



# TREC Advisor

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

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## *From The Chair...*

The December 5, 2011 meeting of the Commission was quite eventful. The staff reports were very enlightening for all department areas.

Many of you have expressed some issues over communication with TREC. The Reception & Communication Services staff has done their best to listen and take action which would result in positive changes for licensees. One such action is to increase the number of incoming phone lines from 14 active to include 30 "hold" lines. Did you know in the month of October TREC received 19,991 calls, plus 4,837 emails and 571 walk-in customers to the agency? How would you like the challenge of handling this level of communication traffic?

Licensing reported, in October 2011, a total of 146,619 licensees as compared with 144,671 licensees in January 2011. Standards and Enforcement reported 160 cases opened in October and 158 cases closed for the same time period.

We also learned that effective January 1, 2012, the cost for a Department of Public Safety background check will go up by \$15, to a total of \$34.25, so when you renew your license renews, know the cost increase in this category is not for TREC, but rather is a pass-through fee to another agency.

Many of our working groups and committees met since our last meeting, The Broker Lawyer Committee, the Inspector Committee and the Education Working Group all reported to the Commission on areas of concern.

The Broker Lawyer Committee sent changes of the contract forms for final adoption to the Commission. Those forms were adopted for mandatory use on March 1, 2012. Please take the time to look at the website to familiarize yourself with the changes to the forms and be sure the agents in your office are aware of the changes and the

effective dates. The Commission also proposed adoption on changes to Form 36-7, the Addendum for Property Subject to Mandatory Membership in a Property Owner's Association.

The Inspector Committee reported some concerns over the broad language of the Code of Conduct for all committees. While TREIC are in favor of a Code of Conduct, they had some syntax concerns. The Commission passed the slightly modified Code. The Commission also adopted a policy which provides that rules affecting the standards of practice, education, and procedures of real estate inspectors should be reviewed by the Inspector Committee at a public meeting before the Commission proposes such rules for notice and comment.

The Education Working Group made some recommendations, which have been included in rule changes to sections 535.71; 535.72 and 535.75, and will be available for review and comment in the Texas Register. Do your part and let your voice be heard. Have a Happy New Year!



**Avis Wukasch, Chair**

### ***Important Dates to Remember***

TREC Broker Lawyer Committee—February 9

TREC Commission Meeting — February 27

## *New Experience Requirements Go Into Effect January 1, 2012*

Recent amendments to TREC rules add the new rules required by SB 747 to establish active experience requirements to qualify for a broker license. Active experience will be measured by a combination of active licensure and transactional experience over a four-year period. An applicant must (1) demonstrate a total of 3600 points of transactional experience for four out of five years using the point system detailed in the rule; (2) have an active license for a total of four years in the five-year period before the application is filed, or be able to complete the time and transaction requirements within the one-year period after the application is filed; and (3) obtain the signature of the applicant's sponsoring broker or brokers for the relevant time periods and transactions. The applicant must complete at least one transaction in each year of the four years in which the applicant is claiming experience.

Under the new rules, the applicant is required to use the TREC Qualifying Experience Report for a Broker License form to detail the transactions for which experience is claimed. Certain types of transactions are worth a certain number of points, depending upon the complexity of the transaction. For example, a closed purchase or sale of a single family home (residential) is worth 300 points, while a closed purchase or sale of an apartment complex with five or more units (commercial) is worth 450 points. Listing agreements or buyer representation agreements in which the applicant is an agent are worth 10 points each. An executed lease for a residential or commercial property is worth 50 points. The applicant should not include with the application copies of the documents that prove that he or she was involved in a particular transaction, but TREC may ask to see documentary proof at any time during or after the application process. Examples of documents that may be used as proof include closing statements, executed contracts, listing agreements, etc. Keep in mind that the documentation must show that the applicant was an agent in the transaction. An applicant who was a

member of a team cannot claim experience for the transactional work done by the team unless the applicant is listed in the documentation as an agent for the buyer or seller or an appointed person if the sponsoring broker is an intermediary in the transaction.

If an applicant is unable to obtain appropriate documentation or the signature of the sponsoring broker for any claimed transaction or time period, the applicant must use the TREC Affidavit in Lieu of Documentation and/or Signature to describe the applicant's efforts to obtain it. In addition, the applicant must provide two TREC Affidavits in Support of Claimed Experience. Each affidavit should be signed by a different person familiar with the applicant's circumstances and attesting to the applicant's efforts to obtain the documents or signature.

Although an applicant has up to one year after the application is filed to meet education and active experience requirements for a license, the applicant cannot take the qualifying examination until all education and experience requirements have been met. If the applicant fails to meet all requirements, including passing the examination, within the one-year period after the application is filed, the applicant will be required to file another application and pay new application fees.

Keep in mind that the effective date for the new broker experience rules is January 1, 2012. This means that applications for a broker license filed on or after January 1, 2012 will be subject to the new requirements. Applications filed before January 1 are subject to the current experience requirements. As stated elsewhere in this newsletter, an application is not considered "filed" with TREC until the entire application fee has been paid. The entire application fee must be paid before January 1 to fall under the existing experience requirements for a broker license.

## *Problems to Avoid when Acquiring Another Broker's Business*

The acquisition of a broker's business may involve particular difficulties with regard to existing listing contracts and property management agreements. If the listing contract or property management agreement is between the property owner and an entity licensed as a broker, a transfer of ownership of the entity ordinarily carries with it the contractual right to handle properties listed with or managed by the entity.

If, however, the listing contract or property management agreement is between an individual broker and a property owner, the right to act as an agent for that owner cannot be transferred without the consent of the owner. Under Texas law, a contract for the performance of personal services cannot be assigned without the consent of the person who contracted with the first broker. This is akin to the common law rule that an agent must obtain the consent of his principal in order to delegate authority to others.

A broker who plans to acquire another broker's business should consult an attorney to determine the best means in a given situation by which to become an agent for the first broker's principals. One approach, however, would be to execute new listing contracts and property management agreements in the name of the new broker. An owner could also be

requested to approve a transfer of the listings or property management agreements by providing his or her written approval.

The consequences of a dispute over the right to act as an agent for an owner may be significant. If a purported assignment of a listing contract or management agreement is ineffective due to lack of consent, the new broker may be accused of violating Section 1101.652(b)(19) of TRELA (offering property for sale or lease without the consent of the owner or the owner's authorized agent.)

The first broker's unauthorized transfer of his contractual obligations also may be alleged by the owner to constitute a breach of the listing contract or property management agreement, exposing the first broker to a suit for damages. The property owner may also attempt to recover any fees or commissions collected by the new broker.

The fact that a property owner frequently acquiesces when a new broker begins to service the property should be viewed only as a problem which has been deferred, not resolved. A broker should be able to demonstrate that the principal has unequivocally authorized representation by the new broker.

## *Public Member Vacancy on Texas Real Estate Inspector Committee*

The Texas Real Estate Commission invites applications for appointment to an open public member seat on the Inspector Committee.

The Committee's purpose is to make recommendations to the Commission regarding a variety of inspection-related matters toward the goal of ensuring a high degree of service to and protection of the public in dealing with inspectors. The committee consists of six professional inspectors and three public members. The open public member appointment expires on February 1, 2015. Following the Commission's model, public members may not hold occupational licenses in the real estate field (appraiser, real estate broker/salesperson, mortgage broker, etc.).

The committee is permitted to meet by teleconference, although it is anticipated that some travel to Austin will be necessary. Limited funds may be available for travel reimbursement, but members are not compensated for their time. All committee meetings must comply with the Open Meetings Act.

Individuals wishing to be considered for appointment should send a letter and resume to Chairman Avis Wukasch at the Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, by fax to 512-936-3788, or by e-mail to [administrator@trec.texas.gov](mailto:administrator@trec.texas.gov). Applications must be received at TREC no later than Monday, February 6, 2012.

## *Rule Actions from the December 5, 2011 Meeting of the Commission*

### **ADOPTED RULES**

#### **Chapter 535, General Provision**

##### **Subchapter B. General Provisions Relating to the Requirements of Licensure**

22 TAC §535.4 regarding License Required

The amendment to §535.4(f) replaces an existing reference to a corporation or limited liability company to “business entity” to more closely track the text of the statute. The amendment to §535.4(g) defines the meaning of “controls the acceptance or deposit of rent” and “single family residential property unit” for purposes of §1101.002(1)(A)(x) of the Act. *Effective 01-02-2012*

##### **Subchapter R. Real Estate Inspectors**

22 TAC §535.211, Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102

The amendment updates the reference in subsection (c) to the current certificate of insurance form, REI COI-0. *Effective 01-02-2012*

##### **Chapter 537 Professional Agreements and Standard Contracts**

22 TAC §537.20-.23, §537.26-.28, §537.30,-.33, §537.35, §537.37, §537.39-.41, §537.44-.48, §537.51, and §537.52

The amendments adopt by reference six revised contract forms and 17 assorted addenda without changes to the rule text as published in the October 28, 2011, issue of the Texas Register (36 TexReg 7262), but with changes to the forms..

The difference between the forms as proposed and as adopted are as follows: Paragraph 7.F. regarding repairs and treatments is changed to clarify that the buyer may extend the closing date up to 15 days so that the seller may complete repairs pursuant to the paragraph. The phrase “smoke detectors” is changed to “smoke alarms” in paragraph 21 of TREC Form Nos. 15-5 and 16-5. “Financing Approval” is changed to “Credit Approval” is changed in TREC Form No. 40-5, Third Party Financing Addendum for Credit Approval, to be consistent with other forms. Typographical errors in various forms are

corrected. ce after an application has been submitted until such time that the applicant meets the total number required but before the applicant may take the qualifying examination. Experience earned after the application is submitted is to be reported on a different form adopted by reference in the rule. If an applicant is unable to obtain sufficient documentation and/or the signature of the sponsoring broker, the applicant is required to use an affidavit adopted by reference in the rule to describe the applicant's efforts to obtain the documentation and/or signatures. In addition, the applicant is required to provide two additional affidavits each signed by a different individual familiar with the applicant's circumstances and attesting to the applicant's efforts to obtain the appropriate documentation. The application forms and affidavits are adopted by reference in the rule. The rule gives the commission the discretion to request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by §1101.356 of the Act and §535.56. *Effective date: 03-01-2012.*

### **PROPOSED RULES**

##### **Subchapter B. General Provisions Relating to the Requirements of Licensure**

22 TAC §535.16. Listings; Net Listings

The amendments clarify that a real estate licensee must provide a broker price opinion rather than opinion of market value when negotiating a listing or offering to purchase the property for the licensee's own account as a result of contact made while acting as a real estate agent.

##### **Subchapter E. Requirements for Licensure**

22 TAC §535.56. Education and Experience Requirements for a Broker License

Under current §535.56, the commission has waived the education and experience required for a broker license for a broker who was licensed as a broker in the preceding two years and otherwise meets the

requirements of the subsection. The proposed rule would conform subsection (h) by deleting a sentence which implies that a person previously licensed as a salesperson may become a broker under the waiver.

## **Subchapter G. Mandatory Continuing Education**

22 TAC §535.71, Approval of Providers, Courses and Instructors, §535.72, Presentation of Courses, Advertising and Records, and new §535.75, Education Curriculum Standards Committee.

The amendments to §535.71 and §535.72 provide the method by which the commission will create and approve the broker responsibility course, which will be the same way it handles the 3 hour legal update and 3 hour ethics courses required under §1101.455, and provides conforming changes for consistency. New §535.75 creates the Education Curriculum Standards Committee whose mission is to regularly review and revise curriculum standards, course content requirements and instructor certification.

## **Subchapter H. Recovery Fund**

22 TAC §535.82 Proration of Payments from the Recovery Trust Account

The new rule clarifies provisions of Subchapter M, regarding proration of claims in the event of multiple claims that exceed the payment limitations of \$50,000 per transaction and \$100,000 per licensee

## **Subchapter R. Real Estate Inspectors**

22 TAC §535.221 Advertisements

The amendments change the requirement that inspectors immediately notify the Commission of the inspector's use of an assumed name in the inspection business, instead allowing 30 days for such notice.

22 TAC §535.240 Proration of Payments from the Real Estate Inspection Recovery Fund

The new rule clarifies provisions of §1102.359, Texas

Occupations Code, regarding proration of claims in the event of multiple claims that exceed the payment limitations of \$12,500 per transaction and \$30,000 per inspector.

## **Subchapter T. Easement and Right-of-Way Agents**

22 TAC §535.400, Registration of Easement or Right-of-Way Agents; §535.403, Renewal of Registration; new §535.404, Fees and new §535.405, Employee of Owner or Purchaser

The amendments would increase the registration fee from \$80 for a one-year registration to \$200 for a two-year registration; and the renewal fee \$160 (\$80 per year) to \$200 for a two-year registration. The amendments would add new §535.405 to clarify that an employee of an owner or purchaser of an easement or right-of-way is not required to be registered under the Act.

## **Chapter 537 Professional Agreements and Standard Contracts**

22 TAC §537.43, Standard Contract Form TREC No. 36-6 Addendum for Property Subject to Mandatory Membership in a Property Owners' Association

The amendment to §537.43 proposes to adopt by reference Standard Contract Form TREC No. 36-7. Paragraphs A.1 is revised, paragraph A.2 is new to acknowledge recent statutory revisions which permit a buyer to obtain a resale certificate directly from a property owner's association, and paragraph A.3 is revised. Paragraph C is revised to replace "resulting from" to "associated with" to track recent statutory changes to Chapter 207, Property Code. Under new paragraph E, seller authorizes the association to release subdivision information and an updated resale certificate if required by the buyer, the title company, or any broker to the sale. Amendments to the form change the main telephone number and website address for TREC located in the box at the bottom of the forms. Unless specifically referenced below, such changes are the only changes made to the forms adopted by reference.

## *TREC Enforcement Matters*

**Acosta, Luis (San Antonio); License #510811** Reprimand of salesperson license, effective October 31, 2011 accepting compensation from a person other than the salesperson's sponsoring broker, in violation of Tex. Occ. Code §1101.651(b), for which disciplinary action is authorized by Tex. Occ. Code §1101.652(a)(10).

**Perez, Martina S. (Corpus Christi); License #413926** 4 year suspension of broker license, effective October 31, 2011; Beginning October 31, 2012 the suspension to be fully probated for 3 years; Assessment of an administrative penalty of \$12,000, effective October 31, 2011; Completion of a 30 hour agency law course on or before January 10, 2012 acting negligently or incompetently in her representation of Seller's and Buyer's interest while acting as the listing agent and buyer's representative in the real estate transaction (2 counts), in violation of Tex Occ. Code §1101.652(b)(1); failing to properly establish the intermediary relationship between herself and the buyer and seller in the real estate transaction, in violation of Tex Occ. Code §1101.559, unauthorized practice of law by drafting a document that transfers or otherwise affects an interest in real property in violation of Tex Occ. Code § 1101.654(a)(1).

**Rawles, Ericka Kristin (Fort Drum); License #493768** Assessment of an administrative penalty of \$13,000, effective October 31, 2011 acting negligently or incompetently in the performance of her duties and responsibilities as a real estate salesperson, in violation of Tex. Occ. Code §1101.652(b)(1) by, not fulfilling her duties and responsibilities in accordance with the Listing and PMA, and not communicating with a client; engaging in conduct that is dishonest or that demonstrates untrustworthiness, in violation of Tex. Occ. Code §1101.652(b)(2) by receiving money as payment to perform specific duties per the Listing and PMA and never fulfilling those duties; and failing within a reasonable time to properly remit money that is received by the license holder and that belongs to another person, in violation of Tex. Occ. Code §1101.652(b)(9), by not remitting funds given to her by seller to her broker.

**Clark, Jackie Lynn (Alvin); License #460071** 6 month suspension of broker license, effective October 28, 2011; Assessment of an administrative penalty of \$2,000, effective October 28, 2011 engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness by failing to perform listing services as promised, in violation of Tex. Occ. Code §1101.652(b)(2).

**Rapp, William Johann Jr. (Houston); License #595622** Agreed reprimand of salesperson license, effective October 25, 2011 engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness while acting as a broker or salesperson by signing an amendment on behalf of a party to a contract without authority, in violation of Tex. Occ. Code §1101.652(b)(2).

**Simon, Gail S. (Eastland); License #546341** Agreed 1 year suspension of salesperson license fully probated for 1 year, effective October 21, 2011; Agreed administrative penalty of \$2,400, effective October 21, 2011 engaging in negligent or incompetent conduct in property management by failing to keep principal informed on property rental status and payments received, in violation of Tex. Occ. Code §§1101.652(b)(1); failing within a reasonable time to properly account for or remit money that is received by the licensee in trust and belongs to another, in violation of Tex. Occ. Code §1101.652(b)(9); commingling money belonging to others with the licensee's own money, in violation of Tex. Occ. Code §1101.652(b)(10); and, performing property management as a salesperson without associating with or going through the sponsoring broker, in violation of Tex. Occ. Code §1101.351(c).

**Dickens, Donna Kaye (Dallas); License #481800** Agreed reprimand of salesperson license, effective October 20, 2011; Agreed administrative penalty of \$2,500, effective October 20, 2011; Completion of a 30 hour contract law course on or before December 31, 2011 violating intermediary provisions in Tex. Occ. Code

§§1101.559(a)(b)&(c); and inserting a contingency in an amendment document and failing to advise the principals that each should consult a lawyer before executing that amendment, in violation of 22 Tex. Admin. Code §§537.11(C) and (d), effective June 1, 2008, now 22 Tex. Admin. Code §§537.11(d) and (l).

**Deleon, Isela Alejandra (Houston); License #576702** Agreed 34 month suspension of salesperson license fully probated for 34 months, effective October 15, 2011; Agreed administrative penalty of \$2,000, effective October 15, 2011 engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness while acting as a broker or salesperson, in violation of Tex. Occ. Code §1101.652(b)(2); 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. Occ. Code §1101.652(b)(9).

**Bolgiano, Milton Steven (McKinney); License #442228** Revocation of broker license, effective October 11, 2011; Assessment of an administrative penalty of \$9,000, effective October 11, 2011 entering a plea of guilty and convicted of a felony, in violation of Tex. Occ. Code §1101.652(a)(1); 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. Occ. Code §1101.652(a)(6); failing to notify the Commission, not later than the 30th day after the date of a final conviction or the entry of a plea of guilty, in violation of Tex. Occ. Code §1101.652(a)(9); offering to sell or lease real property without the knowledge and consent of the owner of the real property, in violation of Tex. Occ. Code §1101.652(b)(19); offering to sell or lease real property on terms other than those authorized by the owner of the real property, in violation of Tex. Occ. Code §1101.652(b)(20); failing to specify a definite termination date that is not subject to prior notice in a contract, in which the license holder agrees to perform services for which a license is required under this chapter, in violation of Tex. Occ. Code §1101.652(b)(12); and failing or refusing to provide information or produce, for inspection by the Commission a document, book, or record related to complaint or to a real estate transaction conducted by the license holder, in violation of Tex. Occ. Code §1101.652(a)(5) and §1101.652(a)(6). 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. Occ. Code §1101.652(a)(6).

**Martin, Linsey Ann (San Antonio); License #559314** Revocation of salesperson license, effective October 4, 2011; Assessment of an administrative penalty of \$4,000, effective October 4, 2011 engaging in misrepresentation, dishonesty, or fraud when selling, buying, trading, or leasing real property in the name of the license holder and license holder's spouse, in violation of Tex. Occ. Code §1101.652(a)(3).

**Taylor, Larry Scott (Austin); License #399516** Agreed reprimand of broker license, effective October 4, 2011; Agreed administrative penalty of \$3,000, effective October 4, 2011 acting negligently or incompetently while acting as a broker in a real estate transaction by failing to be aware of real estate brokerage activities of a limited liability company for which he had signed an application to be the designated manager, in violation of Tex. Occ. Code §1101.652(b)(1).

**Charles, Gwendolyn (Houston); License #499776** Agreed 12 month suspension of broker license fully probated for 12 months, effective October 1, 2011; Agreed administrative penalty of \$1,500, effective October 1, 2011 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. Occ. Code §1101.652(b)(9); 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. Occ. Code §1101.652(a)(6).

**Abbate, James Vincent (Abilene); License #30542** Suspension of easement of right away agent license, effective October 28, 2011 until payment in full of replacement fees and administrative penalty; Assessment of an administrative penalty of \$500, effective October 28, 2011 failing with a reasonable time to make good a check issued to the Commission, in violation of Tex. Occ. Code §1101.652(a)(4); failing to pay a check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 Tex. Admin. Code §535.(a).

**CW Realtors, LLC (Austin); License #571053** Agreed 1 year probationary broker license issued, effective October 25, 2011; Agreed administrative penalty of \$1,000, effective October 25, 2011 conducting brokerage activities without being licensed, in violation of Tex. Occ. Code §1101.351(a); Applicant demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).

**Tamez, David Kyle (Abilene); License #616455** Agreed 2 year probationary license issued, effective October 21, 2011 commission of an offense that directly relates to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).

**Harrison, Lewis Blake (Dallas); License #457921** Agreed 5 year probationary salesperson license issued, effective October 12, 2011 commission of an offense that directly relates to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).

**Douglass, John David (Austin); License #616067** Agreed 2 year probationary license issued, effective October 4, 2011 commission of an offense that directly relates to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1(a). Applicant provided documentation addressing the factors outlined in 22 Tex. Admin. Code §541.1(c) and demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).

# TALCB Bulletin



*TALCB was created by an act of the Texas Legislature in 1991 to license, certify and regulate real estate appraisers in Texas under state and federal laws. In 2011, TALCB's jurisdiction was expanded to register and regulate appraisal management companies.*

***Inside this issue:*** *National Registry Fee Increasing (Page 1) From the Chairman (Page 2)*

## *National Registry Fee Increasing in 2012*

Effective January 1, 2012, the National Registry fee is increasing to \$40/year (\$80 per two-year license). The increased fee will be required for all new licenses issued on or after January 1, 2012, timely renewals of licenses expiring after December 31, 2012, and all late renewals filed on or after January 1, 2012. This change was initiated by the Appraisal Subcommittee (ASC), as required by federal law, and all Registry fees are forwarded to the ASC. The following examples may be helpful in determining whether you will need to pay the increased fee:

### ***Important Dates to Remember***

TALCB Board Meeting— January 13

TALCB Board Meeting—February 17

TALCB Board Meeting—May 20

Example – timely renewal:

An appraiser whose license expires December 31 files a renewal application on December 30. Because the new license is effective January 1, the Registry fee is \$50 (\$25/year).

Example – timely renewal:

An appraiser whose license expires January 31 files a renewal application on December 30. Because the new license is effective after January 1 (February 1), the Registry fee is \$80 (\$40/year).

Example – late renewal:

An appraiser whose license expires December 31 files a late renewal application on January 6. Because the new license is effective after January 1, the Registry fee is \$80 (\$40/year).

## From the Chairman...



**Luis De La Garza, Jr.**

At our October 12<sup>th</sup> meeting, the Board members not only heard the regular staff reports and provided input on agency budget matters, but also had a full agenda of rules to consider and propose or adopt, as well as two dozen enforcement matters to act upon. As usual, the members responded to all items with insightful questions and suggestions.

A large number of new rules related to appraisal management companies were adopted, but four rules were withdrawn and re-proposed due to the intense interest they generated. The Board thought these items needed additional research and comments from a broader group before action to finalize and adopt them should be considered. These four rules are:

159.52 Fees – what should the registration fee be for an AMC to operate in Texas? The initial proposal was \$4,000 for a two-year license, plus \$20 per appraiser panelist. After additional research, the current proposal is reduced to just \$3,300 plus \$10 per panelist. A concern for some AMCs is to protect the names of their panelists as a “trade secret”.

159.154 Competency of Appraisers – how should AMCs establish the competency of appraisers? In addition to the appraiser’s representations on specific issues, what other due diligence can AMCs reasonably

accomplish? This rule clarifies these matters.

159.155 Periodic Review of Appraisals – how often and how many appraisal reports should be reviewed by an AMC to reasonably ensure the quality of the work produced? A random 5% of the total is proposed, including one of the first 5 done by each panelist.

159.157 Compensation of Appraisers – Federal law requires such compensation to be “customary and reasonable”, but how can this be judged? Federal rules also allow for certain presumptions, and these are adopted into the Texas rule as well. One area of concern remains whether an AMC can require an appraiser to sign a certification that the fee paid and received was both customary and reasonable. Texas seeks to prohibit this practice.

These matters will take up a significant portion of the agenda at the Board’s next meeting on January 13<sup>th</sup>. The HB 1146 Working Group has made its recommendations and staff will be making the case for the adoption of the final rules. We encourage those interested in these matters to come and make your thoughts known. We look forward to seeing you. Happy New Year!

# Inspector Insight



***Inside this issue:*** *Public Member Vacancy Announcement (Page 1)*  
*Chairman's Corner (Page 2) Standards of Practice Commentary (Page 2)*  
*Educators Welcome (Page 3)*

## **Public Member Vacancy on Texas Real Estate Inspector Committee**

The Texas Real Estate Commission invites applications for appointment to an open public member seat on the Inspector Committee.

The advisory committee's purpose is to make recommendations to the Commission regarding a variety of inspection-related matters toward the goal of ensuring a high degree of service to and protection of the public in dealing with inspectors. The committee consists of six professional inspectors and three public members. The open public member appointment expires on February 1, 2015. Following the Commission's model, public members may not hold occupational licenses in the real estate field (appraiser, real estate broker/salesperson, mortgage broker, etc.).

The committee is permitted to meet by teleconference, although it is anticipated that some travel to Austin will be necessary. Limited funds may be available for travel reimbursement, but members are not compensated for their time.

All committee meetings must comply with the Open Meetings Act.

Individuals wishing to be considered for appointment should send a letter and resume to Chairman Avis Wukasch at the Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, by fax to 512-936-3788, or by e-mail to [administrator@trec.texas.gov](mailto:administrator@trec.texas.gov). Applications must be received at TREC no later than Monday, February 6, 2012.

### ***Important Dates to Remember***

TREIC SOP Subcommittee Meeting—Jan 10

TREIC Meeting—February 3

*Chairman's Corner*

The Inspector Committee has been very busy this last quarter working on revisions to the Standards of Practice and I want to thank especially the members of the Standards of Practice sub-committee for all their hard work on these important matters. It is a constant challenge to keep the Standards of Practice clear and relevant as building technologies evolve.

The Committee also made its final recommendation to the Commission regarding posting the commentary as an optional exam preparation reference. The Commission decided to allow a period for public comments on this recommendation. Please go to the main inspector page on the TREC website to read the commentary and provide any input on this recommendation. Specifically, do you find the commentary to be a useful exam preparation tool?

The Committee also expressed some concerns over the broad language of the agency's proposed Code of Conduct for all committees and working groups. The Commission agreed with some of the Committee's recommendations

and adopted a slightly modified version. The Commission also adopted a policy that rules affecting the standards of practice, education, and procedures for real estate inspectors should be reviewed by the Inspector Committee at a public meeting before the Commission proposes the rules for public notice and comment. Other more administrative matters may be provided to the Committee for comments at the same time as the public is invited to comment on the proposal. These policies are a helpful clarification of the statutory guidance.

Lastly, the Request for Proposals (RFP) for a national and state exam for inspectors is currently open. The Committee has recommended that the Commission look at alternatives to include a national exam for inspectors that would be more "portable" between states. We look forward to more closely examining these alternatives as the RFP closes early in the new year. Speaking of which, we wish you all the best as 2012 dawns with new challenges and opportunities.

*TREC Seeking Input on Standards of Practice Commentary*

The Texas Real Estate Commission is seeking input from inspectors and the public on a recommendation to post a set of comments to the Standards of Practice for inspectors as one of several optional examination preparation resources listed on the inspector examination page of the TREC website. This set of comments is proposed to be added to that location and posted with the following notice: "These comments are not an official interpretation of the Standards of Practice and should not be relied on as such."

The document is available at <http://www.trec.state.tx.us/inspector/default.asp> or by clicking Inspector Information from the TREC homepage.

Please submit all input by Monday, January 23 by e-mail to [commentary@trec.texas.gov](mailto:commentary@trec.texas.gov) or by mail to the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711.

## *Educators Invited to Attend Next Inspector Committee Meeting*

The Texas Real Estate Inspector Committee (TREIC) invites education providers to the February 3, 2012 TREIC meeting to share their experiences and ideas regarding core and continuing education for inspectors. In addition to general input regarding curriculum matters, the Committee requests responses to the following questions:

- What do you think are the causes of the low examination passing rate?

- What guidance from TREC would be helpful to you in meeting the expectations of the agency and of consumers of real estate inspection services?

Educators who would like to contribute but are unable to attend may provide input in writing to P.O. Box 12188, Austin, Texas 78711.



### **Want to see what's on the agenda for the next TREIC Meeting?**

All of the meeting agendas and minutes are posted on the TREC website here: [www.trec.state.tx.us/newsandpublic/meetings.asp#inspector](http://www.trec.state.tx.us/newsandpublic/meetings.asp#inspector)