker services, and exclude some other services. Secondly, there are also Asset Managers, often with a Power of Attorney to bind their principal, which may require any purchase offers to be submitted directly to the Asset Manager. The perception of "reduced" services required of the listing broker may be cited as justification for negotiating a reduced fee for these exclusive representations.

Sec. 1101.557 of the Texas Real Estate License Act regarding the minimum services to be provided by a broker "under an exclusive agreement" with a party are clear. Such brokers may not instruct another party's broker to "negotiate or attempt to negotiate the sale...of real estate" [per Sec. 1101.652(b)(22)] with any party known to be exclusively represented by a broker. Mere "delivery of an offer to a party" does not violate this section if "the party's broker consents to the delivery" and "a copy of the offer is sent to the party's broker." No other contact with the party is allowed; any further activity may violate the prohibition on "negotiations." Furthermore, each broker has the obligation to 1) keep his or her principal informed "if the broker receives material information related to the transaction," including all offers received by the broker; 2) to "present any offer to or from the party," and 3) to "answer the party's questions." The fees to be paid for each of these services may vary, but these specific services may not be "excluded" from the list of services to be provided by a broker to the principal. A broker's failure to provide one or more of these services to the broker's client would be a violation of the law.

To avoid violations of the law, a broker should ensure that an exclusive representation agreement authorizes such "dual" contacts by providing that 1) the party and the party's broker are each copied on every written contact, 2) the broker is present for any oral contacts (in person or by phone or similar method), 3) the broker remains available to answer all questions from the broker's principal - such as assisting the principal to interpret offers and to develop counter-offers, and 4) the broker presents any offer to or from the principal. To "present" an offer clearly involves more than mere "delivery."

These duties to the broker's principal are required under Texas law, regardless of the fee charged by the broker. A broker may negotiate a fixed fee for all of these services combined, or may negotiate a variable fee (such as an hourly rate), or any combination of similar methods for providing these services, but in every case, all of these services must be provided to each client whom the broker represents under an exclusive agreement. A Texas broker may not contract to provide a lesser level of service to the broker's clients.

For information on the agency's  
**OUTSTANDING PERFORMER** for the second  
quarter see page 3 of the BULLETIN.

Official publication of the  
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The TRECAvvisor (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 TRECAvvisor 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 TRECAvvisor, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. For information regarding TREC, contact:

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## ...from the Administrator

This is by far the busiest time of the year for this agency – we just filed our 2011-2015 Strategic Plan on July 2<sup>nd</sup> and are now working on implementing, by rule, many of the best recommendations received from the public input sessions. In addition, those promising recommendations that require legislative action are being analyzed and reports prepared for consideration by the Commission. The appointed working groups and advisory committees have been working overtime to assist the commission in this regard. And most taxing of all, we are working on our Legislative Appropriation Request (LAR) for the next two year budget period starting in September 2011 – while trying to find a way to reduce our total expenses by another 10% below the 2010 baseline, which after the last cut is at 95% of the 2009 amount. Quite a demanding challenge – we need both your ideas and understanding!

Add to this the tremendous task of implementing a complete replacement of our aging TRELIS database system, a two year long conversion project that we expect to finally “switch on” over the weekend of July 31<sup>st</sup> & August 1<sup>st</sup>. The culmination of this massive effort will immediately be followed by another period of intense “de-bugging” as we serve you while simultaneously coping with those tasks associated with learning the new system and fully testing its many customized features. Of course, we’ve been testing it all along, but once we put it through its paces of handling the thousands of transactions we do every week with and for you, it is likely that a few glitches will be revealed. Of course we will have extra vendor staff standing by to work to resolve every issue as it is revealed. Please be patient in the early stages of this enormous transition.

We are preparing for several process changes that are driven both by efficiency and the capabilities (and some limitations) of the new Iron Data database system. First, and most importantly to our effectiveness and efficiency, you will see more electronic communications from us. Notices of license renewal deadlines will be sent by email, so ensure you read everything that comes from the agency – you will no longer be receiving these notices by mail. Additional online services will be added steadily, and we will notify you of each one. While we prepare to get some items online, some notice letters will be replaced by postcards on a purely interim basis. Education Evaluations will be done at the same time as license application processing, to save time for applicants. Look for more improvements as we adapt to this new environment!

As part of our comprehensive Rule Review, at the August 9<sup>th</sup> Commission meeting, rule amendments will be proposed covering a variety of topics. The final reports with the recommendations of the Broker Responsibility and Education Working Groups will be presented at that time. Also, the Broker Lawyer Committee has proposed some updates to several standard contracts and promulgated forms that the Commission will consider. If you can, attend to see your Commission at work improving your profession and its standards. If you cannot, you may rely on us to keep you fully informed and engaged.



Douglas E. Oldmixon, Administrator

### Licensing System Conversion Announcement

TREC and TALCB have been working on the conversion of their existing licensing system to a product from Iron Data for over a year. This transition gives the agency added flexibility that will allow us to more effectively adapt to future changes. We are now entering the final stages of the implementation and are planning the transition for the weekend of August 1<sup>st</sup>. This is subject to change if technical issues make it necessary.

#### ***What does this mean to you?***

- Electronic submission of education, online applications, and online license renewals will be unavailable as of 6 PM on the Friday of conversion (July 30)
- Mailed renewals with July 31 expiration dates will be accepted as timely if post marked as of August 2<sup>nd</sup>
- Online services will be restored as of 8AM the following Monday (August 2)

Online renewals and applications will be replaced with the Iron Data product

The new online services will include a “My Account” structure allowing licensees the ability to track more data related to each of their licenses. We encourage all license holders to enroll in this feature, which will be necessary in order to take advantage of some new system features.

Additional communications will be provided as the conversion date approaches. The agency is excited to be taking this next big step and we believe it will improve our ability to offer better services to license holders.

## Rules to be Considered at the August 9, 2010 Meeting of the Texas Real Estate Commission

The following rule amendments were proposed at the May 17, 2010 meeting of the Texas Real Estate Commission. They appeared in the June 11, 2010 issue of the *Texas Register* and can be considered for adoption at the August 9, 2010 meeting of the Commission. Comments on the rule amendments can be directed to the General Counsel at [general.counsel@trec.state.tx.us](mailto:general.counsel@trec.state.tx.us)

- The amendment to **§531.18** regarding the Consumer Information Form 1-1 **adds a reference to the TREC website** to download the form. The amendment to **§533.1**, Definitions, **adds the definition of “last known mailing address”** to the list of definitions.
- The amendment to **§533.3, Filing and Notice**, clarifies that the **Notice of Alleged Violation** required by Texas Occupations Code §1101.703 **will be mailed to the respondent’s last known mailing address**, corrects typographical errors, and makes conforming changes to the rule.
- The amendment to **§533.4**, Failure to Answer, Failure to Attend Hearing and Default, **corrects typographical errors and makes conforming changes** to the rule.
- The amendment to **§533.8**, Final Orders, Motions for Rehearing, and Emergency Orders, **provides a procedure for motions for rehearing before the commission, and provides that a person appealing a decision of the commission is responsible for paying for the costs of preparation of an original or certified copy of the transcript** of the proceedings required by a reviewing court.
- The amendments to **§533.20**, Informal Proceedings, and **§533.31**, Referral of Contested Matter for Alternative Dispute Resolution Procedures, **make conforming changes**.
- The amendments to **§533.34**, Commencement of ADR, **delete the procedures for alternative dispute resolution of employment matters** as those matters are provided for in the TREC employee handbook.
- The amendments to **§535.51** concerning General Requirements for a License:
  - ✦ **delete the requirement that an applicant must submit an education evaluation and receive a notice from the commission that the applicant has satisfied all education requirements for a license prior to submitting an application for a license;**
  - ✦ **delete the signature requirement;**
  - ✦ **change from 60 to 20 days the time in which an applicant must submit a payment after the commission has requested such payment; and**
  - ✦ **delete the adoption by reference of all application forms**
- The amendments to **§535.101** concerning Fees:
  - ✦ **delete the reference to a specific fee for an education evaluation;**
  - ✦ **add the fee to the relevant application fees; and**
  - ✦ **add an additional fee of \$20 to submit a paper form in cases where the commission has established an online process for submitting the same form.**
- The amendments to **§535.208** concerning Application for a License and **§535.210** concerning Fees:
  - ✦ **§535.208 deletes (1) the requirement that an applicant must submit an education evaluation and receive a notice from the commission that the applicant has satisfied all education requirements for a license prior to submitting an application for a license, (2) deletes the signature requirement, changes from 60 to 20 days the time in which an applicant must submit a payment after the commission has requested such payment, and (3) deletes the adoption by reference of all application forms.**
  - ✦ **§535.210 (1) deletes the reference to a specific fee for an education evaluation, (2) adds the fee to the relevant application fees, and (3) adds an additional fee of \$20 to submit a paper form in cases where the commission has established an online process for submitting the same form.**
- The amendments to **§537.11** concerning Professional Agreements and Standard Contracts are **not substantive and break down existing paragraphs into subsections** to provide structure to each subsection **for readability and clarity**.
- The amendments to §541.1 concerning Criminal Offense Guidelines and new rule §541.2 concerning Criminal History Evaluation Letters, clarify license eligibility for persons with criminal histories, and outline the process by which a person may request and receive a criminal history evaluation letter under Chapter 53.
- The amendments to **§541.1 clarify that the commission considers convictions and**

**deferred adjudications of the offenses listed in the rule to be directly related to the duties and responsibilities of the licenses issued by the commission** for the reasons articulated in the rule. The amendments **clarify** that the commission has determined that **multiple violations which evidence a disregard for or inability to comply with the law and felony offenses involving driving while intoxicated or under the influence directly relate to the duties and responsibilities of a license** issued by the commission.

The **new rule implements new statutory requirements under Occupations Code Chapter 53**. The new statutory provisions require the Commission to establish a process that will allow a **person to submit a request for a criminal history evaluation**. Under §1101.353 the commission is already authorized to issue a moral character determination of an applicant. Under the proposed rule, the **commission will review the person's criminal history under Chapter 53 using the same process it currently uses to conduct a moral character determination under Chapter 1101**. The **intent** of both statutes is **to provide information about potential license ineligibility based on criminal history before a person spends time and money pursuing an education or training, taking an examination, or applying** for a particular license. New §541.2 clarifies that a person may request an eligibility letter from the commission under Chapter 53 using the same form and paying the same fee required of persons applying for a moral character determination under §1101.353.

## HUD Issues Interpretive Rule on Home Warranty Company Fees to Brokers

On June 25th, HUD published an Interpretive Rule under RESPA involving services provided by real estate brokers and agents on behalf of home warranty companies. The Interpretive Rule discusses the application of Section 8(a)'s prohibition on referral fees in relation to payments made by home warranty companies to real estate brokers. The Interpretive Rule concludes that:

- (1) A payment by a home warranty company for marketing services performed by real estate brokers on behalf of the home warranty company that are directly related to particular homebuyers or sellers is an illegal kickback for a referral under Section 8. HUD bases this conclusion on the fact that a real estate agent is in a unique position to refer settlement service business and, as they hold a position of influence, can easily influence a homebuyer's or seller's selection of a home warranty company.
- (2) Depending on the facts of a particular case, a home warranty company may compensate a real estate broker for services when those services are actual, necessary, and distinct from the primary services provided by the real estate broker, and when those additional services are not nominal and are not services for which there is a duplicative charge. HUD offers some examples of such additional services, which include, among others: (a) conducting annual inspections of the items to be covered by the warranty to identify pre-existing conditions that could affect home warranty coverage; and (b) recording serial numbers of the items to be covered. HUD also provides guidance on the types of evidence that would support a determination that compensable services have been performed by the real estate broker, such as that the services to be performed are specified in a contract between the home warranty company and the real estate broker or agent and the home warranty company assumes responsibility for any representations made by the broker or agent about the warranty product.
- (3) The amount of the compensation that is permitted under Section 8 for such additional services must be reasonably related to the value of those services and may not include compensation for referrals of business. The Interpretive Rule does not provide much guidance on this point, other than to cite to language in Policy Statement 99-1, which covers mortgage broker compensation, regarding how HUD analyzes compensation to determine reasonableness.

Brokers with "exclusive" agreements with a Home Warranty Company should have the agreements reviewed by their counsel, especially those where the fees paid to the broker are based on the number of residential service contracts purchased by the broker's clients.

**Credit for the 3 point summary above goes to Phillip L. Schulman, Esquire at K&L Gates in Washington DC. He may be contacted at [phil.schulman@klgates.com](mailto:phil.schulman@klgates.com)**

## Can I do this Online?

Before printing out any agency form from our website, filling it out by pen, attaching your check, addressing and putting a stamp on the envelope, and mailing it back to the agency, ask yourself this: can I do this online? If the answer is "yes," then the agency encourages you to do so. It is faster and easier for all concerned. No waiting for mail transit, and data entry and processing on this end. If the form is not clear or complete, there are further delays while we contact you for clarification or correction. Doing it online allows for immediate proofing and validation; and an immediate receipt!

The agency has been steadily moving in this direction for the past year. There are many forms that have not yet been converted to online availability, but we are working to add more. Beginning 9/1/10 there will be a \$20.00 paper handling fee attached to each transaction that can be accomplished online where a license holder chooses instead to submit it on paper. Of course, if any service is not provided via the website, the \$20.00 paper handling fee will not apply and license holders should print and mail as before. Always check before printing and mailing. We will be steadily adding new services to our online capabilities to serve you better.

For an easier transition, here is a list of online services:

Update Email Address	<b>YES</b>		
Update Permanent Mailing Address	<b>YES</b>		
<b>Salesperson License</b>		<b>Apprentice Inspector License</b>	
Initial Application	<b>YES</b>	Initial Application	not at this time
Renewal Application	<b>YES</b>	Renewal Application	<b>YES</b>
Late Renewal Application	not at this time	Late Renewal Application	not at this time
<b>Broker License, Individual</b>		<b>Easement Right-of-Way Registration, Individual</b>	
Initial Application	<b>YES</b>	Initial Application	not at this time
Renewal Application	<b>YES</b>	Renewal Application	<b>YES</b>
Late Renewal Application	<b>YES</b>	Late Renewal Application	not at this time
<b>Broker License, LLC</b>		<b>Easement Right-of-Way Registration, Business</b>	
Initial Application	not at this time	Initial Application	not at this time
Renewal Application	<b>YES</b>	Renewal Application	<b>YES</b>
Late Renewal Application	not at this time	Late Renewal Application	not at this time
<b>Broker License, Corporate</b>		<b>Appraiser, Certified General</b>	
Initial Application	<b>YES</b>	Initial Application	not at this time
Renewal Application	<b>YES</b>	Renewal Application	<b>YES</b>
Late Renewal Application	not at this time	Late Renewal Application	not at this time
<b>Professional Inspector License</b>		<b>Appraiser, Certified Residential</b>	
Initial Application	not at this time	Initial Application	not at this time
Renewal Application	<b>YES</b>	Renewal Application	<b>YES</b>
Late Renewal Application	not at this time	Late Renewal Application	not at this time
<b>Real Estate Inspector License</b>		<b>Appraiser, Trainee</b>	
Initial Application	not at this time	Initial Application	not at this time
Renewal Application	<b>YES</b>	Renewal Application	<b>YES</b>
Late Renewal Application	<b>YES</b>	Late Renewal Application	not at this time

### ELECTRONIC DELIVERY OF RENEWAL NOTICES

In August TREC will begin to send renewal notices electronically to real estate brokers, salespersons, inspectors, appraisers, and easement or right-of-way registrants. Renewal notices are typically mailed 90 days prior to the expiration date of a license. The first electronic renewal notices will be sent to licensees who have a November 30, 2010 expiration date. This move to the electronic delivery of renewal notices will be convenient for licensees who have email addresses and will enable the agency to send renewal notices to real estate brokers as well as salespersons (currently all active salesperson renewal notices are mailed only to the sponsoring broker). The electronic delivery of renewal notices is one of the many recommendations the agency is initiating to help meet budget reductions that have been requested by our state government to help offset the projected shortfall in state revenue.

After receipt of the renewal notice, a licensee will be able to go to the agency website and pay the renewal fee online. If the renewal fee is not filed online at the website, the licensee will need to download the renewal form from the agency website and submit it with payment. This method of renewing will require that the renewal fee and a \$20 paper filing fee be submitted for processing.

# TREC Disciplinary Actions May—June 2010

**Santiago, Jose H.**  
(Kingwood); License #507484

Agreed revocation of broker license, fully probated for 5 years, effective May 28, 2010; Agreed administrative penalty of \$15,000, entered May 28, 2010; Agreed completion of a 3 hour agency law course by December 1, 2010, entered May 28, 2010; entering a plea of guilty to the first degree felony offense of theft >=\$200,000.00 in State of Texas v. Jose Herman Santiago; Cause No. 1048432, in the 230th Judicial District of Harris County, Texas, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence, in violation of Tex. Occupations Code §1101.652(a)(1); procuring a license making a material misstatement of fact regarding his in his timely real estate broker application of January 17, 2007, and May 28, 2009, in violation of Tex. Occupations Code §1101.652(a)(2); and failing to notify the Commission, not later than the 30th day after the date of a final conviction or entering a plea of guilty to the first degree felony criminal offense of theft involving fraud, in violation of Tex. Occupations Code §1101.652(a)(9).

**Crawford, John Christopher**  
(Missouri City); License #455489

Temporary suspension of salesperson license until such time that a final decision is made by the Commission in the underlying matter of Texas Real Estate Commission v John Christopher Crawford, effective May 19, 2010; pursuant to Tex. Occupations Code §§1101.662 and 22 Tex. Admin. Code §533.8

**Norton, Marcus M.**  
(Spring); License #N/A

Assessment of an administrative penalty of \$3,000.00 and ordered to cease and desist all unlicensed real estate brokerage activities, entered May 17, 2010; acting, engaging in and representing that he was a real estate salesperson without first holding a license issued by the Texas Real Estate Commission by assisting in negotiations between sellers and buyers for the purchase of real property with the expectation or receipt of valuable consideration, in violation of Tex. Occupations Code §1101.351.

**King, Stephen Melvin Jr.**  
(Red Oak); License #458435

Revocation of salesperson license, effective May 17, 2010; Assessment of an administrative penalty of \$20,000.00, entered May 17, 2010; failing and refusing to produce on request, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder, in violation of Tex. Occupations Code §1101.652(a)(5); failing to provide, within a reasonable time, information requested by the commission that relates to a formal or informal complaint to the commission that would indicate a violation of Tex. Occupations Code Chapter 1101, in violation of Tex. Occupations Code §1101.652(a)(6); acting negligently or incompetently by failing to maintain proper escrow/trust accounts when dealing with client's monies, failing to properly account and remit monies to his clients, and commingling of a client's monies for his own use and benefit, in violation of Tex. Occupations Code §1101.652(b)(1); engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness by failing to properly abide by the applicable rules and laws in property management real estate brokerage activities, in violation of Tex. Occupations Code §1101.652(b)(2); failing with a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person in violation of Tex. Occupations Code §1101.652(b)(9); and commingling money that belongs to another person with the license holder's own money in violation of Tex. Occupations Code §1101.652(b)(10)

**Dakota Son Corporation**  
(Killeen); License #529555

Revocation of broker license, effective May 12, 2010; Assessment of an administrative penalty of \$83,000.00, entered May 12, 2010; multiple counts of failing or refusing to provide on request a copy of a document relating to a real estate transaction to a person who signed the document in violation of Tex. Occupations Code §1101.652(b)(28); failing within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person in violation of Tex. Occupations Code §1101.652(b)(9); commingling money that belongs to another person with the license holder's own money by violating 22 Tex. Admin. Code §535.146(f) by failing to maintain money belonging to another in a trust account in violation of Tex. Occupations Code §1101.652(b)(10); failing to deposit, within a reasonable time, money the license holder receives as escrow agent in a real estate transaction in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state in violation of Tex. Occupations Code §1101.652(b)(30)(B); engaging in conduct that is dishonest or in bad faith or that demonstrates trustworthiness in violation of Tex. Occupations Code §1101.652(b)(2).

**Cleven, Ray Douglas**  
(Copperas Cove); License #481908

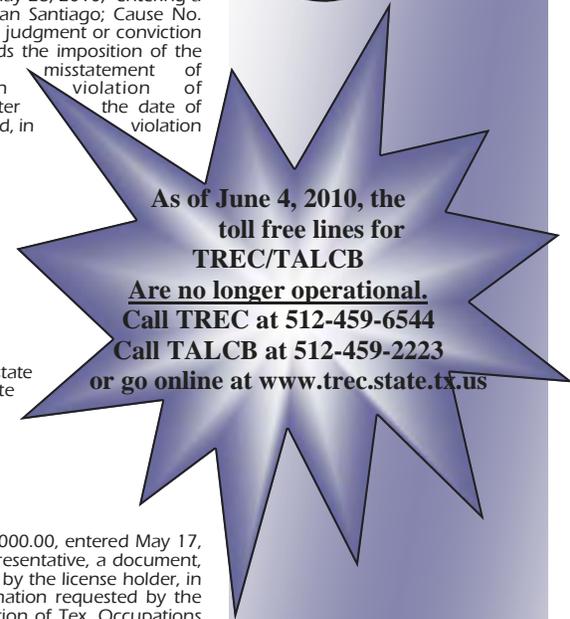
Revocation of broker license, effective May 12, 2010; Assessment of an administrative penalty of \$93,000.00, entered May 12, 2010; multiple counts of failing or refusing to provide on request a copy of a document relating to a real estate transaction to a person who signed the document in violation of Tex. Occupations Code §1101.652(b)(28); failing within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person in violation of Tex. Occupations Code §1101.652(b)(9); commingling money that belongs to another person with the license holder's own money by violating 22 Tex. Admin. Code §535.146(f) by failing to maintain money belonging to another in a trust account in violation of Tex. Occupations Code §1101.652(b)(10); failing to deposit, within a reasonable time, money the license holder receives as escrow agent in a real estate transaction in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state in violation of Tex. Occupations Code §1101.652(b)(30)(B); engaging in conduct that is dishonest or in bad faith or that demonstrates trustworthiness in violation of Tex. Occupations Code §1101.652(b)(2); failing or refusing to produce on request, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder in violation of Tex. Occupations Code §1101.652(a)(5); failing to provide, within a reasonable time, information requested by the commission that relates to a formal or informal complaint to the commission that would indicate a violation of this chapter in violation of Tex. Occupations Code §1101.652(a)(6).

**Short, Donald Mark**  
(Hewett); License #507418

Agreed reprimand of salesperson license, entered May 7, 2010; Agreed administrative penalty of \$500, entered May 7, 2010; acting negligently in failing to keep client informed, in violation of Tex. Occupations Code §1101.652(b)(1); engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness by failing to positively secure the signatures of Sellers for the release of earnest money in violation of Tex. Occupations Code §1101.652(b)(2).

**Golden, Jon Harold, Jr.**  
(Mt. Belview); License #403424

Agreed reprimand of salesperson license, entered May 21, 2010; Agreed administrative penalty of \$500, entered May 21, 2010; failing within a reasonable time to make good a check issued to the Commission, in violation of Tex. Occupations Code §1101.354(a); failing to pay a check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 Tex. Admin. Code §534.(2)



As of June 4, 2010, the  
toll free lines for  
TREC/TALCB

Are no longer operational.  
Call TREC at 512-459-6544

Call TALCB at 512-459-2223  
or go online at [www.trec.state.tx.us](http://www.trec.state.tx.us)

**Carter, Lydia R.**  
**(El Paso); License #502141**

Agreed reprimand of salesperson license, entered May 20, 2010; Agreed administrative penalty of \$500, entered May 20, 2010; 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 Tex Admin. Code §535.91(c)

**Paez, Anita Yolanda**  
**(Killeen); License #577171**

Suspension of salesperson license, until payment in full of fee, replacement funds and administrative penalty, effective May 17, 2010; Assessment of an administrative penalty of \$500, entered May 17, 2010; failing within a reasonable time to make good a check issued to the Commission, in violation of Tex. Occupations Code §1101.652(a)(4); failing to pay a check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 Tex. Admin. Code §534.2(a)

**Gonzalez, Randy**  
**(Lubbock); License #538571**

Agreed reprimand of salesperson license, entered May 12, 2010; Agreed administrative penalty of \$500, entered May 12, 2010; failing within a reasonable time to make good a check issued to the Commission, in violation of Tex. Occupations Code §1101.541(a); failing to pay a check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 Tex. Admin. Code §534.2(a)

**Webb, William Hunter**  
**(Plano); License #605391**

Agreed probationary salesperson license issued, fully probated for 2 years, effective May 27, 2010; commission of offenses that are directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occupations Code 1101.354(2).

**Garcia, Roberto Carlos**  
**(Austin); License #605287**

Agreed probationary salesperson license issued, fully probated for 3 years, effective May 24, 2010; applicant plead guilty to a criminal offense that is directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that applicant possesses the requisite honesty, trustworthiness and integrity to qualify to be licensed as a real estate salesperson under Tex. Occupations Code §1101.354(2).

**Austin, John Bernard**  
**(San Antonio); License #605050**

Agreed probationary salesperson license issued, fully probated for 1 year, effective May 17, 2010; 22 TAC § 535.52 (b)(4) states that "disciplinary action taken against, or the surrender of, any other professional or occupational license or registration, in this or any other state" demonstrates that an applicant does not possess the requisite honesty, trustworthiness or integrity for licensure. The Texas Appraiser Licensing and Certification Board has taken disciplinary action against Applicant's appraiser license, which is currently subject to an Agreed Final Order entered in Complaint No. 09-139 on August 21, 2009 by TALCB. After notice and hearing, SOAH recommended issuance of a probationary license.

**Gillis, Jack C. Jr.**  
**(Dallas); License #291565**

Agreed probationary salesperson license issued, fully probated for 3 years, effective May 13, 2010; commission of an offense that is directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occupations Code 1101.354(2).

**Guzman, Maria DeJesus**  
**(Laredo); License #604746**

Agreed probationary salesperson license issued, fully probated for 1 year, effective May 3, 2010 Applicant pled guilty to one criminal offense. This offense is directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated evidence that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occupations Code §1101.354(2).

**Morris, Ashlee Michelle**  
**(Houston); License #604757**

Agreed probationary salesperson license issued, fully probated for 2 years, effective May 3, 2010 applicant pled guilty to one criminal offense. This offenses is directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated evidence that Applicant possesses the requisite honesty, integrity and trustworthiness to qualify to be licensed as a real estate salesperson under §1101.354(2) of the Texas Occupations Code.

**Hayes, Cassandra Gail**  
**(Wylie); License #561686**

Revocation of salesperson license, effective June 25, 2010; Assessment of administrative penalty of \$5,000.00, entered June 25, 2010; acting negligently in failing to maintain accurate records in connection with leasing and repairs, returning calls, failing to keep client informed, and not providing monthly statements, in violation of Tex. Occupations Code §1101.652(b)(1); failing within a reasonable time to properly account for or remit funds, in violation of Tex. Occupations Code §1101.652(b)(9); commingling security deposits and rental payments not in a trust account, in violation of Tex. Occupations Code §1101.652(b)(10); acting as an escrow agent when not a broker, in violation of 22 Tex. Admin. Code §535.159; failing to produce documents and records to Commission upon request, in violation of Tex. Occupations Code §1101.652(a)(5); and, failing to notify the Commission within 30 days of starting usage of assume name in business, in violation of Tex. Occupations Code §1101.652(b)(23)

**Perez, David**  
**(San Antonio); License #4932**

Agreed 30 day suspension of professional inspector license, fully probated for 1 year, effective June 18, 2010; Agreed administrative penalty of \$1,000.00, entered June 18, 2010; acting negligently or incompetently in the performance of an inspection by failing to report which of the parts, components, and systems present in the property have or have not been inspected, in violation of Tex. Occupations Code §1102.301 and 22 Tex. Admin. Code 535.227(b)(2)(C) [June 1, 2008 Rules of the Texas Real Estate Commission]; failing to advise the client at the earliest practicable time that the fireplace/chimney was not

included in the inspection, in violation of 22 Tex. Admin. Code §535.227(c)(4)(A) [June 1, 2008 Rules of the Texas Real Estate Commission]; and failing to state in the inspection report that the fireplace/chimney was excluded from the report, in violation of 22 Tex. Admin. Code §535.227(c)(4)(B) [June 1, 2008 Rules of the Texas Real Estate Commission]

**Poteet, Carl Edwin, Sr.**  
(Huffman); License #417425

Agreed 2 year fully probation suspension of salesperson license, effective June 15, 2010; Agreed administrative penalty of \$1,000.00, entered June 15, 2010; engaging in misrepresentation, when trading a property with an individual for a different property, in violation of Tex. Occupations Code §1101.652(a)(3)

**Mitchell, Andrea Vanessa**  
(Harker Heights); License #457142

Agreed 6 month suspension of broker license fully probated for 1 year, effective June 11, 2010; Agreed administrative penalty of \$5,000.00, effective June 11, 2010; failing or refusing to produce on request, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder, in violation of Tex. Occupations Code §1101.652(a)(5); failing to provide, within a reasonable time, information requested by the commission that relates to a formal or informal complaint to the commission, in violation of Tex. Occupations Code §1101.652(a)(6); acting negligently or incompetently in a property management situation, in violation of Tex. Occupations Code §1101.652(b)(1); failing within a reasonable time to properly account for or remit money that is received by the license holder that belongs to another person, in violation of Tex. Occupations Code §1101.652(b)(9); failing or refusing to provide, on request, a copy of a document relating to a real estate transaction to a person who signed the document, in violation of Tex. Occupations Code §1101.652(b)(28); while a salesperson, receiving a commission or other fee without the consent of the broker who sponsored the salesperson when the salesperson became entitled to the commission or fee, in violation of 22 Tex. Admin. Code §535.3; failing to keep the principal informed at all times of significant information applicable to the transaction or transactions in which the licensee is acting as an agent for the principal, in violation of 22 Tex. Admin. Code §535.156(c); and while a salesperson, maintaining an escrow account or acting as an escrow agent, in violation of 22 Tex. Admin. Code §535.159(f)

**Magliochetti, Christopher M.**  
(Houston); License #497785

Revocation of salesperson license, effective, June 7, 2010; Assessment of an administrative penalty of \$15,000.00, entered June 7, 2010; failing and refusing to produce on request, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder, in violation of Tex. Occupations Code §1101.652(a)(5); failing to provide, within a reasonable time, information requested by the commission that relates to a formal or informal complaint to the commission that would indicate a violation of Tex. Occupations Code Chapter 1101, in violation of Tex. Occupations Code §1101.652(a)(6); acting negligently or incompetently by failing to maintain proper escrow/trust accounts when dealing with client's monies, failing to properly account and remit monies to his clients, and commingling of a client's monies for his own use and benefit, in violation of Tex. Occupations Code §1101.652(b)(1); engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness by failing to properly abide by the applicable rules and laws in property management real estate brokerage activities, in violation of Tex. Occupations Code §1101.652(b)(2); failing with a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person, in violation of Tex. Occupations Code §1101.652(b)(9); and commingling money that belongs to another person with the license holder's own money, in violation of Tex. Occupations Code §1101.652(b)(10)

**Garcia, Paul A.**  
(San Antonio); License #458960

Revocation of salesperson license, effective June 10, 2010; payment of \$50,000 made from the Real Estate Recovery Trust Account toward satisfaction of a judgment as authorized by Tex. Occupations Code §1101.655(a)

**Lindsey, Aaron Shawn**  
(Houston); License #428341

Revocation of salesperson license, entered June 29, 2010; effective February 15, 2010 automatic revocation of license by operation of law upon imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, pursuant to Tex. Occupations Code §53.021(b) and in accordance with the Opinion No. GA-0064 of the Attorney General of Texas

**Andrews, John Wayne**  
(Wichita Falls); License #164558

Suspension of salesperson license, until receipt of required information, payment in full of the replacement fees and \$1,000.00 administrative penalty assessed, all effective June 22, 2010; Assessment of administrative penalty of \$1,000.00, entered June 22, 2010; 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 Tex. Admin. Code §535.91(c); failing within a reasonable time to make good a check issued to the Commission, in violation of 22 Tex. Occupations Code §1101.354(a); failing to pay a check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 Tex. Admin. Code §534.(2)

**Mahome, Paulette Renee**  
(DeSoto); License #470928

Revocation of salesperson license, entered June 17, 2010 effective June 29, 2006; automatic revocation of license by operation of law upon imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, pursuant to Tex. Occupations Code §53.021(b) and in accordance with the Opinion No. GA-0064 of the Attorney General of Texas

**Rodriguez, Wyndee Lynn**  
(San Antonio); License #430234

Revocation of broker license, effective June 10, 2010; failing to comply with the terms and conditions of an agreed order requiring her to pay an administrative penalty for violation of 22 Tex. Admin. Code §535.92 (f)

**Robbins, Jerry Glenn**  
(Grand Prairie); License #606089

Agreed probationary salesperson license issued, fully probated for 1 year, effective June 23, 2010; commission of an offense that is directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occupations Code §1101.354(2)

**Simpson, Paul Alan**  
(Ennis); License #574701

Agreed probationary salesperson license issued, fully probated for 38 months, effective June 15, 2010; commission of an offense that is directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and

## Calendar of Events

**Inspector Committee Meeting**  
July 21, 2010  
12:00 p.m.  
(Austin)

**Commission Meeting**  
August 9, 2010  
At 10:00 a.m.  
(Austin)

**Broker-Lawyer Committee Meeting**  
Sept. 23-24, 2010  
(Austin)

**Web site:**  
<http://www.trec.state.tx.us>

**Phone**

(512) 459-6544

**New to the agency is Mr. Steven Leipsner of Lakeway who has been appointed as the sole public member to the statutory TREC Broker-Lawyer Committee. His term ends in 2015.**

demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occupations Code §1101.354(2)

**Keah, Tawana  
(McKinney); License #605780**

Agreed probationary salesperson license issued, fully probated for 2 years, effective June 14, 2010; commission of an offense that is directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occupations Code §1101.354(2)

**Swisher, Cara Rebecca  
(Austin); License #605438**

Agreed probationary salesperson license issued, fully probated for 3 years, effective June 2, 2010; commission of an offense that is directly related to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occupations Code §1101.354(2)

## F . A . Q . H I G H L I G H T Unlicensed Assistants

### **Q: What can unlicensed office personnel or an unlicensed assistant do?**

**A:** An unlicensed person may act as a host or hostess at a property being offered for sale by the broker, provided the unlicensed person does not engage in any activity for which a license is required or hold themselves out as licensees. An unlicensed person may also perform secretarial, clerical, or administrative tasks, including training personnel. [Rule 535.1(c) and (d)] Please note that solicitation of prospects by telephone is not considered secretarial work and a license is required to perform that function. [Rule 535.13(c)]. You should also review our “Information for Brokers and Salespersons Regarding Use of Unlicensed Assistants in Real Estate Transactions” under “Topics of special interest” on our home page for further examples of what can and cannot be done.

### **Change in Process: Pre-License Education Evaluations**

Beginning 9/1/10, the agency will no longer require applicants to submit education completion certificates **prior to** submitting an application for a license.

Currently, if a person wants to obtain a license, they first submit all their education (transcripts, course completion certificates, etc.) and the “Request for Evaluation of Education Documents” form to the Education & Licensing Services (ELS) Division for a staff member to review. Once ELS has determined that a person meets the pre-licensure education requirements for a particular license, the person is then given authorization to file an application for a license. This is currently a mandatory first step toward licensure.

As of September 1<sup>st</sup>, persons wanting to obtain a license will submit their education documents **along with** their application for licensure. The “education evaluation” step will no longer be required before an application is accepted. This change comes in light of the new licensing system that the agency will adopt at the end of the month.

### **Current Agency Employment Opportunities**

The agency is currently accepting applications for the following five (5) positions.

**Attorney III, TREC Standards & Enforcement Services Division**

**Appraiser II, TALCB Standards & Enforcement Services Division**

**Administrative Assistant II, Education & Licensing Services Division**

**Administrative Assistant II, Staff & Support Services Division- Cashier (2 openings)**

Detailed information and application instructions can be found on the website at:  
<http://www.trec.state.tx.us/agencyinfo/employment/employment.asp>



# Inspector Insight

Texas Real Estate Commission \* Volume 1, Number 2 \* July 2010

Texas Real Estate Commission

Volume 1, Number 2

July 2010

**Larry Foster**  
Chair  
AUSTIN

**Brian P. Murphy**  
Vice-Chair  
ARLINGTON

**Jill Frankel**  
Secretary  
TEMPLE

**Ray Armendariz**  
EL PASO

**Curtis Carr**  
BEAUMONT

**Brad R. Phillips**  
TEMPLE

**Linda S. Robicheaux**  
HOUSTON

**Nancy J. Schriedel**  
PLANO

**Fred Willcox**  
HOUSTON

## *...from the Administrator*

A large supply of good ideas have recently blossomed out of the Strategic Planning process, and out of the efforts of the dedicated members of the Texas Real Estate Inspector Committee to improve their responsiveness to the industry, and also from the forward-looking commitment of the four major inspector trade associations to cooperate in pursuing the good of the industry and protection of the public.

Strategic Planning spurred the Committee to host an "Inspector Education Forum" in early June, where the focus was on ideas for improving the education of inspectors. Proposals for a broader pre-license education requirement and even some new courses in Standards of Practice, Legal and Ethics matters were taken seriously. The Committee is working on these matters now, which will be the focus of its next meeting on July 21.

We had developed a small backlog of questions from license holders asking for assistance with specific aspects of the Standards of Practice. At its meeting on July 12, the Committee approved guidance on almost 20 of these, and the process and relevant subcommittees were restructured to offer more rapid consideration of such inquiries.

The Texas Inspector Trade Association Council (TITAC) is working steadily to get organized for the challenges and the opportunities facing the industry as it matures and develops. The agency and the Committee have been invited to regularly attend and have agreed to send representatives to act as a resource when requested and where appropriate. We look forward to assisting where we are able to be a positive influence in this effort.

Please take time to read my message in the Advisor for details of other major issues.

## Inspector Committee Meeting Highlights

In recent months, the Texas Real Estate Inspector Committee has held a series of meetings to discuss issues of significance to inspectors. Strategic planning meetings were held across the state, as well as a special Inspector Education Forum in June. Input and suggestions from these meetings have led to the creation and discussion of several proposals regarding pre-licensure and continuing education, as well as examination issues. One common suggestion was to implement a required continuing education course for inspectors dealing specifically with the Standards of Practice and related legal and ethics matters. The Committee is meeting again at noon on Wednesday, July 21, 2010, to refine its recommendations to the Commission regarding these issues and certain legislative housekeeping matters. The Education subcommittee is holding a meeting on Monday, July 26, 2010, and the Enforcement subcommittee is meeting to work on an enforcement matrix for inspector cases on the same day. All meetings are open to the public.

### Meeting Dates

Inspector Committee	July 21, 2010	12:00 p.m.
Education Subcommittee	July 26, 2010	9:00 a.m.
Enforcement Subcommittee	July 26, 2010	1:00 p.m.

### Inside this issue...

**Meeting Highlights . 1**  
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## FAQ highlight

**Q: What requirements does TREC impose on inspectors/consultants who perform maintenance consultations? For example, if a homeowner wanted to hire a consultant to perform a cursory, major defect visual inspection, including the foundation, roof, plumbing, electrical, and major appliances, would TREC require any written report?**

**A:** TREC's jurisdiction over real estate inspections is limited to inspections performed for a buyer or seller of real property in connection with a transaction. If the inspection you are proposing relates to a purchase or sale transaction, then TREC's Standards of Practice would apply, and a written report would be required. If the inspection you are proposing is not in anticipation of a purchase or sale, then TREC's requirements would not apply, and the parameters of the inspection would be governed by the agreement between the inspector and his or her client. For further information, please see §§1102.001 and 1102.002 of the Texas Occupations Code and Rule 535.223. You may find the above-referenced law and rules at our web site here: <http://www.trec.state.tx.us/formslawscontracts/default.asp>.

**Q: I am licensed as a real estate salesperson and as a professional home inspector. Can my broker's real estate office offer my inspection services to their clients?**

**A:** Under §1102.303 of the Texas Occupations Code, an inspector may not act in a transaction in the dual capacity of inspector and either (1) broker or salesperson or (2) an undisclosed principal. Therefore, it would be a violation of §1102.303 for you to inspect any property your broker has listed or where you were personally involved. Under Rule 535.156, real estate licensees have a duty to disclose to their clients any relationship they have with an inspector performing an inspection on property that is the subject of a transaction involving the licensee. If you were to perform an inspection in connection with a transaction in which your broker was involved, your broker would need to disclose your relationship (as the broker's sponsored agent), and if you were paid or received compensation or anything of value from anyone in your office in connection with the inspection, you would also need to disclose this fact and obtain the client's prior permission. You may find the referenced law and rules at our web site here: <http://www.trec.state.tx.us/formslawscontracts/default.asp>.

**Q: As a licensed inspector in the State of Texas, am I supposed to charge a sales tax on the amount of my inspection fee?**

**A:** TREC only handles the licensing and discipline of real estate inspectors, you would need to contact the state agency in charge of collecting state sales tax which is the Texas Comptroller of Public Accounts. The web site for that agency is [www.window.state.tx.us](http://www.window.state.tx.us) and their toll free number is 800.252.5555.

The Texas Department of Housing and Community Affairs has several temporary full-time Inspector Specialist positions. Duties include performing Weatherization Assistance Program (WAP) inspections of single family and multifamily units funded by the WAP Program. Experience, degree, or certification in Building Performance Institute (BPI), Texas Home Energy Rater Organization (HERO), Residential Energy Services Network (RESNET) or experience in building science principles, preferred. For a complete description of duties and how to apply go to: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us)



# TALCB Bulletin

Texas Appraiser Licensing and Certification Board \* Volume 1, Number 5 \* July 2010

## New Financial Regulation Bill Affects Appraisers and TALCB

HR 4173 has been approved by the Senate and is on its way to being signed into law. Officially titled as the "Wall Street Reform and Consumer Protection Act," the bill contains reforms of mortgage lending and marketing practices, some banking regulation reforms and several provisions affecting the appraisal industry. Once enacted, there are varying effective dates for different sections of the law, and numerous federal agencies will have to write the rules needed to actually implement the law, adding further delay. Here are a few of the more notable ideas contained in the bill:

- "Truth in Lending Act" changes will require "fee appraisers" to be paid "customary and reasonable fees" for their services. It will also require a "full, interior inspection appraisal" for "higher risk" (non-prime) loans, and two appraisals if the property is purchased within six months of the prior purchase (a "flip"). Expanded "appraiser independence" provisions are included, along with the authority for multiple agencies to issue joint interpretive guidelines. Penalties of up to \$10,000 per day are authorized for violations of appraiser independence provisions, and state Attorneys General are authorized to bring suit within three years of the violation.
- FIRREA changes include strengthening the regulatory powers of the Appraisal Subcommittee (ASC) and broadening their mandate to include more related issues. It also adds "appraisal review" to the interagency standards requirement, and mandates the use of certified appraisers for "complex appraisals." "Appraisal Management Companies" (AMC) are required to be registered with ASC, and by states within three years after enactment, and states are allowed to establish standards beyond the federal minimums, including "moral character" requirements. The law also authorizes financial grants from ASC to the states to assist with enforcement of federal standards in appraisal regulation. Quality control standards are mandated for Alternative Valuation Methods and Broker Price Opinions are formally restricted in a larger number of loan originations. The law provides needed clarity that agencies may consider professional designations in awarding appraisal assignments, and strengthens interstate reciprocity rules for license recognition.
- Equal Credit Opportunity Act rules will require all forms of valuation used to be provided to the consumer at least three days prior to a loan closing, and RESPA clarifies that fees paid for valuation products may be differentiated between the fee appraiser and the AMC on the HUD 1. And lastly, the Government Accounting Office is mandated to study a host of appraisal industry practices from appraisal methods to ASC effectiveness.

At TALCB, we have been following the progress of these measures and, when enacted, will begin a systematic evaluation of the new law's effect on the Board's processes and operations. The biggest change is likely to be the addition of AMCs as a new category of license holder subject to regulatory oversight.

### Calendar of Events

Board Meetings

August 20, 2010  
At 10:00 a.m.  
( Austin )

Web site:

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

Phone

( 512 ) 459-2232

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Texas Appraiser Licensing and  
Certification Board  
TALCB Bulletin

**Rick Perry**  
Governor

Board Members:

**James B. Ratliff**  
Chairman  
GARLAND

**Mark A. McAnally**  
Vice-Chair  
DESIGNEE MEMBER

**Luis F. De La Garza, Jr.**  
Secretary  
LAREDO

**Walker R. Beard**  
EL PASO

**Malachi O. Boyuls**  
DALLAS

**Robert D. Davis, Jr.**  
HOUSTON

**Clinton P. Sayers**  
AUSTIN

**Sheryl R. Swift**  
GALVESTON

**Donna L. Walz**  
LUBBOCK

TALCB Commissioner  
**Douglas E. Oldmixon**

Desktop Publishing  
**Patricia Holder**

Texas Appraiser Licensing  
and Certification Board  
P.O. Box 12188  
Austin, Texas 78711-2188  
(512) 459-2232  
<http://www.talcb.state.tx.us>

## ...from the Commissioner



**Douglas E. Oldmixon, Commissioner**

While we are still enjoying the results of the ASC's favorable review of the Board's operations in late May, we have little time to rest while tackling the major challenges the agency faces in the period especially leading up to the end of the fiscal year on August 31. Please take time to read the Administrator's column in the Advisor for more details.

For the last few weeks all eyes have been focused on the Congress as it fashioned the Financial Institutions Reform legislation. See the summary of some important provisions of that proposed law explained in an article on the previous page, especially as it may affect appraisers and the TALCB. When enacted, we look forward to working with the Foundation Appraiser Coalition of Texas and its members to implement the required changes, and to address other state efforts at reform as the legislative session approaches.

We announced two new public members appointed to the Board this month, replacing Danny Perkins and Bill Schneider. We appreciate their years of dedicated service and will miss them, even as we prepare to welcome Malachi Boyuls and Sheryl Swift.

Specific rule reviews, the agency's legislative appropriation request, and preparing for legislative matters ahead will dominate the Board's next regularly scheduled quarterly meeting on August 20. We welcome you to offer your ideas and assistance to your Board. We look forward to seeing you or hearing from you; or both!

### ELECTRONIC DELIVERY OF RENEWAL NOTICES

The TALCB will send electronic renewal notices to appraisers 90 days prior to the expiration date of a license. The first electronic renewal notices will be sent to appraiser certificate holders and licensees who have November 30, 2010 expiration dates. The electronic delivery of renewal notices is one of the many recommendations that are being initiated to help meet budget reductions that have been requested by our state government to help offset the projected shortfall in state revenue.

After receipt of the renewal notice, Certified General, Certified Residential, and Appraiser Trainees may go to the agency website and pay the renewal fee online. If the renewal fee is not filed online at the website, the appraiser will need to download the renewal form from the agency website and submit it with payment. This method of renewing will require that the renewal fee and a \$20 paper filing fee be submitted for processing.

State Licensed and Provisional licensees are currently unable to pay the renewal fee online. Beginning with renewals for December 31, 2010 expiration dates, State Licensed and Provisional licensees may download and submit a completed copy of the Renewal form for Appraiser Certification of License form from the website. The \$20 paper filing fee will not be required in this instance.

## *Two New Members Appointed by Perry to TALCB*

The week of July 1st, Governor Rick Perry appointed two new public members to the Texas Appraiser Licensing & Certification Board (TALCB); Mr. Malachi O. Boyuls of Dallas and Ms. Sheryl Swift of Galveston. Mr. Robert D. Davis, Jr., currently a public member on the Board, has been reappointed with a new term expiration of January 31, 2012.

Mr. Boyuls is an associate in the Dallas office of Gibson, Dunn & Crutcher LLP, where he currently practices in the firm's Litigation Department. Mr. Boyuls received his law degree from New York University in 2006 and his undergraduate degree in Religion and Philosophy from the University of Mary Hardin Baylor in 2002, where he was a member of the Crusader football team. Mr. Boyuls' term expires January 31, 2012 and he replaces Bill Schneider of Austin.

Ms. Swift is a Registered Texas Assessor Collector and is the Chief Deputy of Operations with the Galveston County Tax Office, where she supervises all fund related operations within the main and branch offices. In addition, Ms. Swift is responsible for training all management staff on the Operations team. She has been with Galveston County since December 2000. Ms. Swift's term expires January 31, 2011, and she replaces Danny Perkins of Houston.

"I am very happy to welcome Mr. Boyuls and Ms. Swift to the Board and look forward to working with them on the many challenges facing the appraiser profession in Texas," commented TALCB Chairman, James "Jaime" Ratliff. "At the same time, while we are sorry that Mr. Schneider and Mr. Perkins are leaving, we sincerely thank them for their many years of dedication and service."

The agency welcomes these new appointees!

## *Agency Outstanding Performer Named*

The agency's second quarter **OUTSTANDING PERFORMER** is Britta Mutschler. Britta is the Lead Legal Assistant in TALCB Standards & Enforcement Services (TALCB SES) and has been with the agency for six years. She started as a temporary employee in July of 2004 and was offered and accepted a full-time position that November. Britta assists TALCB SES in preparing for hearings and days in court. In addition, her co-workers tout her as the "go-to gal" to get things done in the office. She likes her job she says, because every day is different and the facts and unique circumstance of every enforcement case are interesting and change from project to project. Prior to her work with TALCB, Britta played softball at a number of Texas schools, including Texas State University- San Marcos. Britta is a star not just in TALCB, but throughout the agency as a whole, and is a valued member of the team! For her dedication and drive, the agency is proud to recognize Britta Mutschler as the TREC/TALCB Outstanding Performer.



Britta Mutschler

# Rules to be Considered for Adoption at the August Meeting

TALCB proposed amendments to 22 T.A.C. Chapter 153, Rules Relating to Provisions of the Texas Licensing and Certification Act at the May 21., 2010 meeting of the Board. The proposed amendments result from the Board's rule review process and reflect both substantive and non-substantive changes.

- §153.1, Definitions, add definitions of "ACE" (appraiser continuing education), "administrative law judge," "complex appraisal," "pleading," and "rule". Repeal the definition of "appraisal," which is in conflict with the statutory definition, and clarify the definitions of "contested case," "federally-related transaction," and "person." Replace the term "non-resident temporary registration" to "temporary out of state appraiser" to be more consistent with the statutory language.
- §153.3, The Board, eliminates subsections that are duplicative of statutory provisions and clarify that members shall continue to serve after their terms are finished until their successors are qualified to serve.
- §153.5, Fees, combines the application and education evaluation fees for all license types that are currently required to submit an education evaluation and fee before submitting an application, as these processes and fees are being proposed to be combined into a single application process (see §153.9 below). Implements a new \$20 fee for filing non-electronic documents that could be filed online, as well as increases renewal fees for late renewals at a rate of 1.5 times the regular fee for renewals up to 90 days late and two times for renewals from 91 days to one year after expiration. Last, a number of non-substantive revisions were proposed to improve readability.
- The repeal of §153.7, Categories of Appraiser Certification and Licensing, is proposed because its provisions have been incorporated into Chapter 1103 of the Texas Occupations Code (the Texas Appraiser Licensing and Certification Act).
- §153.8, Scope of Practice, consolidates the requirement that all license types comply with USPAP, and establishes specific provisions regarding a disabled appraiser's use of an unlicensed assistant.
- §153.9, Applications, combines the education evaluation and application processes, allowing applicants to submit an application for license or certification before or concurrently with submitting documentation of their coursework. This will allow prospective licensees to apply for licensure or certification without first submitting a request for education evaluation and waiting for their education to be approved. These amendments would also repeal the promulgated application and application-related forms, allowing the Board to approve (rather than adopt) forms and better respond to process changes and new requirements. Other changes better accommodate online application, renewal, and notification processes or reflect non-substantive changes to improve readability.
- §153.10, Date of Licensure, clarifies that licenses and certifications are valid for two years, while a trainee approval is valid for one year and registration as a temporary out-of-state appraiser is valid for no longer than six months, and that a license, certification, approval, or registration is not effective until it is issued by the board.
- §153.11, Examinations, is primarily a non-substantive update of the examination requirements, including a clarification that while calculators are allowed, cellular phones may not be used as calculators. In accordance with the Appraisal Qualifications Board's (AQB) Real Property Appraiser Qualification Criteria, the amendments also clarify that successful completion of the examination is valid for 24 months.
- §153.13, Educational Requirements, eliminates provisions regarding changes that became effective on November 1, 2007, as all applicants are now subject to the new requirements, and clarifies the AQB requirements regarding distance education courses. The amendments also introduce non-substantive changes to the section.
- §153.15, Experience Required for Certification or Licensing, implements the federal requirement that the board audit the experience of 100% of applicants for certification. The amendments further clarify the experience audit process.
- §153.16, Provisional License, reorganizes the section for readability and constitutes a non-substantive rewrite of the requirements for provisional licenses.
- §153.17, Renewal or Extension of Certification and License or Renewal of Trainee Approval, consolidates the general renewal requirements into a new subsection (a) and clarifies that a renewal is timely if it is complete and mailed or filed online by the expiration date. The amendments also clarify the process for reapplying for a license after expiration and make other non-substantive changes to improve readability.
- §153.18, Appraiser Continuing Education, eliminates provisions regarding changes to trainee education requirements that became effective on March 1, 2006, as the distinction in the rules is no longer necessary. The amendments also clarify that only the 7-hour national USPAP update course or its equivalent, taught by an AQB-certified USPAP instructor who is also a certified appraiser, qualifies for USPAP update course credit, and make other non-substantive changes to improve readability.

## Current Agency Employment Opportunities

The agency is currently accepting applications for the following five (5) positions.

**Attorney III, TREC Standards & Enforcement Services Division**

**Appraiser II, TALCB Standards & Enforcement Services Division**

**Administrative Assistant II, Education & Licensing Services Division**

**Administrative Assistant II, Staff & Support Services Division- Cashier (2 openings)**

Detailed information and application instructions can be found on the website at:

<http://www.trec.state.tx.us/agencyinfo/employment/employment.asp>