



**Materials for the February 8, 2010  
Meeting of the  
Texas Real Estate Commission  
Room 235  
Austin, Texas**



**AGENDA**

**February 8, 2010**

**AGENDA FOR TEXAS REAL ESTATE COMMISSION (TREC) MEETING**  
Conference Room 235, TREC Headquarters Office  
1101 Camino La Costa, Austin, Texas

**February 8, 2010, at 10:00 a.m.**

CALL TO ORDER

1. Call to order and pledges of allegiance
2. Election of Officers

MINUTES

3. Approval of minutes of December 14, 2009 Commission meeting
4. Discussion and possible action to excuse commissioner absence(s), if any

STAFF AND COMMITTEE REPORTS

5. Reports by administrator and division directors which may include reports of monthly activities and statistical data for licensing, education, enforcement, technology usage, recovery trust account and fund activity, and updates on new and ongoing agency activity; questions by commissioners to division directors regarding issues raised by the monthly activities reports; discussion of current topics raised by monthly reports; requests by the Commission for additional information or reports from staff; and introduction of new employees

PUBLIC COMMENTS

6. General comments from visitors

EXECUTIVE SESSION

7. Executive session to discuss pending litigation pursuant to Texas Government Code §551.071 and if necessary, to receive legal advice from general counsel under Texas Government Code §551.071

ACTION ON MATTERS FROM EXECUTIVE SESSION

8. Discussion and possible action to authorize settlement of recovery fund claims or take other action on items considered in executive session

RULE REVIEW

9. Discussion and possible action regarding schedule of rule review for 2010
10. Discussion and possible action to propose the review of:
  - a. 22 TAC Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees
  - b. 22 TAC Chapter 533, Practice and Procedure
  - c. 22 TAC Chapter 537, Professional Agreements and Standard Contracts
  - d. 22 TAC Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53
11. Discussion regarding comments on the review of:
  - a. 22 TAC Chapter 534, General Administration
  - b. 22 TAC Chapter 539, Provisions of the Residential Service Company Act
  - c. 22 TAC Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act

Pursuant to the Americans with Disabilities Act, any requests for reasonable accommodation needed by persons wishing to attend this meeting should be submitted to Loretta DeHay at 512-465-3900.

## RULES FOR POSSIBLE PROPOSAL

12. Discussion and possible action to propose amendments to:
  - a. 22 TAC §534.1 Charges for copies of Public Information,
  - b. 22 TAC §534.4 Historically Underutilized Businesses Program,
  - c. 22 TAC §534.5 Bid Opening and Tabulation
13. Discussion and possible action to propose amendments to:
  - a. 22 TAC §539.4 Disclosures
  - b. 22 TAC §539.51 Employee Defined
  - c. 22 TAC §539.61 Application and Licensing
  - d. 22 TAC §539.71 Miscellaneous Forms
  - e. 22 TAC §539.91 Annual Report Form RSC 6-2
  - f. 22 TAC §539.137 Semiannual Report

## RULES FOR POSSIBLE ADOPTION

14. Discussion and possible action to adopt amendments to:
  - a. 22 TAC §535.61 Examinations
  - b. 22 TAC §535.62 Accreditation of Schools and Approval of Courses and Instructors
  - c. 22 TAC §535.64 Payment of Annual Fee, Audits, Investigations and Enforcement Actions
15. Discussion and possible action to adopt new §535.93 Late Renewal Applications
16. Discussion and possible action to adopt amendments to 535.208 Application for Licensure as an Inspector

## PENDING BUSINESS

17. Discussion regarding appointments to the Broker Responsibility Committee
18. Discussion regarding appointments to the Education Committee

## NEW BUSINESS

19. Discussion and possible action regarding self-executing clauses in agreed orders
20. Discussion and possible action to approve a plan to identify savings in priority increments totaling 5% of the general revenue and general revenue-dedicated appropriations for the 2010-11 biennium, pursuant to the request dated January 15, 2010, from Texas Governor Rick Perry, Lieutenant Governor David Dewhurst, and Speaker of the House Joe Straus
21. Discussion and possible action regarding the Texas Real Estate Commission Strategic Plan for the fiscal years 2011-2015

## FUTURE MEETINGS

22. Discussion and possible action to schedule future meetings
23. Adjourn

1. Call to order and pledges of allegiance
2. Election of Officers

### ***MINUTES***

3. Approval of minutes of December 14, 2009 Commission meetings
4. Discussion and possible action to excuse commissioner absence(s), if any

## **Agenda Item 2**

### **SUMMARY**

Provides for the election of a vice-chair and secretary from the members of the Commission.

### **STAFF RECOMMENDATION**

Elect a vice-chair and secretary

### **MOTION**

**MOVED**, that \_\_\_\_\_ is elected as  
Vice-Chair and \_\_\_\_\_ is elected as  
Secretary for February 2010-February 2011.

### **Agenda Item 3**

#### **SUMMARY**

Provides for the approval of the minutes of the December 14, 2009, Commission meeting.

#### **STAFF RECOMMENDATION**

Approve the minutes as presented.

#### **MOTION**

**MOVED**, that the minutes of the December 14, 2009, Commission meeting, in the form presented at this meeting, are hereby approved.

TEXAS REAL ESTATE COMMISSION  
December 14, 2009  
Room 235, 1101 Camino La Costa  
Austin, Texas

On Monday, December 14, 2009, at 10:02 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Chairman Eckstrum called the meeting to order. The Chairman asked Commissioner Justice to lead the attendees in the pledges of allegiance to the United States and Texas flags. Chairman John Eckstrum presided, and Patricia Holder recorded the minutes. The following commissioners, constituting a quorum, were in attendance:

John Eckstrum, Chairman

Troy C. Alley, Jr.

Adrian Arriaga

Chris Day

Jaime Hensley

Joanne Justice

Dona Scurry

Avis Wukasch

Staff present included Karen Alexander, Devon Bijansky, Loretta DeHay, Kerri Galvin, Gwen Jackson, Douglas Oldmixon and Tom Watson.

The Chairman moved to agenda item two, approval of minutes of the October 19, 2009, Commission meeting. The Chairman asked if there were any corrections, additions or deletions to the minutes as read; hearing none, the Commission approved the minutes by unanimous consent.

The Chairman moved to agenda item three, discussion and possible action to excuse commissioner absence(s), if any. Upon motion of Ms. Wukasch, duly seconded by Mr. Alley, the absence of Commissioner Tom Mesa was excused.

The Chairman moved to agenda item four, reports by the Administrator and Division Directors, which may include reports of monthly activities and statistical data for licensing, education, enforcement, technology usage, recovery trust account and fund activity, and updates on new and ongoing agency activity; questions by Commissioners to Division Directors regarding issues raised by the monthly activity reports; discussion of current topics raised by monthly reports; requests by the Commission for additional information or reports from staff; and introduction of new employees.

Douglas Oldmixon, Administrator, reported that the new employee manual went into effect on November 1, 2009. In conjunction with the release of the manual, core hours for staff were established and further reorganization was implemented. The Reception and Communication Services Division was established, with Lorie DeAnda promoted to Director of this division. Kerri Galvin was hired to fill the position of Director of Standards and Enforcement Services. Betsy Bird joined the Administration and Management Services division as the new Public Affairs Specialist. Mr. Oldmixon presented an update on the VERSA conversion, the NEUBUS scanning project and the testing of the electronic delivery system of licenses. He reported that the agency was going through a Bottom Up Review (BUR) and over 200 suggestions had been received from staff. The Commissioners discussed Mr. Oldmixon's report.

Ms. Jackson, Director of Education and Licensing Services, stated that although the number of applications received in the reporting month of October 2009 was significantly lower than in 2008, there was a 3.18% increase in broker licenses issued from an original application. There was an increase in the total number of licensees for the month of October by 31 licenses over September. Over 350 instructors had taken the "Train the Trainer" course for the updated Legal and Ethics Courses offered by the Real Estate Center. There was discussion concerning the approval of an application to teach the Legal and Ethics Courses as a stand alone course and the approval if the courses were incorporated into another course. There was discussion concerning the current pass rate for examinations and the possibility of changes to this pass rate. Ms. Jackson reported that at this time staff was seeking further information and clarification concerning pass rate percentages. There was discussion concerning the decrease in the number of first year salespersons.

Ms. Galvin, Director of Standards and Enforcement Services, stated that due to information coming out of the BUR, her division would undergo a complete reorganization. Three different teams would handle complaints from different geographical areas: Dallas/Fort Worth, Houston, and South/Central/West Texas. A fourth team would be responsible for all application and moral character determination cases, as well as alternative dispute resolution of some cases. Each team would consist of one or more attorneys, legal assistants, administrative personnel and three investigators. There was discussion concerning setting standards for application review and how subsequent renewals would be handled. Ms. Galvin reported on the current case activity and the projections for the immediate future, which would be affected by the closing of older, more complicated cases that are the current focus of the division. There was discussion concerning the hearing process before the State Office of Administrative Hearings and the agency processes in handling contested cases.

Mr. Watson, Director of Information and Technology Services, reported on the I1 report and the number of online transactions on applications which showed a marked increase. There was discussion concerning the

implementation of the new data system. Mr. Watson stated that the imaging project was in production on a limited scale. There was discussion concerning this issue.

Ms. Alexander, Director of Staff and Support Services, reported on projected payments from the Recovery Trust Account. There was discussion regarding the interest of one of the securities in the report and the process used to purchase securities.

Chairman Eckstrum moved to agenda item five, general comments from visitors. No comments were offered.

Ms. DeHay, General Counsel and Deputy Administrator, updated the Commission on the Attorney General Opinion recently received, GA 0748 (2009). She also reported on the ARELLO conference she had attended in Miami, Florida, in October.

The Chairman moved to agenda item six, executive session to discuss pending litigation pursuant to Texas Government Code §551.071 and, if necessary, to receive legal advice from general counsel on posted agenda items under Texas Government Code, §551.071. The executive session began at 11:20 a.m. The meeting returned to open session at 11:45 a.m.

The Chairman moved to agenda item seven, discussion and possible action to authorize payments from recovery funds or other action on items considered in executive session. Ms. Bijansky presented the following recovery fund cases for consideration and possible payment:

RF09-016, Robert McCarthy v. Daryl Claiborne, in the amount of \$40,000 in actual damages and \$10,000 in attorney fees. Mr. Day, seconded by Ms. Wukasch, moved to contest payment. The motion was adopted by unanimous vote.

RF09-024, Steven Santos v. Angelita Garza, in the amount of \$36,635.85 in actual damages and \$9,500 in attorney fees. Ms. Hensley, seconded by Mr. Arriaga, moved to authorize payment. The motion was adopted by unanimous vote.

RF10-002, Martha Malone v. Christopher L. Bodey, in the amount of \$9,691 in actual damages and \$400 in attorney fees. Mr. Alley, seconded by Mr. Arriaga, moved to authorize payment. The motion was adopted by unanimous vote.

The Chairman moved to agenda item eight, discussion and possible action to propose new 22 TAC §535.93, regarding late applications. Ms. DeHay presented the agenda item for discussion and possible action. New §535.93 would permit a person with an expired salesperson or broker license to retroactively renew the previous license if the application to renew was filed less than one year from the expiration of the previous license. The new rule would require the commission to renew the license in an active status except as provided by the section. In order to retroactively renew a salesperson's license on active status, a salesperson applicant would have to provide certification of sponsorship for the period beginning on the day after the renewal license

is issued, and otherwise comply with the section. If a salesperson desires to show continuous coverage, he or she would complete a form with sponsor's signature indicating coverage from expiration through renewal issuance. 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 would be required to 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 would be required to 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 (optional), and for the period beginning on the day after the renewal license is issued (required). Ms. DeHay stated that this rule was to clarify the late renewal rules in response to recent litigation filed against the Commission in district court.

After discussion, upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the new rule for proposal and publication in the *Texas Register*. Mr. Arriaga voted against the motion.

Mr. Eckstrum moved to agenda item ten, discussion and possible action to adopt amendments to 22 TAC Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act.

Ms. DeHay presented the amendments and forms for discussion and possible adoption. The amendments to §543.4 adopt by reference four amended forms, TSR 1-5, 2-5, 3-3, and 8-1. The changes to the forms correct typographical errors, and TSR 1-5 is amended to be consistent with recent amendments to the Texas Timeshare Act, Chapter 221, Texas Property Code enacted under SB 1036 during the 81st Legislative Session. The revisions remove references to the name and address of the person who prepared the operating budget, and remove language that used to be required in the contract of purchase but is no longer required under SB 1036. The amendment to §543.5 adds to the list of material violations failure to properly comply with requirements for filing an assumed name. The amendment to §543.12 adds subsection (d) to provide a 60-day time period in which a developer must respond to a request for additional information from TREC in connection with an application to renew a timeshare plan. New §543.13 provides a process and time period for which developers must file assumed names with the commission to comply with changes to the Timeshare Act made by SB 1036. Upon motion of Ms. Wukasch, duly seconded by Mr. Alley, the Commission approved the forms and rules for adoption and submission to the *Texas Register*.

The Chairman moved to agenda item nine, discussion and possible action to propose amendments to §535.208 regarding application for licensure as an inspector.

Ms. Bijansky presented agenda item nine for discussion and possible action. The amendments would better implement the statutory requirement that applicants for inspector licenses who fail the examination three times

must wait six months before reapplying. Currently, applicants may circumvent the six-month wait requirement by filing a new application after the second failure, so that a third failure is registered as occurring under a different application. The proposed amendment would prevent applicants from filing a new application while another application is pending. Mr. Willcox, Inspector Committee, provided information concerning the history of the rule. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the amendments to §535.208 for proposal and publication in the *Texas Register*.

The Chairman moved to agenda item eleven, discussion and possible action to adopt: (a) 22 TAC §535.61 regarding Examinations; (b) 22 TAC §535.62 regarding Accreditation of Schools and Approval of Courses and Instructors; and (c) 22 TAC §535.64 regarding Payment of Annual Fee, Audits, Investigations and Enforcement Actions. The Chairman referred to previous discussion concerning postponing this agenda item to obtain information from additional research. Chairman Eckstrum stated that further action would be postponed until additional information was available.

Chairman Eckstrum moved to agenda items twelve, discussion and possible action regarding recommendations from the Broker Responsibility Committee; and thirteen, discussion and possible action regarding recommendations from the Education Committee. Mr. Eckstrum restated that he would be accepting recommendations for individuals who wished to serve on either of the two committees.

Mr. Eckstrum moved to agenda item fourteen, discussion and possible action to approve the recovery trust account and inspection recovery fund investment policies under the Public Funds Investment Act. Ms. Alexander presented the agenda item for discussion and possible action. Upon motion of Ms. Hensley, duly seconded by Ms. Wukasch, the Commission approved the recovery trust account and inspection recovery fund investment policies under the Public Funds Investment Act as presented by staff.

Chairman Eckstrum moved to agenda item fifteen, discussion and possible action to approve amendments to the Seller's Disclosure Notice. Ms. DeHay presented the agenda item for discussion and possible action. The 81<sup>st</sup> Legislature amended this form under amendments to the Property Code §5.008 effective January 1, 2010. Staff recommended changes to the form consistent with the legislative changes to §5.008. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the amended form for voluntary use.

The Chairman moved to agenda item sixteen, discussion and possible action regarding rule review for 2010. Ms. DeHay presented the agenda item for discussion and possible action. Upon motion of Ms. Justice, duly seconded by Mr. Alley, the Commission approved the scheduled rule review as submitted by staff.

Chairman Eckstrum moved to agenda item seventeen, discussion and possible action to propose the review of: (a) Chapter 534, General Administration; (b) Chapter 539, Provisions of the Residential Service Company Act; and (c) Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act in accordance with the Texas Government Code, §2001.039. Ms. DeHay presented the agenda item for discussion and possible action.

Review of the rules under these chapters will determine whether the reasons for adoption of the rules continue to exist. During the review process, TREC may also determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations; whether the rules reflect current TREC procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30-day public comment period prior to final adoption or repeal.

Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, the Commission approved the posting of the notice of intent to review these chapters in the *Texas Register*.

Mr. Eckstrum moved to agenda item eighteen, discussion and possible action to schedule future meetings. After discussion, the next meetings of the Commission were scheduled for February 8, 2010; May 17, 2010; August 9, 2010 and November 15, 2010. All meetings scheduled would begin at 10:00 a.m. The Chairman adjourned the meeting at 12:31 p.m.

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Patricia Holder, Secretary for the Meeting

APPROVED this the 8th day of February, 2010.

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John Eckstrum  
Chairman

ATTEST: \_\_\_\_\_  
Douglas E. Oldmixon  
Administrator

## **Agenda Item 4**

### **SUMMARY**

Provides for excused absences for commission members not in attendance

### **STAFF RECOMMENDATION**

Approve excused absence as presented.

### **MOTION**

**MOVED**, that the absence of \_\_\_\_\_  
for the following dates, \_\_\_\_\_  
are hereby approved.

## ***STAFF AND COMMITTEE REPORTS***

5. Reports by administrator and division directors which may include reports of monthly activities and statistical data for licensing, education, enforcement, technology usage, recovery trust account and fund activity, and updates on new and ongoing agency activity; questions by commissioners to division directors regarding issues raised by the monthly activities reports; discussion of current topics raised by monthly reports; requests by the Commission for additional information or reports from staff; and introduction of new employees

## ***PUBLIC COMMENTS***

6. General comments from visitors



## Staff Reports for December 2009

# Texas Real Estate Commission

## Monthly Staff Reports

### Contents

<b>Report</b>	<b>Report Description</b>	<b>Division</b>	<b>Director</b>
C1	Customer Service Statistics	Reception and Communications Services	Lorie DeAnda
L1	Fiscal Year Comparison	Education and Licensing Services	Gwen Jackson
L2	Real Estate Licensee Status	Education and Licensing Services	Gwen Jackson
L3	Examination Statistics	Education and Licensing Services	Gwen Jackson
L4	Instructor Distribution	Education and Licensing Services	Gwen Jackson
E1	Case Status	Standards and Enforcement	Kerri Galvin
E2	Administrative Orders	Standards and Enforcement	Kerri Galvin
I1	Electronic Information Outlet Statistics	Information Technology Services	Tom Watson
S1	Agency Financial Statement	Staff and Support Services	Karen Alexander
S2	Real Estate Recovery Fund Investments - Current Securities	Staff and Support Services	Karen Alexander
S3	Real Estate Recovery Fund Payments and Repayments	Staff and Support Services	Karen Alexander
S4	Inspection Recovery Fund Status	Staff and Support Services	Karen Alexander

## Reception and Communications Services

### Customer Service Statistics

December 2009

<b>RCS Measures</b>	<b>Current Month</b>	<b>YTD Total</b>	<b>Prior YTD Total</b>
Agency Incoming Calls (target - 400,000)	28,886	119,409	

<b>Communications Incoming Calls</b>	<b>Monthly Total</b>	<b>YTD Total</b>	<b>Prior YTD Total</b>
CO Lines	7,722		7,722
TREC 1-800	7,946		7,946
TALCB 1-877	279		279
<b>Total</b>	<b>15,947</b>	<b>64,475</b>	<b>60,442</b>

<b>Reception Walk Ins</b>	<b>Monthly Total</b>	<b>YTD Total</b>	<b>Prior YTD Total</b>
Licensing	450	450	
Education	195	195	
Inspector	12	12	
Enforcement	21	21	
TALCB Licensing	18	18	
TALCB Enforcement	5	5	
<b>Total</b>	<b>701</b>	<b>701</b>	

<b>Communications E-Mail</b>	<b>Current Month</b>	<b>YTD Total</b>	<b>Prior YTD Total</b>
E-mail Inquiries	512	2,111	3,293

C1 Report

# Licensing Services Division

## Fiscal Year Comparison

### Fiscal Year 2010 - Year to Date

	This YTD 9/09 – 08/10		Last YTD 9/08 – 08/09		Change	
					Count	Percent
<b><i>Applications Received</i></b>						
Broker Original Applications Received	868		837		31	3.70%
Sales Original Applications Received	3526		3238		288	8.89%
<b><i>Total Original Applications</i></b>	<b>4394</b>		<b>4075</b>		<b>319</b>	<b>7.83%</b>
Broker Late Renewal Applications Received	485		571		-86	-15.06%
Sales Late Renewal Applications Received	4468		4601		-133	-2.89%
<b>Total Late Renewal Applications Received</b>	<b>4953</b>		<b>5172</b>		<b>-219</b>	<b>-4.23%</b>
<b><i>Licenses Issued from Applications</i></b>						
Broker Licenses from Original Applications	805		775		30	3.87%
Sales Licenses from Original Applications	2870		2694		176	6.53%
<b><i>Total Licenses from Original Applications</i></b>	<b>3675</b>		<b>3469</b>		<b>206</b>	<b>5.94%</b>
Broker Licenses from Late Renewal Applications	527		571		-44	-7.71%
Sales Licenses from Late Renewal Applications	2430		2599		-169	-6.50%
<b><i>Total Licenses from Late Renewal Applications</i></b>	<b>2957</b>		<b>3170</b>		<b>-213</b>	<b>-6.72%</b>
<b><i>Renewal Activity for Expirations</i></b>						
Broker Timely Renewals and Percentage	5,096	85.26%	4,603	77.69%	493	7.57%
Sales Timely (1 year) Renewals and Percentage	1,544	89.52%	3,654	52.27%	-2,110	37.25%
Sales Timely (2 year) Renewals and Percentage	11,957	70.56%	10,307	67.70%	1,650	2.86%
<b><i>Total Timely Renewals from Broker and Sales</i></b>	<b>18,597</b>	<b>72.88%</b>	<b>18,564</b>	<b>65.97%</b>	<b>33</b>	<b>6.91%</b>

# Licensing Services Division

## Licensee and Registrant Status

### December 2009

#### Real Estate Licensees

	Dec 08	Jan 09	Feb 09	Mar 09	Apr 09	May 09	Jun 09	Jul 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09
<b>Broker Licensees</b>													
Individual (Active)	34,218	34,336	34,328	34,375	34,287	34,236	34,184	34,111	34,150	34,139	34,138	34,132	34,131
Corporation (Active)	4,070	4,075	4,085	4,069	4,063	4,061	4,073	4,031	4,024	4,018	4,025	4,030	3,996
LLC (Active)	2,457	2,501	2,533	2,549	2,594	2,625	2,639	2,684	2,708	2,729	2,762	2,791	2,787
Non-resident (Active)	500	500	502	503	498	495	494	492	493	495	492	490	488
Partnership (Active)	2	2	2	2	2	2	2	2	2	2	2	2	2
<b>Total Active Status</b>	<b>41,247</b>	<b>41,414</b>	<b>41,450</b>	<b>41,498</b>	<b>41,444</b>	<b>41,419</b>	<b>41,392</b>	<b>41,320</b>	<b>41,377</b>	<b>41,383</b>	<b>41,419</b>	<b>41,445</b>	<b>41,404</b>
Inactive Status	1,656	1,650	1,653	1,646	1,646	1,638	1,648	1,645	1,659	1,652	1,658	1,664	1,658
<b>Total Brokers</b>	<b>42,903</b>	<b>43,064</b>	<b>43,103</b>	<b>43,144</b>	<b>43,090</b>	<b>43,057</b>	<b>43,040</b>	<b>42,965</b>	<b>43,036</b>	<b>43,035</b>	<b>43,077</b>	<b>43,109</b>	<b>43,062</b>
<b>Sales Licensees</b>													
Active Status	77,123	75,833	75,711	75,797	75,637	75,329	74,323	74,244	74,462	74,656	75,000	74,806	74,020
Inactive Status	27,318	28,651	28,241	27,763	27,291	27,032	27,331	26,974	26,721	26,349	26,070	26,102	26,776
<b>Total Sales</b>	<b>104,441</b>	<b>104,484</b>	<b>103,952</b>	<b>103,560</b>	<b>102,928</b>	<b>102,361</b>	<b>101,654</b>	<b>101,218</b>	<b>101,183</b>	<b>101,005</b>	<b>101,070</b>	<b>100,908</b>	<b>100,796</b>
Total Active	118,370	117,247	117,161	117,295	117,081	116,748	115,715	115,564	115,839	116,039	116,419	116,251	115,424
Total Inactive	28,974	30,301	29,894	29,409	28,937	28,670	28,979	28,619	28,380	28,001	27,728	27,766	28,434
<b>Total Brokers &amp; Sales</b>	<b>147,344</b>	<b>147,548</b>	<b>147,055</b>	<b>146,704</b>	<b>146,018</b>	<b>145,418</b>	<b>144,694</b>	<b>144,183</b>	<b>144,219</b>	<b>144,040</b>	<b>144,147</b>	<b>144,017</b>	<b>143,858</b>

#### Inspectors

	Dec 08	Jan 09	Feb 09	Mar 09	Apr 09	May 09	Jun 09	Jul 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09
<b>Inspector Licensees</b>													
Professional Inspectors	3,605	3,563	3,533	3,462	3,374	3,361	3,323	3,314	3,311	3,311	3,312	3,309	3,329
Real Estate Inspectors	142	139	140	140	137	137	134	136	136	135	138	135	139
Apprentice Inspectors	98	96	90	85	87	88	88	86	86	86	84	84	81
<b>Total Inspectors</b>	<b>3,845</b>	<b>3,798</b>	<b>3,763</b>	<b>3,687</b>	<b>3,598</b>	<b>3,586</b>	<b>3,545</b>	<b>3,536</b>	<b>3,533</b>	<b>3,532</b>	<b>3,534</b>	<b>3,528</b>	<b>3,549</b>

#### Easement & Right-of-way Registrants

	Dec 08	Jan 09	Feb 09	Mar 09	Apr 09	May 09	Jun 09	Jul 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09
<b>ERW Registrants</b>													
Businesses	35	36	40	39	36	37	39	39	39	38	38	37	36
Individuals	1,856	1,901	1,947	1,969	1,994	1,970	1,960	1,908	1,893	1,835	1,757	1,742	1,713
<b>Total Registrants</b>	<b>1,891</b>	<b>1,937</b>	<b>1,987</b>	<b>2,008</b>	<b>2,030</b>	<b>2,007</b>	<b>1,999</b>	<b>1,947</b>	<b>1,932</b>	<b>1,873</b>	<b>1,795</b>	<b>1,779</b>	<b>1,749</b>

#### Total Licensees and Registrants

	Dec 08	Jan 09	Feb 09	Mar 09	Apr 09	May 09	Jun 09	Jul 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09
<b>All Licensees &amp; Registrants</b>	<b>153,080</b>	<b>153,283</b>	<b>152,805</b>	<b>152,399</b>	<b>151,646</b>	<b>151,011</b>	<b>150,238</b>	<b>149,666</b>	<b>149,684</b>	<b>149,445</b>	<b>149,476</b>	<b>149,324</b>	<b>149,156</b>

# Licensing Services Division

## Examination Activity

December 2009

### Monthly Results

	<u>Salesperson</u>	<u>Broker</u>	R. E. <u>Inspector</u>	Prof. <u>Inspector</u>
Examinations Passed	753	147	1	20
Examinations Failed	555	66	1	42
<b>Examinations Taken</b>	<b>1,308</b>	<b>213</b>	<b>2</b>	<b>62</b>
Applicants Examined	1,059	185	2	58
1st Time Passed	626	133	1	19
Examination Pass Rate	57.6%	69.0%	50.0%	32.3%
Applicant Pass Rate	71.1%	79.5%	50.0%	34.5%
1st Time Pass Rate	59.1%	71.9%	50.0%	32.8%

### Year-to-Date Results

	<u>Salesperson</u>	<u>Broker</u>	R. E. <u>Inspector</u>	Prof. <u>Inspector</u>
Examinations Passed	3,010	557	3	73
Examinations Failed	2,394	252	3	128
<b>Examinations Taken</b>	<b>5,404</b>	<b>809</b>	<b>6</b>	<b>201</b>
Applicants Examined	3,700	619	6	151
1st Time Passed	2,241	439	3	52
Examination Pass Rate	55.7%	68.9%	50.0%	36.3%
Applicant Pass Rate	81.4%	90.0%	50.0%	48.3%
1st Time Pass Rate	60.6%	70.9%	50.0%	34.4%

## Licensing Services Division

### Instructor Distribution

December 2009

#### Approved Instructor Distribution

	Dec 08	Jan 09	Feb 09	Mar 09	Apr 09	May 09	June 09	July 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09
MCE Electives Only	2,226	2,242	2,272	2,305	2,343	2,365	2,384	2,408	2,447	2,430	2,409	2,392	2,276
Core and MCE Electives	881	870	873	871	868	869	857	852	844	849	854	857	840
Core, MCE Electives and TREC MCE Legal	6	6	6	6	6	6	6	6	6	7	7	7	5
Core, MCE Electives and TREC MCE Ethics	4	3	3	3	3	3	3	3	3	3	3	3	3
Core, MCE Electives, TREC MCE Legal and Ethics	503	499	498	497	495	492	497	495	499	503	515	521	555
MCE Electives and TREC MCE Legal	1	1	1	1	1	1	1	1	1	1	1	2	2
MCE Electives and TREC MCE Ethics	4	4	4	4	4	4	4	4	4	2	2	2	2
MCE Electives, TREC MCE Legal and Ethics	293	292	291	291	290	290	298	298	293	276	244	233	225
<b>Total Approved Instructors</b>	<b>3,918</b>	<b>3,917</b>	<b>3,948</b>	<b>3,978</b>	<b>4,010</b>	<b>4,030</b>	<b>4,050</b>	<b>4,067</b>	<b>4,097</b>	<b>4,071</b>	<b>4,034</b>	<b>4,015</b>	<b>3,906</b>

## Enforcement Division Report

### Case Status DECEMBER 2009

	December 2009	YTD
Open at Beginning of the Month	806	-----
Opened During the Month	220	997
Closed During the Month	(269)	1,270
Open at End of Month	757	-----

	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10
Opened During Month:	285	254	238	220								
Administrative	55	43	44	52								
Public Complaints	98	87	84	57								
Application Investigations	54	50	40	47								
Moral Character Determinations	23	22	22	25								
Non-Jurisdictional Complaints	55	52	48	39								
Closed During Month:	324	401	276	269								
Administrative	29	35	25	15								
Public Complaints	118	157	132	154								
Application Investigations	102	111	51	40								
Moral Character Determinations	10	41	18	17								
Non-Jurisdictional Complaints	65	57	50	43								
Open at End of Month	991	844	806	757								

# Enforcement Division

## Administrative Actions

For December 2009

Name and Location	Order	Basis for Order
<b>Wade, Freddie(Houston); License# 342800</b>	Agreed surrender of broker license in lieu of further disciplinary action and agreement to not seek licensure, registration or certification from the Texas Real Estate Commission for a minimum of six years, effective December 7, 2009	Freddie Wade was owner of a real estate brokerage and mortgage lending business. Alma Banks Brown was employed by Mr. Wade as a mortgage consultant and loan processor. As Mr. Wade's associate, Ms. Brown engaged in the business of a real estate broker by assisting a buyer in a real estate sales transaction and Mr. Wade signed a disbursement letter authorizing the title company to share most of his commission with her, in violation of §§1101.652(b)(1),(11),(26)&(27) of the Texas Occupations Code.
<b>Striegel, James J.(Flower Mound); License# 482524</b>	Agreed reprimand of salesperson license with an agreed administrative penalty of \$2,000 (neither admitting nor denying), entered December 28, 2009	the publishing or causing to be published an advertisement, including advertisements by newspaper, the Internet or display that tends to create a misleading impression regarding an incentive seller plan, in violation of §1101.652(b)(23) of the Texas Occupations Code; publishing an advertisement that in any way implies the salesperson is the person responsible for the operation of a real estate brokerage by not indicating the licensee salesperson status on a website in violation of TEX. ADMIN. CODE §535.154(e); acting negligently or incompetently in the formation of an intermediary relationship when the licensee represents another party in a real estate transaction where he is also a principal to the transaction representing himself, in violation of §1101.559(a) and (b) and §1101.652(b)(1) of the Texas Occupations Code; and failing to make clear to all parties to a real estate transaction the party for whom the license holder is acting, in violation of §1101.652(b)(7) of the Texas Occupations Code.
<b>Cossey, Effie Mary(Houston); License# 584810</b>	Revocation of salesperson license, effective December 14, 2009	failing within a reasonable time to make good a check issued to the Commission, in violation of §1101.652(a)(4) of the Texas Occupations Code; failing to pay a check processing fee within 15 days after the Commission has mailed a request for payment, in violation of 22 TAC §534.2(a)

## Technology Services Division

### Electronic Information Outlet Statistics

December 2009

<b>World Wide Web</b>	<b>Current Month</b>	<b>YTD Total</b>	<b>Prior YTD Total</b>
Total Pages Viewed	1,868,353	7,966,323	9,220,666

<b>TREC E-Mail Notification List</b>	<b>Current Total</b>
Current Subscribers	194,555

<b>Online Transactions</b>	<b>Total</b>	<b>Online</b>	<b>Online Percent</b>	<b>YTD Online Percent</b>	<b>Prior YTD Percent</b>
<b>Applications</b> (Performance Measure: 70)	<b>1100</b>	<b>890</b>	<b>80.9%</b>	<b>81.8%</b>	<b>78.6</b>
Broker Application	135	113	83.7%	85.4%	80.5
Broker Late Renewal Application	139	70	50.4%	50.4%	48.4
Salesperson Application	805	704	87.5%	87.0%	85
Corporate Application	21	3	14.3%	22.2%	28.1
<b>Renewals</b> (Performance Measure 80%)	<b>4293</b>	<b>3780</b>	<b>88.1%</b>	<b>88.9%</b>	<b>85.5</b>
Broker Renewals	1019	904	88.7%	88.8%	89.8
Salesperson SAE Renewal	329	226	68.7%	72.0%	83
Salesperson MCE Renewal	2591	2428	93.7%	93.7%	92.1
Corporate Renewals	129	119	92.2%	91.8%	92.1
Limited Liability Company Renewals	89	81	91.0%	92.5%	91.4
Professional Inspector Renewals	32	7	21.9%	27.9%	25.9
Real Estate Inspector Renewals	0	0		30.0%	12.5
Apprentice Inspector Renewals	0	0		0.0%	50
Easement ROW Business Renewals	3	0	0.0%	25.0%	22.2
Easement ROW Individual Renewals	101	15	14.9%	18.7%	18.6

**Staff & Support Services Division  
Agency Financial Statement**

December 2009

THRU 4TH MONTH OF FISCAL YEAR 2010

STRATEGIES	FY 10 APPROPRIATION*	4/12 ANNUAL APPROPRIATION	FOUR MONTHS EXPENDITURES AND A/P**	\$ VARIANCE OVER(-) OR UNDER	% VARIANCE OVER(-) OR UNDER	ENCUMBRANCES***
Licensing	\$ 2,577,699.00	\$ 859,233.00	\$ 670,454.31	\$ 188,778.69	21.97%	\$ 263,660.35
Enforcement	1,784,072.00	594,690.67	551,561.11	43,129.56	7.25%	83,822.34
Communication/Information	833,756.00	277,918.67	272,522.14	5,396.53	1.94%	21,532.46
Indirect Administration	1,780,743.13	593,581.04	509,290.48	84,290.56	14.20%	423,085.95
<b>TOTAL</b>	<b>\$ <u>6,976,270.13</u></b>	<b>\$ <u>2,325,423.38</u></b>	<b>\$ <u>2,003,828.04</u></b>	<b>\$ <u>321,595.34</u></b>	13.83%	<b>\$ <u>792,101.10</u></b>

\* Total appropriations have been increased by \$26,700 for benefit replacement pay.

In the Licensing strategy, FBI criminal history background check fees in the amount of \$152,440.75 have been collected and accrued as a payable to DPS. Also in the Licensing strategy, subscription fees in the amount of \$91,671 have been collected and remitted to the Texas Online vendor.

\*\* Some expenditures are paid at the beginning of the fiscal year, such as computer and software maintenance, worker's compensation premium, etc.

\*\*\* Legislative provision requires the encumbrance of all contractual obligations through the end of the fiscal year. This includes items such as office rent, office equipment leases, or other contractual obligations. Encumbrances are not included in the "Four Months Expenditures and A/P" column.

**Staff & Support Services Division**  
**Real Estate Recovery Trust Account No. 971 Investments**  
**Current Securities**  
**December 2009**

Purchase Date	Par Value	Purchase Price	Beginning Market Value	Additions Changes	Ending Market Value	Accrued Interest	Description	Maturity Date
02/24/2006	200,000.00	192,000.00	201,437.50	(687.50)	200,750.00	2,625.00	U.S. T-Notes, 3.50%	02/15/2010
12/21/2004	200,000.00	221,250.00	207,812.50	(1,125.00)	206,687.50	4,312.50	U.S. T-Notes, 5.75%	08/15/2010
11/29/2005	100,000.00	99,750.00	103,468.75	(468.75)	103,000.00	885.42	U.S. T-Notes, 4.25%	10/15/2010
05/28/2009	200,000.00	201,470.30	201,250.00	(500.00)	200,750.00	0.00	U.S. T-Notes, 0.875%	12/31/2010
02/24/2006	100,000.00	102,000.00	105,656.25	(843.75)	104,812.50	1,875.00	U.S. T-Notes, 5.00%	02/15/2011
05/24/2005	300,000.00	318,421.88	323,250.00	(3,375.00)	319,875.00	5,625.00	U.S. T-Notes, 5.00%	08/15/2011
02/28/2007	100,000.00	99,750.00	107,656.25	(1,187.50)	106,468.75	375.00	U.S. T-Notes, 4.50%	11/30/2011
08/29/2007	200,000.00	205,370.92	218,062.50	(2,812.50)	215,250.00	3,656.25	U.S. T-Notes, 4.875%	02/15/2012
02/20/2009	200,000.00	222,000.00	219,250.00	(3,250.00)	216,000.00	791.67	U.S. T-Notes, 4.750%	05/31/2012
12/06/2007	100,000.00	104,750.00	109,281.25	(1,687.50)	107,593.75	1,640.63	U.S. T-Notes, 4.375%	08/15/2012
05/27/2008	100,000.00	101,062.50	106,781.25	(1,718.75)	105,062.50	281.25	U.S. T-Notes, 3.375%	11/30/2012
02/20/2009	200,000.00	219,250.00	216,937.50	(3,875.00)	213,062.50	2,906.25	U.S. T-Notes, 3.875%	02/15/2013
<b>Totals</b>	<b>\$ 2,000,000.00</b>	<b>\$ 2,087,075.60</b>	<b>\$ 2,120,843.75</b>	<b>\$ (21,531.25)</b>	<b>\$ 2,099,312.50</b>	<b>\$ 24,973.97</b>		

	Current Month	Cumulative Totals
<b>Receipts:</b>		
License's Remittances to Recovery Fund	\$ 14,580.00	\$ 6,084,960.08
Interest Realized	875.00	5,949,144.15
Repayments to Recovery Fund (Principal and Interest)	2,119.20	1,087,608.32
Administrative Penalties	2,908.33	689,794.98
<b>Total Received</b>	<b>\$ 20,482.53</b>	<b>\$ 13,811,507.53</b>
<b>Disbursements:</b>		
Investments Purchased (Offset by Matured Security)	\$ 0.00	2,088,651.88
Accrued Interest Purchased	0.00	0.00
Payments from Recovery Fund	117,623.29	11,123,678.86
Rider Disbursements	99.89	13,644.39
<b>Total Disbursed</b>	<b>\$ 117,723.18</b>	<b>\$ 13,225,975.13</b>
<b>Totals</b>	<b>(97,240.65)</b>	<b>585,532.40</b>
	(Current Month)	
Reserved for Investment		0.00
Reserved for Potential Payments Within 90 Days		(323,588.00)
<b>Balance</b>		<b>\$ 261,944.40</b>

Investment Position: The Fund is capable of meeting all known obligations.  
Investment Compliance: The Investment Policy of the Commission has been followed.



Karen Alexander, Investment Officer



Barbara Kolb, Alternate Investment Officer

## Staff & Support Services Division

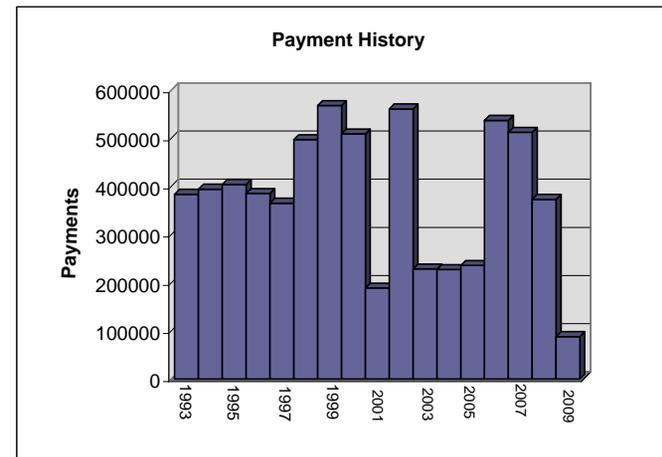
# Real Estate Recovery Trust Account No. 971 Investments Payments and Repayments

December 2009

Month-Year	Payment Total	Repayment Total	Admin Penalties Total	Rider Disbursements	Payments FY2010-To-Date	Number of Payments
December 2008	0.00	835.00	22,750.00	139.44		
January 2009	0.00	1,010.75	9,450.00	53.10		
February 2009	30,152.28	775.00	3,650.00	1,786.40		
March 2009	25,516.81	765.00	5,416.67	0.00		
April 2009	15,784.52	765.00	12,000.00	0.00		
May 2009	0.00	190.00	3,808.33	86.40		
June 2009	12,065.74	766.37	7,808.33	18.70		
July 2009	0.00	18,420.82	8,016.66	20.00		
August 2009	0.00	999.82	5,550.00	0.00		
September 2009	50,000.00	3,387.69	10,846.66	0.00	50,000.00	1
October 2009	141,603.36	792.56	4,250.00	0.00	141,603.36	3
November 2009	0.00	897.20	200.00	38.00	0.00	0
December 2009	117,623.29	2,119.20	2,908.33	99.89	117,623.29	3
	<b>392,746.00</b>	<b>31,724.41</b>	<b>96,654.98</b>	<b>2,241.93</b>	<b>309,226.65</b>	<b>7</b>

Payment History		
Fiscal Year	# of Payments	Total Payments
thru 1992	345	4,350,190.77
1993	33	384,067.85
1994	31	394,466.36
1995	29	404,449.31
1996	26	385,724.99
1997	20	365,445.94
1998	27	497,406.17
1999	21	568,326.88
2000	18	509,279.95
2001	11	189,405.09
2002	19	561,110.81
2003	11	228,924.68
2004	8	227,794.75
2005	8	236,012.61
2006	22	537,356.93
2007	14	512,774.82
2008	12	373,414.95
2009	5	88,299.35
<b>Total</b>	<b>660</b>	<b>\$10,814,452.21</b>

**Potential Payments\*  
Next 3 Months 323,588.00**



\*Potential Payments: Payments could be made in the time periods indicated. Several time/work variables can affect the actual payment dates.

## Staff & Support Services Division

### Real Estate Inspection Recovery Fund No. 0988

December 2009

	Monthly Activity			Payment History		
	Beginning Balance	Current Month	Cumulative Totals	Fiscal Year	Number of Payments	Total Payments
<b>Beginning Balance</b>	\$ 629,037.38		\$ 629,037.38	thru 1992	2	\$ 4,309.26
<b>Receipts:</b>				1993	2	15,000.00
Licensees' Remittances to Recovery Fund		\$ 1,700.00		1994	5	31,473.40
Interest Realized		987.25		1995	4	25,668.83
Repayments		533.00		1996	2	7,500.00
Administrative Penalties		0.00		1997	1	7,500.00
<b>Total Received in Current Month</b>		<u>3,220.25</u>	<b>\$ 3,220.25</b>	1998	4	30,000.00
<b>Disbursements:</b>				1999	1	7,500.00
Payments from Recovery Fund	\$ 0.00			2000	6	45,000.00
Cash Transfer to General Revenue		0.00		2001	0	0.00
Rider Disbursements		0.00		2002	2	15,000.00
<b>Total Disbursed in Current Month</b>		<u>0.00</u>	<b>\$ 0.00</b>	2003	1	7,500.00
<b>Total</b>			<b>\$ 632,257.63</b>	2004	4	32,523.96
<b>Reserved for Payment within 90 Days</b>			<b>(14,266.00)</b>	2005	5	28,567.39
<b>Fund Balance</b>			<u><u>617,991.63</u></u>	2006	5	49,837.11
				2007	1	12,500.00
				2008	0	0.00
				2009	1	12,500.00
				2010 YTD	1	5,000.00
				<b>Total</b>		<b>\$ 337,379.95</b>

Investment Position: The Fund is capable of meeting all known obligations.  
Investment Compliance: The Investment Policy of the Commission has been followed.



Karen Alexander, Investment Officer



Barbara Kolb, Alternate Investment Officer

## ***EXECUTIVE SESSION***

7. Executive session to discuss pending litigation pursuant to Texas Government Code §551.071 and if necessary, to receive legal advice from general counsel on posted agenda items under Texas Government Code, §§551.071

## ***POSSIBLE ACTION ON MATTERS FROM EXECUTIVE SESSION***

8. Discussion and possible action to authorize settlement of recovery fund claims or take other action on items considered in executive session

## ***RULE REVIEW***

**9. Discussion and possible action regarding schedule of rule review for 2010**

## **Agenda Item 9**

### **SUMMARY**

At the December meeting of the Commission staff submitted a rule review schedule for the upcoming year. It was approved. Staff has amended the schedule to allow the review of all rules during 2010. Staff is seeking approval for the revised review schedule.

### **STAFF RECOMMENDATION**

Approve the review schedule.

### **MOTION**

**MOVED**, that the Commission approves the scheduled rule review as submitted by staff.

**Approved at December 14, 2009 meeting**

**RULE REVIEWS FOR 2010**

December 2009	Feb. 8, 2010	May 17, 2010	Aug. 9, 2010	Nov. 15, 2010
Propose review of Chapters 534, 539, 543	Consider comments on Chapters 534, 539, 543	Conclude review of Chapters 534, 539, 543		
		Propose review of Chapters 531, 533, 537	Consider comments on Chapters 531, 533, 537	Conclude review of Chapters 531, 533, 537

22 TAC Chapter 534: General Administration.

22 TAC Chapter 539: Provisions of The Residential Service Company Act.

22 TAC Chapter 543: Rules Relating to the Provisions of The Texas Timeshare Act.

22 TAC Chapter 531: Canons of Professional Ethics and Conduct for Real Estate Licensees.

22 TAC Chapter 533: Practice and Procedure.

22 TAC Chapter 537: Professional Agreements and Standard Contracts.



**2010 TREC RULE REVIEW**

<b>Commission Meeting Dates</b>	December 14, 2009	February 8, 2010	May 17, 2010	August 9, 2010	November 15, 2010
<b>Chapters 534, 539, 543</b>	Propose review of Chapters 534, 539, 543	Consider comments and potential rule revisions of Chapters 534, 539, 543	Conclude review and potential rule revisions adoption of Chapters 534, 539, 543		
<b>Chapters 531, 533, 537, 541</b>		Propose review of Chapters 531, 533, 537, 541	Consider comments and potential rule revisions of Chapters 531, 533, 537, 541	Conclude review and potential rule revisions adoption of Chapters 531, 533, 537, 541	
<b>Chapter 535</b>			Propose review of Chapter 535	Consider comments and potential rule revisions of Chapter 535	Conclude review and potential rule revisions adoption of Chapter 535

22 TAC Chapter 531: Canons of Professional Ethics and Conduct for Real Estate Licensees

22 TAC Chapter 533: Practice and Procedure

22 TAC Chapter 534: General Administration

22 TAC Chapter 535: General Provisions

22 TAC Chapter 537: Professional Agreements and Standard Contracts

22 TAC Chapter 539: Provisions of the Residential Service Company Act

22 TAC Chapter 541: Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53

22 TAC Chapter 543: Rules Relating to the Provisions of the Texas Timeshare Act

Contact: Ms. Loretta DeHay, TREC General Counsel  
 general.counsel@trec.state.tx.us  
 512-465-3966

\*subject to final approval at the February 8, 2010 Commission Meeting

## ***RULE REVIEW***

10. Discussion and possible action to propose the review of:
  - a. 22 TAC Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees
  - b. 22 TAC Chapter 533, Practice and Procedure
  - c. 22 TAC Chapter 537, Professional Agreements and Standard Contracts
  - d. 22 TAC Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53

## **Agenda Item 10**

### **SUMMARY**

The Texas Real Estate Commission (TREC) proposes to review Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees; Chapter 533, Practice and Procedure; Chapter 537, Professional Agreements and Standard Contracts and Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53 in accordance with the Texas Government Code, §2001.039.

### **STAFF RECOMMENDATION**

Approve the proposed review.

### **MOTION**

**MOVED**, that the Commission approves the review of Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees; Chapter 533, Practice and Procedure; Chapter 537, Professional Agreements and Standard Contracts and Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53, as submitted by staff.

Agenda Item 10 (a)-(d)

TITLE 22. EXAMINING BOARDS  
Part XXIII. Texas Real Estate Commission

***Chapter 531. Canons of Professional Ethics and Conduct for Real Estate Licensees.***  
***Chapter 533. Practice and Procedure.***  
***Chapter 537. Professional Agreements and Standard Contracts.***  
***Chapter 541. Rules Relating to the Provisions of the Texas Occupations Code,***  
***Chapter 53.***

Notice of Proposed Review of Rules

The Texas Real Estate Commission (TREC) proposes to review Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees; Chapter 533, Practice and Procedure; Chapter 537, Professional Agreements and Standard Contracts and Chapter 541. Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53 in accordance with the Texas Government Code, §2001.039.

Review of the rules under these chapters will determine whether the reasons for adoption of the rules continue to exist. During the review process, TREC may also determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations; whether the rules reflect current TREC procedures; that no changes to a rule as currently in effect are necessary; or that a rule is not longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the Texas Register's Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30-day public comment period prior to final adoption or repeal.

TREC invites comments during the review process for 30 days following the publication of this notice in the *Texas Register*. Any questions or comments pertaining to this notice of intention to review should be directed to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to [general.counsel@trec.state.tx.us](mailto:general.counsel@trec.state.tx.us) within 30 days of publication.

Issued in Austin, Texas on December 14, 2009.

**RULES OF THE TEXAS  
REAL ESTATE COMMISSION**

§531

**CHAPTER 531 CANONS OF PROFESSIONAL ETHICS AND  
CONDUCT FOR REAL ESTATE LICENSEES**

**§531.1. Fidelity.** *[Adopted January 1, 1976; amended February 23, 1998]* A real estate broker or salesperson, while acting as an agent for another, is a fiduciary. Special obligations are imposed when such fiduciary relationships are created. They demand:

(1) that the primary duty of the real estate agent is to represent the interests of the agent's client, and the agent's position, in this respect, should be clear to all parties concerned in a real estate transaction; that, however, the agent, in performing duties to the client, shall treat other parties to a transaction fairly;

(2) that the real estate agent be faithful and observant to trust placed in the agent, and be scrupulous and meticulous in performing the agent's functions;

(3) that the real estate agent place no personal interest above that of the agent's client.

**§531.2. Integrity.** *[Adopted January 1, 1976; amended February 23, 1998]* A real estate broker or salesperson has a special obligation to exercise integrity in the discharge of the licensee's responsibilities, including employment of prudence and caution so as to avoid misrepresentation, in any wise, by acts of commission or omission.

**§531.3. Competency.** *[Adopted January 1, 1976; amended February 23, 1998]* It is the obligation of a real estate agent to be knowledgeable as a real estate brokerage practitioner. The agent should:

(1) be informed on market conditions affecting the real estate business and pledged to continuing education in the intricacies involved in marketing real estate for others;

(2) be informed on national, state and local issues and developments in the real estate industry; and

(3) exercise judgment and skill in the performance of the work.

**§§531.10-531.17. Minimum Appraisal Standards.** *[Repealed March 1, 1991]*

**§531.18. Consumer Information Form 1-1.** *[Adopted February 1, 1990; amended November 1, 1991; Ref: §1101.202(a)(2)]*

(a) The Texas Real Estate Commission adopts by reference Consumer Information Form 1-1 approved by the Texas Real Estate Commission in 1991. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) Each real estate inspector or active real estate broker licensed by the Texas Real Estate Commission shall display Consumer Information Form 1-1 in a prominent location in each place of business the broker or inspector maintains.

**§531.19. Discriminatory Practices.** *[Adopted February 19, 1990; Ref: AG OP.JM-1093]* No real estate licensee shall inquire about, respond to or facilitate inquiries about, or make a disclosure which indicates or is intended to indicate any preference, limitation or discrimination based on the following: race, color, religion, sex, national origin, ancestry, familial status, or handicap of an owner, previous or current occupant, potential purchaser, lessor, or potential lessee of real property. For the purpose of this section, handicap includes a person who had, may have had, has, or may have AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the United States Public Health Service.

**RULES OF THE TEXAS  
REAL ESTATE COMMISSION**

**§§533.1-.2(a)**

**CHAPTER 533 PRACTICE AND PROCEDURE  
(Ref: Texas Government Code, Chapter 2001)**

**§§533.1.-533.30 Practice and Procedure.**  
*[Repealed December 29, 1998]*

**§533.1. Definitions.** *[Adopted December 30, 2007]* The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) ADR—Alternative dispute resolution.

(2) ADR Administrator--The trained coordinator in the commission office designated by the commission to coordinate and oversee the ADR procedures which may include conducting mediations. The ADR Administrator shall serve as a resource for ADR training and shall collect data concerning the effectiveness of the ADR procedures.

(3) Administrator—The Administrator of the Texas Real Estate Commission.

(4) ALJ--Administrative law judge employed by the State Office of Administrative Hearings.

(5) Alternative Dispute Resolution (ADR) Procedures--Alternatives to judicial forums or administrative agency contested case proceedings for the voluntary settlement of contested matters through the facilitation of an impartial third party.

(6) APA--The Administrative Procedure Act (Texas Government Code, Chapter 2001).

(7) Applicant--Any person seeking a license, certificate, registration, approval or permit from the commission.

(8) Commission--The Texas Real Estate Commission.

(9) Complainant--Any person who has filed a complaint with the commission against any person whose activities are subject to the jurisdiction of the commission.

(10) Contested case or proceeding--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the commission and/or administrator after an opportunity for adjudicative hearing.

(11) Final decision maker--The commission and/or the administrator, both of whom are authorized to render the final decision in a contested case.

(12) Judge--Administrative law judge employed by the State Office of Administrative Hearings.

(13) License--The whole or part of any commission registration, license, certificate,

approval, permit, or similar form of permission required or permitted by law.

(14) Mediator--The commission employee or other state employee who presides over ADR proceedings regardless of which ADR method is utilized.

(15) Party--A person admitted to participate in a case before the final decision maker.

(16) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(17) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(18) Private Mediator--A person in the mediation profession who is not a Texas State employee and who has met all the qualifications prescribed by Texas law for mediators.

(19) Respondent--Any person, licensed or unlicensed, who has been charged with violating a law establishing a regulatory program administered by the commission or a rule or order issued by the commission.

(20) Rule--Any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission and is filed with the *Texas Register*.

(21) SOAH--State Office of Administrative Hearings.

**§533.2. Purpose and Scope.** *[Adopted December 30, 2007]*

(a) Purpose. Unless otherwise provided by statute or by the provisions of this subchapter, this subchapter will govern the institution and final conclusion of proceedings followed in handling all adjudicative matters under the APA. Once the commission files the Request to Docket Case form with SOAH, SOAH acquires jurisdiction over a contested case, and a hearing conducted by SOAH on a contested case proceeding pending before the commission is governed by SOAH's rules of procedure. In the case of a conflict with rules in this chapter, SOAH's rules, 1 TAC Chapter 155, control after the filing of the Request to Docket Case form and until after final amendments or corrections to the proposal for decision.

## §533.2(b) - 4(b)

(b) Scope. These rules govern the institution, conduct, and determination of adjudicative proceedings required or permitted by law, whether instituted by the commission or by the filing of an application, claim, complaint, or any other pleading. These rules shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the administrator, or the substantive rights of any person or agency.

### **§533.3. Filing and Notice.** *[Adopted December 30, 2007]*

(a) The commission shall provide notice to all parties in accordance with the APA §2001.052, Chapters 1101 and 1102, Texas Occupations Code, and the following:

(1) If, after investigation of a possible violation and the facts surrounding that possible violation, the commission determines that a violation has occurred, the commission shall issue a written Notice of Alleged Violation.

(2) The Notice of Alleged Violation shall include:

(A) a brief summary of the alleged violation(s);

(B) a statement of the amount of the penalty and/or sanction recommended; and

(C) a statement of the right of the Respondent to a hearing.

(3) The commission shall base the recommendation on the factors set forth in this chapter.

(b) Not later than the 20th day after the date on which the notice is received, the Respondent may accept the determination of the commission, including the recommended penalty and/or sanction, or make a written request for a hearing on that determination.

(c) Upon receipt of a written request for hearing, the commission shall submit a Request for Docket Case form to SOAH accompanied by legible copies of all pertinent documents, including but not limited to the Notice of Hearing or other document describing the agency action giving rise to a contested case. In accordance with 1 TAC §155.9, the commission shall request one or more of the following actions on the Request to Docket Case form:

(1) Setting of hearing;

(2) Assignment of an administrative law judge; and/or

(3) Setting of alternative dispute

resolution proceeding, including but not limited to mediated settlement conference, mediation, or arbitration.

(d) The original of all pleadings and other documents requesting action or relief in a contested case, shall be filed with SOAH once it acquires jurisdiction. Pleadings, other documents, and service to SOAH shall be directed to: Docketing Division, State Office of Administrative Hearings, 300 West 15th Street, Room 504, P.O. Box 13025, Austin, Texas 78711-3025. The time and date of filing shall be determined by the file stamp affixed by SOAH. Unless otherwise ordered by the judge, only the original and no additional copies of any pleading or document shall be filed. Unless otherwise provided by law, after a proposal for decision has been issued, originals of documents requesting relief, such as exceptions to the proposal for decision or requests to reopen the hearing, shall be filed with the commission's administrator and/or commission as well as the commission's Enforcement Division, P.O. Box 12188, Austin, Texas 78711; 1101 Camino La Costa, Austin Texas; or by facsimile mail at (512)465-3962 if the documents contain 20 or fewer pages including exhibits. Filings may be made until 5:00 p.m. on business days. Copies shall be filed with SOAH.

(e) If a real estate salesperson is a respondent, the commission also will notify the salesperson's sponsoring broker of the hearing. If an apprentice inspector or real estate inspector is a respondent, the commission also will notify the sponsoring professional inspector of the hearing.

(f) Any document served upon a party is prima facie evidence of receipt if it is directed to the party's last known complete, correct address as shown by the commission's records. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of nondelivery.

### **§533.4. Failure to Answer, Failure to Attend Hearing and Default.** *[Adopted December 30, 2007]*

(a) If, within twenty days after receiving a Notice of Alleged Violation, the Respondent fails to accept the commission's determination and recommended administrative penalty and/or sanction, or fails to make a written request for a hearing on the determination, the commission shall enter a default order against the Respondent, containing findings of fact and conclusions of law.

(b) After receiving a notice proposing disapproval of an application an Applicant may

request a hearing in writing within twenty days of receipt of the notice or forfeit the right to a hearing unless otherwise provided by applicable law.

(c) The commission may delegate to the administrator the commission's authority to act under Texas Occupations Code §1101.704(b) and subsection (a) of this section.

(d) 1 TAC §155.55 (SOAH rules) applies where a Respondent fails to appear on the day and time set for administrative hearing. In that case, the commission's staff may move either for dismissal of the case from SOAH's docket or for the issuance of a default proposal for decision by the judge.

**§533.5. The Adjudicative Hearing Record.** [Adopted December 30, 2007]

(a) On the written request by a party to a case or on request of the judge, a written transcript of all or part of the proceedings shall be prepared. The cost of the transcript is borne by the requesting party. This section does not preclude the parties from agreeing to share the costs associated with the preparation of a transcript. If only the judge requests a transcript, costs will be assessed to the Respondent(s) or Applicant(s), as appropriate.

(b) Any party who needs a certified language interpreter for presentation of its case shall be responsible for requesting the services of an interpreter. The requesting party shall be responsible for making arrangements with a certified language interpreter once a request is made. The cost of the certified language interpreter shall be borne by the party requiring the interpreter's services.

**§533.6. Filing of Exceptions and Replies.** [Adopted December 30, 2007]

(a) Any party of record who is adversely affected by the proposal for decision of the judge shall have the opportunity to file exceptions and a brief to the proposal for decision within 15 days after the date of service of the proposal for decision.

(b) A reply to the exceptions may be filed by the other party within 15 days of the filing of the exceptions.

(c) Exceptions and replies shall be filed with the judge with copies served on the opposing party. The proposal for decision may be amended by the judge pursuant to the exceptions, replies, or briefs submitted by the parties without again being served on the parties.

**§533.7. Proposals for Decision.** [Adopted

December 30, 2007]

(a) Proposed decisions shall be brought before the commission for final decision.

(b) The proposal for decision may be acted on by the commission after the expiration of 10 days after the filing of replies to exceptions to the proposal for decision or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.

(c) It is the policy of the commission to change a finding of fact or conclusion of law in a proposal for decision or to vacate or modify the proposed order of a judge when, the commission determines:

(1) that the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) that a prior administrative decision on which the judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

**§533.8. Final Orders, Motions for Rehearing, and Emergency Orders.** [Adopted December 30, 2007]

(a) Unless otherwise authorized under §533.13 (f) of this chapter, a final order in a contested case shall be in writing and shall be signed by the presiding officer of the commission. Final orders shall include findings of fact and conclusions of law separately stated.

(b) If the commission modifies, amends, or changes a proposal for decision, the order shall reflect the commission's changes as stated in the record of the meeting and state the specific reason and legal basis for the changes made according to §533.7(c) of this chapter.

(c) A party notified by mail of a final decision or order shall be presumed to have been notified on the third day after the date on which the notice is mailed.

(d) The timely filing of a motion for rehearing is a prerequisite to appeal.

(e) Motions for rehearing are controlled by Texas Government Code §2001.145 and §2001.146.

(f) If the commission and/or the administrator find that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order, that finding shall be recited in the decision or order as well as the fact that the decision or order is final and effective on the date signed, in which event the decision or order is final and appealable on the date signed and no motion for rehearing is required as a prerequisite for appeal.

### §533.8(g)-.20(o)

(g) A petition for judicial review must be filed in a District Court of Travis County Texas within 30 days after the order is final and appealable, as provided by Government Code, Title 10, Subtitle A, Chapter 2001. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.

(h) If, after judicial review, the penalty is reduced or not assessed, the administrator shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the administrator under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty is paid to the commission and ending on the date the penalty is remitted.

#### **§533.20. Informal Proceedings.** *[Adopted December 30, 2007]*

(a) Informal disposition of any contested case involving a licensee or an applicant for licensure may be made through an informal conference pursuant to Texas Occupations Code §1101.660.

(b) The commission and the respondent or applicant may enter into an agreed order without first engaging in an informal conference under this subchapter.

(c) A licensee or applicant may request an informal conference; however, the decision to hold a conference shall be made by the Director of Enforcement.

(d) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(e) An informal conference may be conducted in person, or by electronic, telephonic, or written communication.

(f) The Director of Enforcement or the director's designee shall decide upon the time, date and place of the informal conference, and provide written notice to the licensee or applicant. Notice shall be provided by certified mail no less than ten days prior to the date of the conference to the permanent mailing address of the licensee or applicant. The ten days shall begin on the date of mailing. The licensee or applicant may waive the ten-day notice requirement.

(g) A copy of the commission's rules concerning informal conferences shall be enclosed with the notice of the informal conference. The notice shall inform the licensee or applicant of

the following:

(1) that the licensee or applicant may be represented by legal counsel;

(2) that the licensee or applicant may offer documentary evidence as may be appropriate;

(3) that at least one public member of the commission shall be present;

(4) that two staff members, including the staff attorney assigned to the case, with experience in the regulatory area that is the subject of the proceedings shall be present;

(5) that the licensee's or applicant's attendance and participation is voluntary; and

(6) that the complainant involved in the alleged violations may be present.

(h) The notice of the informal conference shall be sent to the complainant at his or her last known address. The complainant shall be informed that he or she may appear in person or may submit a written statement for consideration at the informal conference.

(i) The conference shall be informal and need not follow the procedures established in this chapter for contested cases and formal hearings.

(j) The licensee or applicant, the licensee's or applicant's attorney, the commission member, and the staff attorney may question the respondent or complainant, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(k) The staff attorney assigned to the case shall attend each informal conference. The commission member or other staff member may call upon the attorney at any time for assistance in the informal conference.

(l) No formal record of the proceedings of the informal conference shall be made or maintained.

(m) The complainant may be excluded from the informal conference except during the complainant's oral presentation. The licensee or applicant, the licensee's or applicant's attorney, and commission staff may remain for all portions of the informal conference, except for consultation between the commission member and commission staff.

(n) The complainant shall not be considered a party in the informal conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(o) At the conclusion of the informal conference, the commission member or staff

attorney may propose an informal settlement of the contested case. The proposed settlement may include administrative penalties or any disciplinary action authorized by the Act. The commission member or staff attorney may also recommend that no further action be taken.

(p) The licensee or applicant may either accept or reject the settlement recommendations at the conference. If the recommendations are accepted, an agreed order shall be prepared by the staff attorney and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the commission within ten days of his or her receipt of the proposed agreed order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendation.

(q) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the Director of Enforcement for appropriate action.

(r) If the licensee or applicant signs and accepts the recommendation, the agreed order shall be submitted to the administrator for approval.

(s) If the administrator does not approve a proposed agreed order, the licensee or applicant shall be so informed and the matter shall be referred to the Director of Enforcement for other appropriate action.

(t) A licensee's opportunity for an informal conference under this subchapter shall satisfy the requirement of the APA, §2001.054(c).

(u) The commission may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal conference instead of or in addition to imposing an administrative penalty. The amount of a refund ordered as provided in an agreement resulting from an informal conference may not exceed the amount the consumer paid to the license holder for a service regulated by the Act and this title. The commission may not require payment of other damages or estimate harm in a refund order.

**§533.30. Alternative Dispute Resolution Policy.** *[Adopted December 30, 2007]* It is the commission's policy to encourage the fair and expeditious resolution of all contested matters through voluntary settlement procedures. The commission is committed to working with all parties to achieve early settlement of contested matters.

**§533.31. §533.39. Practice and Procedure.** *[Repealed December 30, 2007]*

**§533.31. Referral of Contested Matter for Alternative Dispute Resolution Procedures.** *[Adopted December 30, 2007]* The commission's Director of Enforcement or Human Resources Office, on behalf of the commission, may seek to resolve a contested matter through negotiation or mediation involving all parties and if so, shall refer the matter for mediation in accordance with §533.34 of this chapter (Relating to Commencement of ADR).

**§533.32. Appointment of Mediator.** *[Adopted December 30, 2007]*

(a) For each matter referred for ADR procedures, the ADR Administrator shall mediate or assign another commission mediator unless the parties agree upon the use of another agency's mediator or private mediator. The ADR Administrator may assign a substitute or additional mediator to a proceeding as the ADR Administrator deems necessary.

(b) A private mediator may be hired for commission ADR procedures provided that:

(1) the parties unanimously agree to use a private mediator;

(2) the parties unanimously agree to the selection of the person to serve as the mediator; and

(3) the mediator agrees to be subject to the direction of the commission's ADR Administrator and to all time limits imposed by the Administrator, statute or regulation.

(c) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the parties, unless otherwise agreed upon by the parties, and shall be paid directly to the mediator.

(d) All mediators in commission mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

**§533.33. Qualifications of Mediators.** *[Adopted December 30, 2007]*

(a) A commission mediator will receive at a minimum 40 hours of formal training in ADR procedures through a program approved by the commission's administrator.

(b) SOAH mediators, employees of other agencies who are mediators, and private pro bono mediators, may be assigned to contested matters as needed.

### §§533.33(b)(1)-.40(c)

(1) Each mediator shall first have received 40 hours of Texas mediation training as prescribed by Texas law.

(2) Each mediator shall have some expertise in the area of the contested matter.

(3) If the mediator is a SOAH judge, that person will not also sit as the judge for the case if the contested matter goes to public hearing. If the mediator is an employee of the commission and dispute does not settle, that mediator will not have any further contact or involvement concerning the disputed matter.

#### **§533.34. Commencement of ADR.** *[Adopted December 30, 2007]*

(a) The commission encourages resolution of disputes at any time; however, ADR procedures may begin, at the discretion of the Director of Enforcement or the Human Resources Office, anytime after the commission anticipates initiation of an adverse action against an applicant, respondent, or employee. The commission may issue a Notice of Mediation along with a Notice of Alleged Violation or along with a notice of a proposed denial of licensure or opportunity to take an examination. Prior to the submission of a Request for Docket Case form to SOAH, and with agreement of all parties, the ADR Administrator may schedule mediation upon any party's request.

(b) A commission employee, subsequent to appealing a personnel action to the appropriate commission Division Director in accordance with the commission's Personnel Manual and without having obtained satisfaction, may request approval of mediation from the Human Resources Office.

(c) Upon unanimous motion of the parties and at the discretion of the administrative law judge, the provisions of this section may apply to contested case hearings. In such cases, it is within the discretion of the judge to continue the hearing to allow the use of ADR procedures.

**§533.35 Stipulations.** *[Adopted December 30, 2007]* When the ADR procedures do not result in the full settlement of a matter, the parties in conjunction with the mediator, may limit the contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the administrative law judge assigned to conduct the contested case hearing on the merits and shall be made part of the hearing record.

**§533.36. Agreements.** *[Adopted December 30, 2007]* All agreements between or among parties that are reached as a result of ADR must be committed to writing and will have the same force and effect as a written contract.

**§533.37. Confidentiality.** *[Adopted December*

*30, 2007]*

(a) Except as provided in subsections (c) and (d) of this section, a communication relating to the subject matter made by a participant in an ADR procedure, whether before or after the institution of formal ADR proceedings, is confidential, is not subject to disclosure, and may not be used as evidence in any further proceeding.

(b) Any notes or record made of an ADR procedure are confidential, and participants, including the mediator, may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(c) An oral communication or written material used in or made a part of an ADR procedure is admissible or discoverable only if it is admissible or discoverable independent of the procedure.

(d) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the judge to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

(e) All communications in the mediation between parties and between each party and the mediator are confidential. No shared information will be given to the other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator will not be provided to other parties and will not be filed or become part of the contested case record. All notes taken during the mediation conference will be destroyed at the end of the process.

#### **§533.40. Negotiated Rulemaking.** *[Adopted December 30, 2007]*

(a) It is the commission's policy to employ negotiated rulemaking procedures when appropriate. When the commission is of the opinion that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking will be considered.

(b) When negotiated rulemaking is to be considered, the commission will appoint a convener to assist it in determining whether it is advisable to proceed. The convener shall have the duties described in Texas Government Code, Chapter 2008, and shall make a recommendation to the administrator to proceed or to defer negotiated rulemaking. The recommendation shall be made after the convener, at a minimum, has considered all of the items enumerated in Texas Government Code, §2008.052(c).

(c) Upon the convener's recommendation to proceed, the commission shall initiate negotiated rulemaking according to the provisions of Texas Government Code, Chapter 2008.

## CHAPTER 537 PROFESSIONAL AGREEMENT AND STANDARD CONTRACTS (Ref: §1101.155)

## Professional Agreements

**§537.1. Statement of Principles by the State Bar of Texas and the Texas Real Estate Commission.** *[Repealed January 3, 1983]*

**§537.2. Special Advisory Committee on Standardized Forms.** *[Repealed October 20, 1983]*

**§537.11. Use of Standard Contract Forms.** *[Adopted March 3, 1976; amended April 5, 1979; October 23, 1983; February 27, 1985; May 16, 1985; May 15, 1986; October 5, 1990; September 1, 1992; February 1, 1994; September 1, 1994; March 1, 1995; January 3, 1996; September 1, 1998; March 1, 1999; September 1, 1999; January 1, 2000; April 20, 2000; September 1, 2000; April 1, 2001; February 1, 2002; April 1, 2003; April 1, 2004; September 1, 2004; May 1, 2006 and December 27, 2006]*

(a) When negotiating contracts binding the sale, exchange, option, lease or rental of any interest in real property, a real estate licensee shall use only those contract forms promulgated by the Texas Real Estate Commission for that kind of transaction with the following exceptions:

(1) transactions in which the licensee is functioning solely as a principal, not as an agent;

(2) transactions in which an agency of the United States government requires a different form to be used;

(3) transactions for which a contract form has been prepared by the property owner or prepared by an attorney and required by the property owner;

(4) transactions for which no standard contract form has been promulgated by the Texas Real Estate Commission, and the licensee uses a form prepared by an attorney at law licensed by this state and approved by the attorney for the particular kind of transactions involved or prepared by the Texas Real Estate Broker-Lawyer Committee and made available for trial use by licensees with the consent of the Texas Real Estate Commission.

(b) A licensee may not practice law, offer, give nor attempt to give advice, directly or indirectly; the licensee may not act as a public conveyancer nor give advice or opinions as to the legal effect of any contracts or other such instruments which may affect the title to real estate; the licensee may not give opinions concerning the status or validity of title to real estate; and the licensee may not attempt to prevent nor in any manner whatsoever discourage any principal to a real estate transaction from employing a lawyer. However, nothing herein shall be deemed to limit

the licensee's fiduciary obligation to disclose to the licensee's principals all pertinent facts which are within the knowledge of the licensee, including such facts which might affect the status of or title to real estate.

(c) A licensee may not undertake to draw or prepare documents fixing and defining the legal rights of the principals to a transaction. In negotiating real estate transactions, the licensee may fill in forms for such transactions, using exclusively forms which have been approved and promulgated by the Texas Real Estate Commission or such forms as are otherwise permitted by these rules. When filling in such a form, the licensee may only fill in the blanks provided and may not add to or strike matter from such form, except that licensees shall add factual statements and business details desired by the principals and shall strike only such matter as is desired by the principals and as is necessary to conform the instrument to the intent of the parties. A licensee may not add to a promulgated earnest money contract form factual statements or business details for which a contract addendum, lease or other form has been promulgated by the commission for mandatory use. Nothing herein shall be deemed to prevent the licensee from explaining to the principals the meaning of the factual statements and business details contained in the said instrument so long as the licensee does not offer or give legal advice. It is not the practice of law as defined in this Act for a real estate licensee to complete a contract form which is either promulgated by the Texas Real Estate Commission or prepared by the Texas Real Estate Broker-Lawyer Committee and made available for trial use by licensees with the consent of the Texas Real Estate Commission. Contract forms prepared by the Texas Real Estate Broker-Lawyer Committee for trial use may be used on a voluntary basis after being approved by the commission. Contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and approved by the commission to replace previously promulgated forms may be used by licensees on a voluntary basis prior to the effective date of rules requiring use of the replacement forms.

(d) Where it appears that, prior to the execution of any such instrument, there are unusual matters involved in the transaction which should be resolved by legal counsel before the instrument is executed or that the instrument is to be acknowledged and filed for record, the licensee shall advise the principals that each should consult a lawyer of the principal's choice before executing same.

(e) A licensee may not employ, directly or

## §537.11(e)-.22

indirectly, a lawyer nor pay for the services of a lawyer to represent any principal to a real estate transaction in which the licensee is acting as an agent. The licensee may employ and pay for the services of a lawyer to represent only the licensee in a real estate transaction, including preparation of the contract, agreement, or other legal instruments to be executed by the principals to the transactions.

(f) A licensee shall advise the principals that the instrument they are about to execute is binding on them.

(g) Forms approved or promulgated by the commission may be reproduced only from the following sources:

(1) numbered copies obtained from the commission, whether in a printed format or electronically reproduced from the files available on the commission's Internet site;

(2) printed copies made from copies obtained from the commission;

(3) legible photocopies made from such copies; or

(4) computer-driven printers following these guidelines.

(A) The computer file or program containing the form text must not allow the end-user direct access to the text of the form and may only permit the user to insert language in blanks in the forms or to strike through language at the direction of the parties to the contract.

(B) Typefaces or fonts must appear to be identical to those used by the commission in printed copies of the particular form.

(C) The text and number of pages must be identical to that used by the commission in printed copies of the particular form.

(D) The spacing, length of blanks, borders and placement of text on the page must appear to be identical to that used by the commission in printed copies of the form.

(E) The name and address of the person or firm responsible for developing the software program must be legibly printed below the border at the bottom of each page in no less than six point type and in no larger than 10 point type.

(h) Forms approved or promulgated by the commission must be reproduced on the same size of paper used by the commission with the following changes or additions only.

(1) The business name or logo of a broker, organization or printer may appear at the top of a form outside the border.

(2) The broker's name may be inserted in

any blank provided for that purpose.

**§537.12. Standard Contract Form TREC No. 1-1.** *[Repealed August 1, 1985.]*

**§537.13. Standard Contract Form TREC No. 2-4.** *[Repealed January 1, 1998.]*

**§537.14. Standard Contract Form TREC No. 3-0.** *[Repealed August 1, 1985.]*

**§537.15. Standard Contract Form TREC No. 4-0.** *[Repealed August 1, 1985.]*

**§537.16. Standard Contract Form TREC No. 5-0.** *[Repealed August 1, 1985.]*

**§537.17. Standard Contract Form TREC No. 6-0.** *[Repealed August 1, 1985.]*

**§537.20. Standard Contract Form TREC No. 9-7.** *[Adopted November 1, 1982; amended August 1, 1985; February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000; April 1, 2003; May 1, 2006; December 27, 2006 and September 1, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-7 approved by the Texas Real Estate Commission in 2008 for use in the sale of unimproved property where intended use is for one to four family residences. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.21. Standard Contract Form TREC No. 10-5.** *[Adopted November 1, 1982; amended December 1, 1987; September 1, 1994; September 1, 1999; January 1, 2000; February 1, 2002; December 27, 2006; July 1, 2007 and November 17, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 10-5 approved by the Texas Real Estate Commission in 2007 for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.22. Standard Contract Form TREC No. 11-6.** *[Adopted November 11, 1982; amended December 1, 1987; September 1, 1994; and September 1, 1998; February 1, 2002; April 1, 2004 December 27, 2006; July 1, 2007 and November 17, 2008.]* The Texas Real Estate Commission adopts by reference standard

contract form TREC No.11-6 approved by the Texas Real Estate Commission in 2007 for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

**§537.23. Standard Contract Form TREC No. 12-2.** *[Adopted November 1, 1982; amended September 1, 1992; December 27, 2006; July 1, 2007 and November 17, 2008]* The The Texas Real Estate Commission adopts by reference standard contract form TREC No. 12-2 approved by the Texas Real Estate Commission in 2007 for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

**§537.24. Standard Contract Form TREC No. 13-1.** *[Repealed September 1, 2000.]*

**§537.25. Standard Contract Form TREC No. 14-0.** *[Repealed September 1, 1994.]*

**§537.26. Standard Contract Form TREC No. 15-4.** *[Adopted November 1, 1982; amended August 1, 1985; September 1, 1994; March 1, 1999; December 27, 2006 and November 17, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 15-4 approved by the Texas Real Estate Commission in 2006 for use as a residential lease when a seller temporarily occupies property after closing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, www.trec.state.tx.us.

**§537.27. Standard Contract Form TREC No. 16-4.** *[Adopted November 1, 1982; amended August 1, 1985; September 1, 1994; March 1, 1999; December 27, 2006 and November 17, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 16-4 approved by the Texas Real Estate Commission in 2006 for use as a residential lease when a buyer temporarily occupies property prior to closing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, www.trec.state.tx.us.

**§537.28. Standard Contract Form TREC No.**

**20-8.** *[Adopted August 1, 1985; amended September 1, 1992; February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000; February 1, 2002; April 1, 2003; May 1, 2006 and December 27, 2006 and September 1, 2008.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-8 approved by the Texas Real Estate Commission in 2008 for use in the resale of residential real estate. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

**§537.29. Standard Contract Form TREC No. 21-4.** *[Repealed February 1, 2002]*

**§537.30. Standard Contract Form TREC No. 23-8.** *[Adopted December 1, 1987; amended February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000; September 1, 2000; April 1, 2003; May 1, 2006; December 27, 2006; December 30, 2007 and September 1, 2008.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-8 approved by the Texas Real Estate Commission in 2008 for use in the sale of a new home where construction is incomplete. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

**§537.31. Standard Contract Form TREC No. 24-8.** *[Adopted December 1, 1987; amended February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000; September 1, 2000; April 1, 2003; May 1, 2006; December 27, 2006; December 30, 2007 and September 1, 2008.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-8 approved by the Texas Real Estate Commission in 2008 for use in the sale of a new home where construction is completed. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

**§537.32. Standard Contract Form TREC No. 25-6.** *[Adopted December 1, 1987; amended February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000; April 1, 2003; May 1, 2006; December 27, 2006 and September 1, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-6 approved by the Texas Real Estate Commission in 2008 for use in the sale of a farm or ranch. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

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**§537.33. Standard Contract Form TREC No. 26-4.** *[Adopted December 1, 1987; amended September 1, 1992; February 1, 1994; April 1, 2001; February 1, 2002; December 27, 2006 and November 17, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 26-5 approved by the Texas Real Estate Commission in 2006 for use as an addendum concerning seller financing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.34. Standard Contract Form TREC No. 27-0.** *[Repealed January 1, 1998]*

**§537.35. Standard Contract Form TREC No. 28-1.** *[Adopted February 1, 1994; amended December 27, 2006; July 1, 2007 and November 17, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 28-1 approved by the Texas Real Estate Commission in 2007 for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.36. Standard Contract Form TREC No. 29-1.** *[Repealed April 1, 2003]*

**§537.37. Standard Contract Form TREC No. 30-7.** *[Adopted September 1, 1994; amended January 1, 1998; January 1, 2000; April 20, 2000; February 1, 2002; April 1, 2003; May 1, 2006 and December 27, 2006; September 1, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-7 approved by the Texas Real Estate Commission in 2008 for use in the resale of a residential condominium unit. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.38. Standard Contract Form TREC No. 31-2.** *[Repealed February 1, 2002]*

**§537.39. Standard Contract Form TREC No. 32-2.** *[Adopted September 1, 1994; amended December 27, 2006; July 1, 2007 and September 1, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 32-2 approved by the Texas Real Estate Commission in 2008 for use as a condominium resale certificate. This document

is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.40. Standard Contract Form TREC No. 33-1.** *[Adopted March 1, 1995; amended December 27, 2006; July 1, 2007 and November 17, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 33-1 approved by the Texas Real Estate Commission in 2007 for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.41. Standard Contract Form TREC No. 34-3.** *[Adopted March 1, 1995; amended February 1, 2002; December 27, 2006; July 1, 2007 and December 30, 2007]* The Texas Real Estate Commission adopts by reference standard contract form, TREC No. 34-3 approved by the Texas Real Estate Commission in 2008 for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.42. Standard Contract Form TREC No. 35-2.** *[Repealed April 1, 2003]*

**§537.43. Standard Contract Form TREC No. 36-5.** *[Adopted January 3, 1996; amended September 1, 1999; January 1, 2000; April 1, 2003; April 1, 2004; May 1, 2006 and December 27, 2006 and September 1, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-5 approved by the Texas Real Estate Commission in 2008 for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.44. Standard Contract Form TREC No. 37-3.** *[Adopted January 3, 1996; amended September 1, 1999; January 1, 2000; May 1, 2006 and December 27, 2006 and September 1, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 37-3 approved by the Texas Real Estate Commission in 2008 for use as a resale

certificate when the property is subject to mandatory membership in an owners' association. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.45. Standard Contract Form TREC No.38-2.** *[Adopted September 1, 1998; amended February 1, 2002; December 27, 2006 and September 1, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No.38-2 approved by the Texas Real Estate Commission in 2008 for use as a notice of termination of contract. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.46. Standard Contract Form TREC No. 39-6.** *[Adopted September 1, 1998; amended September 1, 1999; January 1, 2000; April 1, 2001; February 1, 2002; April 1, 2003 and September 1, 2004; May 1, 2006 and December 27, 2006 and November 17, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 39-6 approved by the Texas Real Estate Commission in 2006 for use as an amendment to promulgated forms of contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.47. Standard Contract Form TREC No. 40-3.** *[Adopted February 1, 2002; amended April 1, 2004; May 1, 2006; December 27, 2006 and December 30, 2007.]* The Texas Real Estate Commission adopts by The Texas Real Estate Commission adopts by reference standard contract form, TREC No. 40-3 approved by the Texas Real Estate Commission in 2008 for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.48. Standard Contract Form TREC No. 41-1.** *[Adopted February 1, 2002; amended December 27, 2006 and July 1, 2007 and November 17, 2008]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 41-1 approved by the Texas Real Estate Commission in 2007 for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan. This document is published by and available from the Texas Real Estate

Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§535.49. Standard Contract form TREC No. 42-0.** *[Adopted April 1, 2004; amended December 27, 2006]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 42-0 approved by the Texas Real Estate Commission in 2004 for use as a notice that buyer cannot obtain financing pursuant to the Third Party Financing Condition Addendum. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.50. Standard Contract Form TREC No. 43-0.** *[Adopted December 30, 2007.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 43-0 approved by the Texas Real Estate Commission in 2008 for use as an addendum to be added to promulgated forms of contracts when there is a condition requiring notices under §5.016, §420.001 and §420.002, Texas Property Code. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.51. Standard Contract Form TREC No. 44-0.** *[Adopted March 1, 2009.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 44-0 approved by the Texas Real Estate Commission in 2008 for use as an addendum to be added to promulgated forms of contracts for the reservation of oil, gas, and other minerals. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**§537.52. Standard Contract Form TREC No. 45-0.** *[Adopted March 1, 2009.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 45-0 approved by the Texas Real Estate Commission in 2008 for use as an addendum to be added to promulgated forms of contracts in the short sale of property. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

**CHAPTER 541 RULES RELATING TO THE PROVISIONS  
OF TEXAS OCCUPATIONS CODE, CHAPTER 53**

**§541**

**§541.1. Criminal Offense Guidelines.**  
*[Adopted May 19, 1982; amended November 6, 1990; December 8, 1992; February 23, 1998; May 4, 1999; January 1, 2004 and January 7, 2009]*

(a) For the purposes of Texas Occupations Code, Chapter 53, §§1101.354, 1102.107, 1102.108, 1102.109, and §535.400(f) of this title, the Texas Real Estate Commission considers that the following criminal offenses directly relate to the duties and responsibilities of a real estate broker, real estate salesperson, easement or right-of-way agent, professional inspector, real estate inspector or apprentice inspector for the reason that the commission of the offenses tends to demonstrate the person's inability to represent the interest of another with honesty, trustworthiness and integrity:

- (1) offenses involving fraud or misrepresentation;
- (2) offenses involving forgery, falsification of records, or perjury;
- (3) offenses involving the taking of bribes, kickbacks, or other illegal compensation;
- (4) offenses against real or personal property belonging to another, if committed knowingly or intentionally;
- (5) offenses against the person;
- (6) offenses against public administration;
- (7) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;
- (8) offenses involving moral turpitude;
- (9) offenses in violation of Chapter 21, Texas Penal Code (sexual offenses);
- (10) offenses for which the person has been required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure;
- (11) offenses of attempting or conspiring to commit any of the foregoing offenses;
- (12) offenses involving aiding and abetting the commission of an offense listed in this section;
- (13) multiple violations of any criminal statute; and
- (14) any other offense that the commission determines is directly related to an occupation regulated by the commission using the factors described in subsection (b) of this section.

(b) In determining whether a criminal offense listed in subsection (a) of this section or any other criminal offense is directly related to an

occupation regulated by the commission, the commission shall consider and make appropriate findings of fact in a contested case upon the following factors:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(c) In addition to the factors under subsection (b) of this section, the commission, in determining a person's present fitness for a license, shall consider the following evidence:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the offense;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) the person's compliance with the courtordered terms and conditions while on parole, supervised release, probation, or community supervision;
- (6) the person's repeated offenses over a period of time which tend to demonstrate a lack of respect for, disregard for, or apparent inability to comply with, the law;
- (7) the time remaining, if any, on the person's term of parole, supervised release, probation, or community supervision;
- (8) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
- (9) other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the person.

(d) It shall be the responsibility of the applicant to provide to the commission:

## §541

(1) the recommendations of prosecution, law enforcement, and correctional authorities;

(2) signed letters of character reference from persons in the applicant's business or professional community which confirm that the writer knows about the applicant's prior criminal conduct;

(3) proof in such form as may be required by the commission that he or she has maintained a record of steady employment;

(4) proof that the applicant has supported his or her dependents, if any;

(5) proof that the applicant has maintained a record of good conduct;

(6) proof that the applicant has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases; and

(7) if the applicant submits a letter of character reference from a prospective sponsor, the letter must confirm that the writer knows about the applicant's prior criminal conduct.

## ***RULE REVIEW***

- 11. Discussion regarding comments on the review of:**
  - a. 22 TAC Chapter 534, General Administration**
  - b. 22 TAC Chapter 539, Provisions of the Residential Service Company Act**
  - c. 22 TAC Chapter 543, Rules Relating to the Provisions of the Texas Timeshare Act**

## **Agenda Item 11**

### **SUMMARY**

This agenda item allows for the discussion of comments on the proposed review of Chapter 534, General Administration; Chapter 539, Provisions of The Residential Service Company Act; and Chapter 543, Rules Relating to the Provisions of The Texas Timeshare Act.

No comments were received on the review of the rules.

## ***RULES FOR POSSIBLE PROPOSAL***

**12. Discussion and possible action to propose amendments to:**

- a. 22 TAC §534.1 Charges for copies of Public Information**
- b. 22 TAC §534.4 Historically Underutilized Businesses Program**
- c. 22 TAC §534.5 Bid Opening and Tabulation**

## **Agenda Item 12(a)-(c)**

### **SUMMARY**

The Texas Real Estate Commission (TREC) proposes amendments to §534.1. concerning Charges for Copies of Public Information, §534.4. concerning Historically Underutilized Businesses Program, and §534.5. Bid Opening and Tabulation. The proposed amendments update the references to the rules promulgated by other state agencies that are adopted by reference by the commission.

### **STAFF RECOMMENDATION**

Propose the amended rules for publication in the *Texas Register* and for public comment.

### **MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §534.1, concerning Charges for Copies of Public Information, §534.4, concerning Historically Underutilized Businesses Program, and §534.5, Bid Opening and Tabulation in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, and with substantive changes as have been approved by the Commission for publication in the *Texas Register* and for comment.

**Agenda Items 12 (a)-(c)**  
**22 TAC Chapter 534 General Administration**

The Texas Real Estate Commission (TREC) proposes amendments to §534.1. concerning Charges for Copies of Public Information, §534.4. concerning Historically Underutilized Businesses Program, and §534.5. Bid Opening and Tabulation. The proposed amendments update the references to the rules promulgated by other state agencies that are adopted by reference by the commission.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

**§534.1. Charges for Copies of Public Information**

(a) **Charges** [~~Charge~~] for copies of public information provided by the commission shall be based upon the current charges established by the **Office of the Attorney General** [~~Services Commission~~]; provided, however, that the commission shall charge its actual costs if the actual costs of providing copies exceed the established charges, and an exemption has been granted by the **Office of the Attorney General** [~~Services Commission~~].

(b) (No change.)

**§534.4. Historically Underutilized Businesses Program. In accordance with Texas Government Code §2161.003, the commission adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B. [Pursuant to Chapter 2161, §2161.003, Texas Government Code, the commission adopts by reference the rules of the Texas Building and Procurement Commission in 1 TAC §§111.11 – 111.28,]** relating to the Historically Underutilized Business Program. **The Comptroller of Public Accounts rules are located at the Office of the Secretary of State's internet website: [www.sos.state.tx.us/tac/index.html](http://www.sos.state.tx.us/tac/index.html).**

**§534.5. Bid Opening and Tabulation**

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC §§20.35 [~~Building and Procurement Commission in 1 TAC §113.5(b)~~] relating to bid submission, bid opening, and tabulation.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on February 8, 2010.

## ***RULES FOR POSSIBLE PROPOSAL***

**13. Discussion and possible action to propose amendments to:**

**a. 22 TAC §539.4 Disclosures**

**b. 22 TAC §539.51 Employee Defined**

**c. 22 TAC §539.61 Application and Licensing**

**d. 22 TAC §539.71 Miscellaneous Forms**

**e. 22 TAC §539.91 Annual Report Form  
RSC 6-2**

**f. 22 TAC §539.137 Semiannual Report**

## **Agenda Item 13(a)**

### **SUMMARY**

This agenda item proposes an amended title for 22 TAC Chapter 539, new Subchapter E, concerning Disclosures, and new §539.4 concerning Disclosures. The new rule would require 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 a residential service contract.

### **STAFF RECOMMENDATION**

Propose the amended title, new subchapter and new rule for publication in the *Texas Register* and for public comment.

### **MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amended title for 22 TAC Chapter 539, new Subchapter E, concerning Disclosures, and new §539.4 concerning Disclosures, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, and with substantive changes as have been approved by the Commission for publication in the *Texas Register* and for comment.

**Agenda Item 13(a)**  
**22 TAC Chapter 539 Rules Relating to the Residential Service Company Act**  
**Subchapter E. Disclosures**  
**§539.4. Disclosures**

The Texas Real Estate Commission (TREC) proposes an amended title for 22 TAC Chapter 539, new Subchapter E, concerning Disclosures, and new §539.4 concerning Disclosures. The new rule would require 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 a residential service contract.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

**CHAPTER 539. PROVISIONS RELATING TO [ØF] THE RESIDENTIAL SERVICE COMPANY ACT.**

**Subchapter E. Disclosures.**

**§539.4. Disclosures. A residential service company that pays persons not employed by the company for the sale, advertising, inspection, or processing of a residential service contract under Texas Occupations Code §1303.304 may not offer to sell a residential service contract unless the contract contains the following statement in at least 10-point bold type:**

**NOTICE: THIS COMPANY PAYS PERSONS NOT EMPLOYED BY THE COMPANY FOR THE SALE, ADVERTISING, INSPECTION, OR PROCESSING OF A RESIDENTIAL SERVICE CONTRACT UNDER TEXAS OCCUPATIONS CODE §1303.304.**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on February 8, 2010.

## **Agenda Item 13(b)**

### **SUMMARY**

This agenda item proposes amendments to Chapter 539, Subchapter F, §539.51 concerning “Employed by” Defined. The proposed amendment corrects typographical errors in the existing rule to better reflect the statutory reference.

### **STAFF RECOMMENDATION**

Propose the amended title, new subchapter and new rule for publication in the *Texas Register* and for public comment.

### **MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to Chapter 539, Subchapter F, §539.51 concerning “Employed by” Defined, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, and with substantive changes as have been approved by the Commission for publication in the *Texas Register* and for comment.

**Agenda Item 13(b)**  
**22 TAC Chapter 539 Rules Relating to the Residential Service Company Act**  
**Subchapter F Authorized Personnel**  
**§539.51. “Employed By” Defined**

The Texas Real Estate Commission (TREC) proposes amendments to Chapter 539, Subchapter F, §539.51 concerning “Employed by” Defined. The proposed amendment corrects typographical errors in the existing rule to better reflect the statutory reference.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

**§539.51 “Employed By” [Employee] Defined.** For the purposes of Texas Occupations Code, Chapter 1303, **§1303.101(b) [~~§1303.004~~], a person is “employed by a residential service company” [“employee”] if the [means any] person is** other than a licensed real estate salesperson, real estate broker, mobile home dealer, or insurance agent **and is** authorized by a licensed **residential** service company to sell, offer to sell, arrange or solicit the sale of, or receive applications for residential service contracts subject to the following conditions.

(1) The residential service company must have the right to direct and control the employee’s performance.

(2) The residential service company must accept responsibility for representations made by the employee within the scope of the employee’s employment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Issued in Austin, Texas, on February 8, 2010.

## **Agenda Item 13(c)**

### **SUMMARY**

This agenda item proposes amendments to Subchapter G, §539.61 concerning Application and Licensing. The amended rule adopts by reference a revised application form. The revised form is streamlined and changed to provide consistency with other TREC forms.

### **STAFF RECOMMENDATION**

Propose the amended rule and revised form for publication in the *Texas Register* and for public comment.

### **MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to Chapter 539, Subchapter G, §539.61 concerning Application and Licensing and the revised form adopted by reference, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, and with substantive changes as have been approved by the Commission for publication in the *Texas Register* and for comment.

**Agenda Item 13(c)**  
**22 TAC Chapter 539 Rules Relating to the Residential Service Company Act**  
**Subchapter G. Application for License**  
**§539.61. Application and Licensing**

The Texas Real Estate Commission (TREC) proposes amendments to Subchapter G, §539.61 concerning Application and Licensing. The amended rule adopts by reference a revised application form. The revised form is streamlined and changed to provide consistency with other TREC forms.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

**§539.61. Application and Licensing**

(a) The Texas Real Estate Commission adopts by reference Application Form RSC 1-2 ~~[1-1]~~ approved by the commission ~~[in 1994]~~. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on February 8, 2010.

MAILING ADDRESS:  
TEXAS REAL ESTATE COMMISSION  
P.O. Box 12188  
Austin, Texas 78711-2188  
www.trec.state.tx.us



OFFICE ADDRESS:  
TEXAS REAL ESTATE COMMISSION  
1101 Camino La Costa  
Austin, Texas 78752  
Telephone: (512) 459-6544 or  
**1-800-250-TREC (8732)**

## **APPLICATION FOR RESIDENTIAL SERVICE COMPANY LICENSURE**

### **GENERAL INFORMATION**

The attached forms may be used by persons applying for a residential service company license.

### **FEE**

A \$3,500 filing fee is required as part of the application; the fee is not returnable if an application is disapproved or abandoned. Each evidence of coverage and schedule of charges the residential service company wishes to offer must be separately approved by the Commission. Separate filing fees are required for an applicant's Schedule of Charges and for each different Evidence of Coverage a licensee may wish to offer. Please complete and submit TREC Form No. RSC 3-2, Application to Approve Evidence of Coverage/Schedule of Charges, along with the required fee.

### **INFORMATION REQUESTED**

Applicant should determine that all requested information is provided. Failure to provide requested information will delay consideration of the application. Use separate sheets where necessary to provide complete responses.

### **SURETY BOND**

An applicant for a residential service company license must file with the Commission a surety bond issued by an admitted carrier in this State, using Residential Service Company Bond, TREC Form No. RSC 2-4, or other security accepted by the Commission in the amount of \$25,000.

**NOTE:** The information submitted in connection with this application is generally subject to public disclosure pursuant to Government Code, Chapter 552, the Public Information Act (PIA). The PIA excepts from disclosure proprietary information under certain conditions. Please identify each page containing such information by clearly marking it as confidential or proprietary. Note that marking documents as proprietary or confidential does not automatically mean that they will be withheld if requested; the marked information would be submitted to the Office of the Attorney General for determination of its status.

#### **PRIVACY NOTICE**

**In accordance with Chapter 559, Government Code, the following notice about certain information laws and practices is given.**

- (1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.**
- (2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.**
- (3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect**



**Texas Real Estate Commission**  
**P.O. Box 12188**  
**Austin, Texas 78711-2188**  
www.trec.state.tx.us

APPLICATION FOR:  
**RESIDENTIAL SERVICE COMPANY LICENSE**

FEE	REGISTER NUMBER	REVENUE CODE	AMOUNT	LICENSE NUMBER
RSC Application	<i>THIS AREA FOR TREC USE ONLY</i>		29 \$3,500	

**DO NOT WRITE ABOVE THIS LINE**

*NOTE: ALL INFORMATION MUST BE TYPED OR PRINTED IN INK*

1. Name and address (principal office) of applicant:

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Telephone \_\_\_\_\_

E-mail Address \_\_\_\_\_ Fax Number \_\_\_\_\_

Name of Contact \_\_\_\_\_ Telephone \_\_\_\_\_

E-mail Address \_\_\_\_\_ Fax Number \_\_\_\_\_

2. Type of organization of applicant: (check one)

Sole Proprietor    Corporation    Limited Liability Company (LLC)    Partnership or Joint Venture

Other (Specify) \_\_\_\_\_

- a) If a corporation or LLC, state of formation: \_\_\_\_\_
- b) If a foreign corporation or LLC, attach copy of entity's certificate of authority to do business in Texas, along with the copies of all documents submitted to and from the Secretary of State of Texas.
- c) Attach copies of organizational documents such as Articles of Incorporation, Articles of Organization, Articles of Association, Partnership or Management Agreement, or Trust Agreement, including all amendments.
- d) Attach copies of bylaws, rules or other documents prescribing regulations for internal affairs of applicant.

3. Attach a list of names, addresses, and official positions of corporate officers, partners, or principals responsible for affairs of applicant. (Include Board of Directors, Board of Trustees, Executive Committee, Partners, Officers.)

4. Attach a certified financial statement and management letter prepared by an independent public accountant within the preceding six (6) months, as well as a statement of stockholders equity and statement of cash flows, if applicable.

5. Attach a statement describing applicant's proposed marketing methods, sources of working capital and sources of funding.

6. Attach a statement describing applicant's sources of working capital and all sources of funding.

This document is available on the TREC website at [www.trec.state.tx.us](http://www.trec.state.tx.us)

7. Business name to be used, if different from that above. Attach Certificate of Assumed Name, if any: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Attach Power of Attorney, if applicant is not domiciled in Texas, appointing the Administrator of the Texas Real Estate Commission as the true and lawful attorney of the applicant for receipt of legal services of process in any legal action brought against applicant in Texas.

9. Has applicant ever been licensed or authorized to do business as a residential service company or home warranty company in any other state?  Yes  No

*(If "yes", provide requested information below or on a separate sheet as necessary.)*

YEAR	STATE	ISSUING AGENCY	LICENSE OR REGISTRATION NUMBER	EXACT NAME IN WHICH LICENSE WAS ISSUED

10. Has any other state ever revoked, cancelled or withdrawn applicant's authority to do business in that state? **If "yes", provide relevant documentation.**  Yes  No

11. Does the applicant have a procedure established to respond to consumer complaints?  Yes  No  
(Please describe or explain on a separate sheet.)

### **CERTIFICATION**

I certify that all information reflected in or attached to this application is true and correct to the best of my knowledge.

Certification must be provided by individual applicant, by principal officer of corporation, manager of LLC or by each partner or member of partnership or association.

Printed Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, personally appeared: \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration therein expressed.

WITNESS MY HAND AND SEAL OF OFFICE, this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for

\_\_\_\_\_ County, \_\_\_\_\_

This page should be completed by the principal officer of a Corporation, manager of the LLC, the partners in a Partnership or members of an Association.

1. Name: \_\_\_\_\_

2. Title: \_\_\_\_\_

3. Residence Address: \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

4. Social Security No. \_\_\_\_ - \_\_\_\_ - \_\_\_\_\_ 5. Driver's License (State & No.) \_\_\_\_\_ 6. Date of Birth \_\_\_\_\_

7. Business or occupation for the past five years:

FROM	TO	CITY AND STATE	NATURE OF BUSINESS

8. Experience in the residential service company business (If none, so indicate):

FROM	TO	CITY AND STATE	NATURE OF BUSINESS

**FOR EVERY "YES" ANSWER TO QUESTIONS 9 THROUGH 14, SUBMIT A FULL EXPLANATION ON A SEPARATE SHEET OF PAPER AND ATTACH RELEVANT DOCUMENTATION.**

9. Have you ever been convicted of a criminal offense?  Yes  No  
 (Include all felonies and misdemeanors other than minor traffic tickets.)

10. Have you ever been placed on probation or community supervision (also known as deferred adjudication)?  Yes  No

11. Are there any criminal actions or civil suits pending against you?  Yes  No

12. Are there any unpaid judgments outstanding against you?  Yes  No  
 If so, where? STATE \_\_\_\_\_ COUNTY \_\_\_\_\_

13. Have you ever had an application for any type of professional or occupational license disapproved?  Yes  No

14. Have you ever had any type of professional or occupational license suspended, cancelled or revoked?  Yes  No

**CERTIFICATION**

I, \_\_\_\_\_, the person named above, do hereby certify that the information reflected above is accurate to the best of my knowledge.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

## **Agenda Item 13(d)**

### **SUMMARY**

This agenda item proposes amendments to Subchapter H., §539.71 concerning Miscellaneous Forms. The amended rule adopts by reference a revised Residential Service Company Bond form and Application to approve Evidence of Coverage/Schedule of Charges form. The forms are revised to maintain consistency with other TREC forms.

### **STAFF RECOMMENDATION**

Propose the amended rule and revised forms for publication in the *Texas Register* and for public comment.

### **MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to Chapter 539, Subchapter H., §539.71 concerning Miscellaneous Forms and the revised forms adopted by reference, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, and with substantive changes as have been approved by the Commission for publication in the *Texas Register* and for comment.

**Agenda Item 13(d)**  
**22 TAC Chapter 539 Rules Relating to the Residential Service Company Act**  
**Subchapter H. Miscellaneous Forms**  
**§539.71. Miscellaneous Forms**

The Texas Real Estate Commission (TREC) proposes amendments to Subchapter H., §539.71 concerning Miscellaneous Forms. The amended rule adopts by reference a revised Residential Service Company Bond form and Application to approve Evidence of Coverage/Schedule of Charges form. The forms are revised to maintain consistency with other TREC forms.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

**§539.71. Miscellaneous Forms.**

The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

(1) Residential Service Company Bond, Form RSC 2-~~4~~ [~~3~~]; and

(2) Application to Approve Evidence of Coverage/Schedule of Charges, Form RSC 3-~~2~~ [~~1~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on February 8, 2010.



**Texas Real Estate Commission**  
**P.O. Box 12188**  
**Austin, Texas 78711-2188**  
www.trec.state.tx.us

STATE OF TEXAS

RESIDENTIAL SERVICE COMPANY BOND

KNOW ALL PERSONS BY THESE PRESENTS:

BOND NO. \_\_\_\_\_

That we, \_\_\_\_\_, of the County of \_\_\_\_\_, State of \_\_\_\_\_, as Principal, and \_\_\_\_\_, an insurance carrier duly admitted to do business in the State of Texas, as Surety, are held and firmly bound unto the Texas Real Estate Commission, Obligee, in the penal sum of \_\_\_\_\_ THOUSAND (\$\_\_\_\_\_,000) DOLLARS, lawful money of the United States, to be paid to said Obligee for the benefit of a party who may suffer damages resulting from the failure of the above-named Residential Service Company to meet obligations to the persons contracting for its services, for which payment well and truly to be made, we bind ourselves and our legal representatives, successors and assigns, jointly and severally by these presents. Provided, however, in no event shall Surety's liability for all claims under this bond exceed the penal sum of the bond.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas, the said Principal has been licensed as a Residential Service Company, pursuant to The Residential Service Company Act, Chapter 1303, Texas Occupations Code, by the said Obligee.

NOW, THEREFORE, if the said Principal shall faithfully perform its obligations to the persons contracting for its services and in all things comply with Chapter 1303, Texas Occupations Code, and the rules and regulations of the Texas Real Estate Commission appertaining thereto, then this obligation to be void, otherwise to remain in full force and effect subject to the following conditions:

1. It is agreed that as of \_\_\_\_\_, \_\_\_\_\_, this bond shall be in full force and effect indefinitely and that a continuation or renewal certificate is unnecessary.
2. The Surety may at any time cancel this bond by giving ninety (90) days written notice to the Texas Real Estate Commission; the Surety, however, is to remain liable for any defaults under this bond committed on residential service contracts written during its term.

SIGNED AND SEALED, this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Corporate Seal)

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Texas Recording Agent)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Address of Agent)

By: \_\_\_\_\_  
(Attorney-in-fact)

**MAILING ADDRESS:**  
TEXAS REAL ESTATE COMMISSION  
P.O. Box 12188  
Austin, Texas 78711-2188  
www.trec.state.tx.us



**OFFICE ADDRESS:**  
TEXAS REAL ESTATE COMMISSION  
1101 Camino La Costa  
Austin, Texas 78752  
Telephone: (512) 459-6544 or  
**1-800-250-TREC (8732)**

## **EVIDENCE OF COVERAGE & SCHEDULE OF CHARGES**

These instructions apply to a residential service company licensee or applicant requesting revisions or implementation of a new evidence of coverage (contract) or schedule of charges (rates).

- ◆ On item 1, check whether you are requesting approval for an “Evidence of Coverage” or “Schedule of Charges.” If you are requesting both, provide a copy of this form for each.
- ◆ On item 2, enter the date that you propose to implement the Evidence of Coverage or Schedule of Charges. In providing this date, please allow at least 30 days for the Commission to review and provide a response to the information submitted.
- ◆ On item 3, enter the name of the company, the license number, and address.
- ◆ Provide an original signature, title of the person submitting the request, and the date signed.

To expedite the review process, the following will be helpful:

### **Evidence of Coverage Filing**

- ◆ When submitting a new contract, provide a summary explaining the coverage, and how and to whom this contract will be marketed.
- ◆ When submitting revisions to an existing contract, provide a summary of the proposed changes to be made and the rationale for the changes, if applicable.
- ◆ When revising a contract, submit a copy of the previous contract along with the proposed new version. Highlight the additions or deletions to coverage on the proposed version.
- ◆ Provide copies of promotional materials along with the contract. Changes to the contract may also affect advertising and promotional pieces.
- ◆ Before submitting, proofread for typographical errors and reading comprehension for the average person.
- ◆ Avoid extreme cutting and pasting or use of proofreading symbols without providing a readable draft that is clear and clean.
- ◆ Ensure that the evidence of coverage and/or promotional materials submitted are readable. Print less than 11 pt. type may be difficult to read.

### **Schedule of Charges Filing**

- ◆ Identify the contracts that will be affected by these rates or rate changes.
- ◆ Provide justification or a rationale for the rates to be charged or for changes in rates.
- ◆ Provide a breakdown of projected costs (expenses) for the rates to be charged, including a profit projection.
- ◆ Provide a “then” and “now” breakdown of costs (expenses) for contracts where revised rates are being requested. This should include profit projections for the new rates as well as profits earned for the rates currently approved.



Texas Real Estate Commission  
P.O. Box 12188  
Austin, Texas 78711-2188  
www.trec.state.tx.us

APPLICATION TO:

**APPROVE EVIDENCE OF COVERAGE/SCHEDULE OF CHARGES**

FEE	REGISTER NUMBER	REVENUE CODE	AMOUNT	LICENSE NUMBER
RSC EVIDENCE OF COVERAGE		30	\$250	
RSC SCHEDULE OF CHARGES		30	\$250	

*THIS AREA FOR TREC USE ONLY*

**DO NOT WRITE ABOVE THIS LINE**

*NOTE: ALL INFORMATION MUST BE TYPED OR PRINTED IN INK*

1. This is a request for approval of the enclosed (check only one):

EVIDENCE OF COVERAGE

SCHEDULE OF CHARGES      FORM NAME OR NUMBER, IF ANY: \_\_\_\_\_

2. We propose to use or implement the enclosed evidence of coverage or schedule of charges on (specify date) \_\_\_\_\_.

3. The \$250.00 FEE for filing this request is enclosed.

NAME OF COMPANY: \_\_\_\_\_

LICENSE NUMBER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

CONTACT NAME: \_\_\_\_\_

TELEPHONE/FAX: \_\_\_\_\_

EMAIL: \_\_\_\_\_

This document is available on the TREC website at [www.trec.state.tx.us](http://www.trec.state.tx.us)

## Agenda Item 13(e)

### SUMMARY

This agenda item proposes amendments to Subchapter J, §539.91 concerning Annual Report. The proposed rule adopts by reference a revised annual report form. The revised form is streamlined and changed to provide consistency with other TREC forms. Among other things, 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.

### STAFF RECOMMENDATION

Propose the amended rule and revised form for publication in the *Texas Register* and for public comment.

### MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to Chapter 539, Subchapter J, §539.91 concerning Annual Report and the revised form adopted by reference, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, and with substantive changes as have been approved by the Commission for publication in the *Texas Register* and for comment.

**Agenda Item 13(e)**  
**22 TAC Chapter 539 Rules Relating to the Residential Service Company Act**  
**Subchapter J. Annual Report**  
**§539.91 Annual Report**

The Texas Real Estate Commission (TREC) proposes amendments to Subchapter J, §539.91 concerning Annual Report. The proposed rule adopts by reference a revised annual report form. The revised form is streamlined and changed to provide consistency with other TREC forms. Among other things, 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.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

**§539.91. Annual Report [~~Form RSC 6-2~~].**

The Texas Real Estate Commission adopts by reference the Annual Report form RSC 6-~~3~~ **[2]** approved by the commission [~~in 2004~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on February 8, 2010.

MAILING ADDRESS:  
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OFFICE ADDRESS:  
TEXAS REAL ESTATE COMMISSION  
1101 Camino La Costa  
Austin, Texas 78752  
Telephone: (512) 459-6544 or  
**1-800-250-TREC (8732)**

## **ANNUAL REPORT BY RESIDENTIAL SERVICE COMPANY**

### **GENERAL INFORMATION AND INSTRUCTIONS**

The attached form is to be used by a residential service company when filing its Annual Report. The report is due on or before the first day of February each year and will cover the preceding calendar year. Financial statements are due by the first day of April each year.

### **FEE**

A \$3,500 filing fee is required with the Annual Report. Please make checks payable to the Texas Real Estate Commission.

### **INFORMATION REQUESTED**

The residential service company should determine that all requested information provided is detailed and accurate. Use separate sheets of paper where necessary to provide complete responses. **FAILURE TO FILE AN ANNUAL REPORT IN A TIMELY AND ACCURATE MANNER MAY RESULT IN THE SUSPENSION OR REVOCATION OF THE COMPANY'S LICENSE TO DO BUSINESS IN THE STATE OF TEXAS AND TO OTHER PENALTIES AS SET FORTH IN §1303.352, RESIDENTIAL SERVICE COMPANY ACT, TEXAS OCCUPATIONS CODE.**

1. This report should cover the preceding calendar year ending on December 31.
2. Unanswered questions and blank lines or schedules are not acceptable. If no answers or entries are to be made, write "None", not applicable", "N/A", or "-0-" in the space provided.
3. The certification statement must be signed by the appropriate company officers, have the company seal affixed thereon, and be properly notarized.
4. If this report does not contain the requested information in the blanks or is not prepared in accordance with these instructions, the residential service company will be required to satisfy these deficiencies.
5. The residential service company must submit **TWO** copies of its financial statements.
6. The Commission will accept any supplemental information submitted on a computer disk, provided the information is in a generally accepted format.

The information submitted in connection with this report is generally subject to public disclosure pursuant to Government Code, Chapter 552, the Public Information Act (PIA). The PIA excepts from disclosure proprietary information under certain conditions. Please identify each page containing such information by clearly marking it as confidential or proprietary. Note that marking documents as proprietary or confidential does not automatically mean that they will be withheld if requested; the marked information would be submitted to the Office of the Attorney General for determination of its status.



Texas Real Estate Commission  
 P.O. Box 12188  
 Austin, Texas 78711-2188  
 www.trec.state.tx.us

ANNUAL REPORT BY:  
**RESIDENTIAL SERVICE COMPANY**

FEE	REGISTER NUMBER	REVENUE CODE	AMOUNT	LICENSE NUMBER
ANNUAL REPORT FEE	<i>THIS AREA FOR TREC USE ONLY</i>		29 \$3,500	

**DO NOT WRITE ABOVE THIS LINE**

**NOTE: ALL INFORMATION MUST BE PRINTED OR TYPED.**

Identify each page containing proprietary or confidential information under the Public Information Act by clearly marking it as such.

ANNUAL REPORT

Of

\_\_\_\_\_  
 Name of Residential Service Company

\_\_\_\_\_  
 License Number

\_\_\_\_\_  
 (City, State)

To the  
 TEXAS REAL ESTATE COMMISSION

FOR THE PERIOD ENDED

\_\_\_\_\_  
 (Date)

## GENERAL INTERROGATORIES

1. Period covered by this report:

From: January 1, \_\_\_\_\_ to December 31, \_\_\_\_\_

2. What was the total on the last day of this reporting period of company accounts payable to service contractors who have performed service work in Texas under company service contracts?

Answer: \$ \_\_\_\_\_

A. Of this amount, how much is 31 to 60 days past due? \$ \_\_\_\_\_

B. Of this amount, how much is 61 or more days past due? \$ \_\_\_\_\_

3. What was the total of all accounts payable on the last day of this reporting period? \$ \_\_\_\_\_

4. Attach a copy of pleadings, or briefly describe all lawsuits filed during this reporting period in which the company has been named as a defendant.

What is the total potential exposure of all active lawsuits? \$ \_\_\_\_\_

5. List all lawsuits in which the company was named as a defendant which have been disposed of during this reporting period, either by settlement, dismissal or final judgment. State disposition and terms and attach a copy of the final order of the Court.

6. Has the company, during the reporting period covered by this report, been the subject of any administrative proceedings in any jurisdiction?  Yes  No

If "Yes", explain.

7. Attach a specimen of each evidence of coverage (contract) used by the company during all or any part of this reporting period, stating the dates, inclusively, such contracts were in use.

8. Attach a copy of all schedules of charges (rates) which were used by the company during all or any part of this reporting period, stating the dates, inclusively, such schedules were used.

9. Has the company transferred any of the risk of loss under contracts written by it in Texas to any insurer, reinsurer, residential service company or other entity during this reporting period?  Yes  No

If "Yes", explain.

10. Was the company licensed and/or doing business in states other than Texas during this reporting period?  Yes  No

If "Yes", attach an additional sheet giving the names of such state(s), the name of the regulating agency (if any), the agency's mailing address and telephone number (if applicable).

## COMPUTATION OF REQUIRED FUNDED RESERVE

**NOTE: FOR THE PURPOSES OF ALL CALCULATIONS IN THIS SECTION, CARE SHOULD BE TAKEN NOT TO COMBINE CONTRACTS WRITTEN FOR DIFFERENT TERMS. EACH SUCH GROUP OF CONTRACTS SHOULD BE CALCULATED SEPARATELY AND THE RESULTS COMBINED FOR AN ACCURATE REPORT. COMMISSION STAFF ARE AVAILABLE IN CASE QUESTIONS ARISE.**

11. a. Total the number of contract months remaining on contracts in force in Texas on the last day of the reporting period. (For purposes of this calculation, contracts expiring on or before the 15th day of the month should be counted as 0 months for the final contract month. Contracts expiring after the 15th day of the month should be counted as 1 month for the final contract month.) Answer: \_\_\_\_\_

b. Determine the pro rata monthly contract charge. [For purposes of this calculation the aggregate actual contract costs to the consumer are divided by the aggregate number of months (exclusive of listing period months) in the contract terms of "in force" contracts (see note at top of page).] Answer: \$ \_\_\_\_\_

c. Determine the remaining liability on all contracts in force. (Multiply a and b above). Answer: \$ \_\_\_\_\_

d. Calculate 50% of c above. Answer: \$ \_\_\_\_\_

e. Enter actual Funded reserve as documented in attached financial reports. Answer: \$ \_\_\_\_\_

f. **ALTERNATIVE COMPUTATION**

If 11e is equal to or greater than 11d, no further calculations are needed. If not, filer must demonstrate that a lesser figure will satisfy the statute or be in violation. This is done by totaling the losses of all contracts which expired during the twelve months ending with the last day of the reporting period. This total is divided by the actual gross contract costs of those same expired contracts. (This figure will differ from the aggregate actual contract costs in b above in that none of these contracts are still in force.) The quotient of this calculation is now multiplied by c above.

Answer: \$ \_\_\_\_\_

12. If 11e is not equal to or greater than 11d or 11f above, the residential service company must take immediate steps to come into compliance. Several methods are mentioned in the Act and repeated here:

*"Whenever the financial condition of a service company indicates a condition such that the continued operation of the service company might be hazardous to its service contract holders, creditors, or the general public, then the commission may, after notice of hearing, order the service company to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one of the following steps:*

*(1) to reduce the total amount of present or potential liability for benefits by reinsurance, and/or by obtaining an appropriate bond from an admitted carrier or a surplus line carrier;*

*(2) to reduce the volume of new business being accepted;*

*(3) to reduce expenses by specified methods;*

*(4) to suspend or limit the writing of new business for a period of time; or*

*(5) to increase the service company's net worth by contribution."*

13. **EXCEPT AS PROVIDED BELOW, RESIDENTIAL SERVICE COMPANIES WITH ASSETS TOTALING \$5 MILLION OR MORE MUST SUBMIT AUDITED OR REVIEWED FINANCIAL STATEMENTS WITH ANNUAL REPORTS.** Attach a copy of a financial statement as of the last day of this reporting period and the management letter issued by the independent public accountant pursuant to the statement. The financial statement must use the GAAP accounting principles and include a balance sheet, income statement, statement of stockholders' equity, and statement of cash flows for the preceding year. **A company licensed or registered in another state may submit a financial statement in the statutory form required by the other state. The Commission may request additional information.**

The company should also provide the following schedules:

- a. A schedule showing the company's funded reserve account for future claims, showing both nationwide and in Texas, if maintained in separate accounts.
- b. A schedule showing the amount owed to service contractors, both nationwide and in Texas.
- c. Schedules showing payments made to service contractors for service work performed on service contracts in Texas and for service work performed in the rest of the nation.
- d. Cash on hand and on deposit. List each account separately. Give name and address of depository, account number, account balance and type. For demand deposits only, give the balance on the last day of each calendar quarter during this reporting period.
- e. Investments. Give type, issuer, purchase date, amount, market and/or book value, and credit ratings, if applicable.
- f. Fixed assets. Also furnish a copy of your depreciation schedule, if applicable.
- g. Real Estate. Give a property description, actual cost, date of purchase, liens, name and address of mortgagee and market value of property. Furnish a copy of your amortization schedule, if you prefer.
- h. Notes payable. For notes of \$5,000 or more give the name and address of the holder of the note, account number, interest rate, date of loan, principal amount of loan, accrued interest, unpaid balance, and repayment terms.
- i. Show payments to real estate brokers, insurance agents, mobile home dealers or non-RSC employees for selling, advertising, inspection or processing of residential service contracts. (residential service company employees who contact producers should not be in this schedule but included in the income statement under costs of contract expense.)

	Number of contracts	Number of payees
A. Selling	_____	_____
B. Advertising	_____	_____
C. Inspection	_____	_____
D. Processing	_____	_____

j. Schedules listing executive salaries and a subsection showing the total salaries of all employees of the residential service company.

14. Provide information on sales and service call activity sufficient to complete the chart on page 6 and 7 that follows.

General Interrogatory 14 \_\_\_\_\_ of the \_\_\_\_\_  
 Statement as of December 31 \_\_\_\_\_ (Date) \_\_\_\_\_ (Name of residential service company)

Current Reporting Period	Paid Service Contracts in Force: Beginning of Quarter		Paid Service Contracts Issued During Quarter		Paid Service Contracts Expired, Terminated, or Cancelled During Quarter		Paid Service Contracts in Force at End of Quarter	
	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas
First Quarter								
Second Quarter								
Third Quarter								
Fourth Quarter								
TOTALS								
Current Reporting Period	Paid Service Contract Fees Collected During Quarter		Service Calls Reported to and Paid for by the Company		Dollar Cost of Service Calls Paid for During Quarter		Average Dollar Cost per Paid Claim	
	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas
First Quarter								
Second Quarter								
Third Quarter								
Fourth Quarter								
TOTALS								

General Interrogatory 14  
 Statement as of December 31, \_\_\_\_\_ of the \_\_\_\_\_  
 (Date) (Name of residential service company)

Current Reporting Period	Paid Service Contract Fees Collected During Month		Service Calls Reported to and Paid for by the Company		Dollar Cost of Service Calls Paid for During Month		Average Dollar Cost per Paid Service Call	
	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas
July								
August								
September								
October								
November								
December								
TOTALS								

Current Reporting Period	Paid Service Contracts in Force: Beginning of Month		Paid Service Contracts Issued During Month		Paid Service Contracts Expired, Terminated, or Cancelled During Month		Paid Service Contracts in Force at End of Month	
	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas
July								
August								
September								
October								
November								
December								
TOTALS								

**STATEMENT**

For the period ended December 31, \_\_\_\_\_, of the conditions and affairs of \_\_\_\_\_,  
\_\_\_\_\_  
(Name of Residential Service Company)

Address of Home Office:

Texas Address:

\_\_\_\_\_  
\_\_\_\_\_  
Telephone # \_\_\_\_\_  
Fax# \_\_\_\_\_  
Email \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Telephone # \_\_\_\_\_  
Fax # \_\_\_\_\_  
Email \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, President, \_\_\_\_\_, Secretary,  
\_\_\_\_\_, Treasurer (or corresponding person having charge of the  
financial records of the Residential service company) of the \_\_\_\_\_,  
being duly sworn each for himself deposes and says that they are the above described officers of the said  
residential service company, and that on the reporting period stated above, all of the herein assets were the  
absolute property of the said residential service company, free and clear from any liens or claims therein, except  
as herein stated, according to generally accepted accounting principles, and that this Annual Report, together  
with related exhibits, schedules and explanations therein contained, annexed or referred to is a full and true  
statement of all of the assets and liability and of the condition and affairs of the said residential service company  
as of the reporting period stated above, and of its income and deductions therefrom for the period reported, and  
that the information and statements contained therein are true and correct.

(Company Seal)

\_\_\_\_\_, President  
Name Printed/Typed  
\_\_\_\_\_  
Signed  
\_\_\_\_\_, Secretary  
Name Printed/Typed  
\_\_\_\_\_  
Signed  
\_\_\_\_\_, Treasurer  
Name Printed/Typed  
\_\_\_\_\_  
Signed

Sworn to and subscribed before me by the said \_\_\_\_\_,  
\_\_\_\_\_, and \_\_\_\_\_,  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, to certify which, witness my hand and  
seal of office.

My Commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for  
\_\_\_\_\_  
County,  
\_\_\_\_\_  
(State)

## **Agenda Item 13(f)**

### **SUMMARY**

This agenda item proposes amendments to Subchapter N, §539.137 concerning Mid-year Report. The proposed rule adopts by reference a revised mid-year report form. The revised form is streamlined and changed to provide consistency with other TREC forms. Among other things, 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.

### **STAFF RECOMMENDATION**

Propose the amended rule and revised form for publication in the *Texas Register* and for public comment.

### **MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to Chapter 539, Subchapter N, §539.137 concerning Mid-year Report and the revised form adopted by reference, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, and with substantive changes as have been approved by the Commission for publication in the *Texas Register* and for comment.

**Agenda Item 13(f)**  
**22 TAC Chapter 539 Rules Relating to the Residential Service Company Act**  
**Subchapter N. Mid-year Report**  
**§539.137 Mid-year Report**

The Texas Real Estate Commission (TREC) proposes amendments to Subchapter N, §539.137 concerning Mid-year Report. The proposed rule adopts by reference a revised mid-year report form. The revised form is streamlined and changed to provide consistency with other TREC forms. Among other things, 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.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1303.

The statute affected by this proposal is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the proposed amendments.

**§539.137. Mid-year [~~Semiannual~~] Report**

(a) The Texas Real Estate Commission adopts by reference Mid-year [~~Semiannual~~] Report Form RSC 7-~~2~~ [~~1~~] approved by the commission [~~in 1994~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.state.tx.us](http://www.trec.state.tx.us).

(b) Each residential service company shall file a mid-year [~~semiannual~~] report no later than August 15 of each year for the preceding months of January through June [~~and shall file a semiannual report no later than February 15 of each year for the preceding months of July through December~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on February 8, 2010.

MAILING ADDRESS:  
TEXAS REAL ESTATE COMMISSION  
P.O. Box 12188  
Austin, Texas 78711-2188  
www.trec.state.tx.us



OFFICE ADDRESS:  
TEXAS REAL ESTATE COMMISSION  
1101 Camino La Costa  
Austin, Texas 78752  
Telephone: (512) 459-6544 or  
**1-800-250-TREC (8732)**

## **MID-YEAR REPORT BY RESIDENTIAL SERVICE COMPANY**

### **GENERAL INFORMATION**

The attached form is to be used by a residential service company when filing its Mid-year Report. The report for January 1 through June 30 is due on August 1st.

### **INFORMATION REQUESTED**

The residential service company should determine that all requested information provided is detailed and accurate. Use separate sheets of paper where necessary to provide complete responses. **FAILURE TO FILE A MID-YEAR REPORT IN A TIMELY AND ACCURATE MANNER MAY RESULT IN THE SUSPENSION OR REVOCATION OF THE COMPANY'S LICENSE TO DO BUSINESS IN THE STATE OF TEXAS, AND TO OTHER PENALTIES AS SET FORTH IN §1303.352, RESIDENTIAL SERVICE COMPANY ACT, TEXAS OCCUPATIONS CODE.**

1. This report should cover the period from January 1 thru June 30.
2. Unanswered questions and blank lines or schedules are not acceptable. If no answers or entries are to be made, write "None", "not acceptable", "N/A", or "-0-" in the space provided.
3. The certification statement must be signed by the appropriate company officers, have the company seal affixed thereon and be properly notarized.
4. If this report does not contain the requested information asked for in the blanks, or is not prepared in accordance with these instructions, the residential service company will be required to file amendments in order to satisfy these deficiencies.

The information submitted in connection with this mid-year report is generally subject to public disclosure pursuant to Government Code, Chapter 552, the Public Information Act (PIA). The PIA excepts from disclosure proprietary information under certain conditions. Please identify each page containing such information by clearly marking it as confidential or proprietary. Note that marking documents as proprietary or confidential does not automatically mean that they will be withheld if requested; the marked information would be submitted to the Office of the Attorney General for determination of its status.



**Texas Real Estate Commission**  
**P.O. Box 12188**  
**Austin, Texas 78711-2188**  
www.trec.state.tx.us

MID-YEAR REPORT BY:  
**RESIDENTIAL SERVICE COMPANY**

**DO NOT WRITE ABOVE THIS LINE**

**NOTE: ALL INFORMATION MUST BE PRINTED OR TYPED.**

Identify each page containing proprietary or confidential information under the Public Information Act by clearly marking it as such.

MID-YEAR REPORT

of

---

(Name of Residential Service Company)

---

(License Number)

---

( City, State )

To the

TEXAS REAL ESTATE COMMISSION

FOR THE PERIOD ENDED  
JANUARY-JUNE, \_\_\_\_\_

## GENERAL INTERROGATORIES

1. What was the total on the last day of this reporting period of company accounts payable to service contractors who have performed service work in Texas under company service contracts?

Answer: \$ \_\_\_\_\_

A. Of this amount, how much is 31 days to 60 days past due?

\$ \_\_\_\_\_

B. Of this amount, how much is 61 or more days past due?

\$ \_\_\_\_\_

On a separate piece of paper, give an explanation as to why the amount owed is past due. Give the name and address of the service contractor along with the amount owed and date debt was incurred for each separate item in this category

2. What was the total of all accounts payable on the last day of this reporting period? \$ \_\_\_\_\_

3. Attach a copy of pleadings or briefly describe, all lawsuits filed against the company during this reporting period in which you have been named as a defendant.

What is the total potential exposure of all active lawsuits? \$ \_\_\_\_\_

4. List all lawsuits in excess of \$10,000 in which the company was named as a defendant which have been disposed of during this reporting period, either by settlement, dismissal or final judgment. State disposition and terms and attach a copy of the final order of the Court.

5. Has the company, during the reporting period covered by this report, been the  Yes  No subject of any administrative proceedings in any jurisdiction?

If "yes," explain.

6. Has the company transferred any of the risk of loss under contracts written by  Yes  No it in Texas to any insurer, reinsurer, residential service company or other entity during this reporting period?

If "yes," explain.

## COMPUTATION OF REQUIRED FUNDED RESERVES

**NOTE: FOR THE PURPOSES OF ALL CALCULATIONS IN THIS SECTION, CARE SHOULD BE TAKEN NOT TO COMBINE CONTRACTS WRITTEN FOR DIFFERENT TERMS. EACH SUCH GROUP OF CONTRACTS SHOULD BE CALCULATED SEPARATELY AND THE RESULTS COMBINED FOR AN ACCURATE REPORT. COMMISSION STAFF ARE AVAILABLE IN CASE QUESTIONS ARISE.**

7. a. Total the number of contract months remaining on contracts in force in Texas on the last day of the reporting period. (For purposes of this calculation, contracts expiring on or before the 15th day of the month should be counted as 0 months for the final contract month. Contracts expiring after the 15th day of the month should be counted as 1 month for the final contract month.) Answer: \_\_\_\_\_
- b. Determine the pro rata monthly contract charge. [For purposes of this calculation the aggregate actual contract costs to the consumer are divided by the aggregate number of months (exclusive of listing period months) in the contract terms of "in force" contracts (see note at bottom of page).] Answer: \$ \_\_\_\_\_
- c. Determine the remaining liability on all contracts in force. (Multiply a and b above). Answer: \$ \_\_\_\_\_
- d. Calculate 50% of c above. Answer: \$ \_\_\_\_\_
- e. Enter actual Funded Reserve as documented in attached financial reports. Answer: \$ \_\_\_\_\_

f. **ALTERNATIVE COMPUTATION**

If 7e is equal to or greater than 7d, no further calculations are needed. If not, filer must demonstrate that a lesser figure will satisfy the statute or be in violation. This is done by totaling the losses of all contracts which expired during the twelve months ending with the last day of the reporting period. This total is divided by the actual gross contract costs of those same expired contracts. (This figure will differ from the aggregate actual contract costs in b above in that none of these contracts are still in force.) The quotient of this calculation is now multiplied by c above. Answer: \$ \_\_\_\_\_

- g. Provide the calculation of the funded reserve for the 5 months prior to this reporting period.

8. If 7e is not equal to or greater than 7d or 7f above, the residential service company must take immediate steps to come into compliance. Several methods are mentioned in the Act and repeated here:

*"Whenever the financial condition of a service company indicates a condition such that the continued operation of the service company might be hazardous to its service contract holders, creditors, or the general public, then the commission may, after notice of hearing, order the service company to take such actions as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one of the following steps:*

- (1) to reduce the total amount of present or potential liability for benefits by reinsurance, and/or by obtaining an appropriate bond from an admitted carrier of a surplus line carrier;*
- (2) to reduce the volume of new business being accepted;*
- (3) to reduce expenses by specified methods;*
- (4) to suspend or limit the writing of new business for a period of time; or*
- (5) to increase the service company's net worth by contribution."*

9. Furnish schedules for the Funded Reserve. Give details concerning the company's funded reserve account(s) for future service calls, both nationwide and for Texas, if maintained separately. Show the balance in each account on the last day of the preceding six months. (Copies of bank or investment house statements are preferred here.)

10. Show payments to real estate brokers, insurance agents, mobile home dealers or non-RSC employees for selling, advertising, inspection or processing of residential service contracts. (residential service company employees who contact producers should not be in this schedule but included in the income statement under costs of contract expense.)

	Number of contracts	Number of payees
A. Selling	_____	_____
B. Advertising	_____	_____
C. Inspection	_____	_____
D. Processing	_____	_____

11. Provide information on sales and service call activity sufficient to complete the chart on page 5.

General Interrogatory 11 \_\_\_\_\_ of the \_\_\_\_\_ (Name of residential service company)  
 Statement as of June 30, \_\_\_\_\_ (Date)

Current Reporting Period	Paid Service Contract Fees Collected During Month		Service Calls Reported to and Paid for by the Company		Dollar Cost of Service Calls Paid for During Month		Average Dollar Cost per Paid Service Call	
	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas
January								
February								
March								
April								
May								
June								
TOTALS								

Current Reporting Period	Paid Service Contracts in Force: Beginning of Month		Paid Service Contracts Issued During Month		Paid Service Contracts Expired, Terminated, or Cancelled During Month		Paid Service Contracts in Force at End of Month	
	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas	Nationwide	Texas
January								
February								
March								
April								
May								
June								
TOTALS								

**STATEMENT**

For the period ended June 30, \_\_\_\_\_, of the conditions and affairs of \_\_\_\_\_  
\_\_\_\_\_  
(Name of Residential Service Company)

Address of Home Office:

Texas Address:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone # \_\_\_\_\_

Telephone # \_\_\_\_\_

Fax# \_\_\_\_\_

Fax # \_\_\_\_\_

Email \_\_\_\_\_

Email \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, President, \_\_\_\_\_, Secretary,  
\_\_\_\_\_, Treasurer (or corresponding person having charge of the  
financial records of the residential service company) of the \_\_\_\_\_,  
being duly sworn each for himself deposes and says that they are the above described officers of the said  
residential service company, and that on the reporting period stated above, all of the herein assets were the  
absolute property of the said residential service company, free and clear from any liens or claims therein, except  
as herein stated, according to generally accepted accounting principles, and that this Mid-Year Report, together  
with related exhibits, schedules and explanations therein contained, annexed or referred to is a full and true  
statement of all of the assets and liability and of the condition and affairs of the said residential service company  
as of the reporting period stated above, and of its income and deductions therefrom for the period reported, and  
that the information and statements contained therein are true and correct.

\_\_\_\_\_, President  
Name Printed/Typed

\_\_\_\_\_  
Signed

(Company Seal)

\_\_\_\_\_, Secretary  
Name Printed/Typed

\_\_\_\_\_  
Signed

\_\_\_\_\_, Treasurer  
Name Printed/Typed

\_\_\_\_\_  
Signed

Sworn to and subscribed before me by the said \_\_\_\_\_,  
\_\_\_\_\_, and \_\_\_\_\_,  
this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, to certify which, witness my hand and  
seal of office.

My Commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for

\_\_\_\_\_ County,

\_\_\_\_\_ (State)

## ***RULES FOR POSSIBLE ADOPTION***

- 14. Discussion and possible action to adopt amendments to:**
  - a.22 TAC §535.61 Examinations**
  - b.22 TAC §535.62 Accreditation of Schools and Approval of Courses and Instructors**
  - c.22 TAC §535.64 Payment of Annual Fee, Audits, Investigations and Enforcement Actions**

## **Agenda Item 14 (a)-(c)**

### **SUMMARY**

The Texas Real Estate Commission (TREC) adopts amendments to §535.61, Examinations §535.62, Acceptable Courses of Study, and §535.64, Accreditation of Schools and Approval of Courses and Instructors with changes to the proposed text as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7762). The amendment to §535.61 as adopted establishes a pre-license examination pass rate for brokers at 75% and for salespersons at 70%. The difference between the rule as originally proposed and the rule as adopted is the 75% pass rate applies to the broker examinations and the 70% pass rate applies to salesperson examinations. 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. In response to comments to previously proposed amendments to these rules, 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 rates. The amendments further state that correspondence courses offered in association with accredited colleges or universities, like correspondence courses offered by accredited colleges and universities, do not require commission approval because all such courses must comply with the college or university's curriculum accreditation standards.

The reasoned justification for the amendments is greater public availability of information regarding a school's examination passage rate, and an increased ability by the agency to ensure the quality of education offered by these schools.

Five comments were received on the rules as proposed, including the Texas Association of Realtors.

One commenter commented favorably on establishing the pre-license examination passing score for salespersons and brokers at 75%.

One commenter generally agrees with the amendments.

One commenter suggested postponing for at least six months changing the passing score from 70% to 75% until the commission has collected additional statistical data on the recent changes to the examination structure

and format. The commission respectfully disagrees with the commenter with respect to the broker examination and believes that increasing the passing score to 75% for the broker examination will further ensure well-qualified and educated brokers to better protect consumers of real estate services in Texas.

One commenter is not in favor of changing the passing score from 70% to 75%. The commenter indicates that there are no signs of concern with the current 70% passing score and such score is sufficient evidence of mastery. The commission respectfully disagrees with the commenter and believes that increasing the passing score to 75% for the broker examination will further ensure well-qualified and educated brokers to better protect consumers of real estate services in Texas.

One commenter is not in favor of changing the passing score from 70% to 75% and requested additional clarification on the amendments to §535.62 and §535.64. Regarding the examination passing score, the commenter states that since changing the passing score is not a matter of urgency, the commission should focus its attention on implementing the 55% first time pre-license exam pass rate before in considers raising the actual passing score for the examination.

Regarding the amendments to §535.62, the commenter asks for clarification regarding the term “aggregated.” The aggregate pass rate is the total number of broker, salesperson, real estate inspector, and professional inspector examinees (students) divided by the total number of students who passed the examination on the first attempt for the same period. The aggregate number of students does not include appraiser examinees.

#### **STAFF RECOMMENDATION**

Adopt the rules as submitted by staff with an effective date of September 1, 2010.

#### **MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.61, §535.62 and §535.64 in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, and with substantive changes as have been approved by the Commission in the *Texas Register* for adoption with an effective date of September 1, 2010.

## **Agenda Items 14 (a)-(c)**

### **F. Education, Experience, Educational Programs, Time Periods and Type of License**

#### **§535.61 Examinations**

#### **§535.62 Acceptable Courses of Study**

#### **§535.64 Accreditation of Schools and Approval of Courses and Instructors**

The Texas Real Estate Commission (TREC) adopts amendments to §535.61, Examinations §535.62, Acceptable Courses of Study, and §535.64, Accreditation of Schools and Approval of Courses and Instructors with changes to the proposed text as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7762). The amendment to §535.61 as adopted establishes a pre-license examination pass rate for brokers at 75% and for salespersons at 70%. The difference between the rule as originally proposed and the rule as adopted is the 75% pass rate applies to the broker examinations and the 70% pass rate applies to salesperson examinations. 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. In response to comments to previously proposed amendments to these rules, 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 rates. The amendments further state that correspondence courses offered in association with accredited colleges or universities, like correspondence courses offered by accredited colleges and universities, do not require commission approval because all such courses must comply with the college or university's curriculum accreditation standards.

The reasoned justification for the amendments is greater public availability of information regarding a school's examination passage rate, and an increased ability by the agency to ensure the quality of education offered by these schools.

Five comments were received on the rules as proposed, including the Texas Association of Realtors.

One commenter commented favorably on establishing the pre-license examination passing score for salespersons and brokers at 75%.

One commenter generally agrees with the amendments.

One commenter suggested postponing for at least six months changing the passing score from 70% to 75% until the commission has collected additional statistical data on the recent changes to the examination structure and format. The commission respectfully disagrees with the commenter with respect to the broker examination and believes that increasing the passing score to 75% for the broker examination will further ensure well-qualified and educated brokers to better protect consumers of real estate services in Texas.

One commenter is not in favor of changing the passing score from 70% to 75%. The commenter indicates that there are no signs of concern with the current 70% passing score and such score is sufficient evidence of mastery. The commission respectfully disagrees with the commenter and believes that increasing the passing score to 75% for the broker examination will further ensure well-qualified and educated brokers to better protect consumers of real estate services in Texas.

One commenter is not in favor of changing the passing score from 70% to 75% and requested additional clarification on the amendments to §535.62 and §535.64. Regarding the examination

passing score, the commenter states that since changing the passing score is not a matter of urgency, the commission should focus its attention on implementing the 55% first time pre-license exam pass rate before in considers raising the actual passing score for the examination.

Regarding the amendments to §535.62, the commenter asks for clarification regarding the term “aggregated.” The aggregate pass rate is the total number of broker, salesperson, real estate inspector, and professional inspector examinees (students) divided by the total number of students who passed the examination on the first attempt for the same period. The aggregate number of students does not include appraiser examinees.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

#### **§535.61. Examinations.**

(a) (No Change.)

(b) Examinations required for any license issued by the commission will be conducted by the testing service with which the commission has contracted for the administration of examinations. The testing service shall schedule and conduct the examinations in the manner required by the contract between the commission and the testing service. To pass the **broker licensing** examination, an applicant must attain a passing score **of at least 75%** in each section of the examination. **To pass the salesperson licensing examination, an applicant must attain a passing score of at least 7% in each section of the examination.**

(c)–(g) (No Change.)

#### **§535.62. Acceptable Courses of Study.**

(a)–(c) (No change.)

(d) A core real estate course also must meet each of the following requirements to be accepted.

(1)–(4) (No change.)

(5) For a correspondence course, the course must have been offered by **or in association with** an accredited college or university, and students receiving credit for the course must pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks course credit.

**(6) If a correspondence course was offered by a proprietary school in association with an accredited college or university, the proprietary school has certified to the commission that the course was offered in accordance with the college or**

**university's curriculum accreditation standards. Using the name of the proprietary school "in association with" the name of the college or university on the course completion certificate or electronic course submission constitutes certification to the commission that the course was offered in compliance with the college or university's curriculum accreditation standards.**

**(7) [(6)]** For a course offered by an alternative delivery method, the course met the following requirements.

(A) The course must be certified by a distance learning certification center that is acceptable by the commission.

(B) The rationale for the education processes implemented in the course must be based on sound instructional strategies which have been systematically designed and proven effective through educational research and development. The basis and rationale for any proposed instructional approach must be specified in the application for approval. The following types of programs will not be approved:

(i) those which consist primarily of text material; or

(ii) those which primarily consist of questions similar to those on the state licensing examination.

(C) An approved instructor or the provider's coordinator/director shall grade the written course work.

(D) Every provider offering an approved course under this subsection shall:

(i) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(ii) satisfy the commission that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and

(iii) certify students as successfully completing the course only if the student;

(I) has completed all instructional modules required to demonstrate mastery of the material;

(II) has attended any hours of live instruction and/or testing required for a given course; and

(III) has passed either:

(-a-) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(-b-) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks credit.

**(8) [(7)]** The student must not have completed more than one course with substantially the same course content within a three year period.

**(9) [(8)]** The course did not primarily concern techniques or procedures utilized by a particular brokerage or organization.

**(10) [(9)]** For a classroom course, the course was offered in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.

(e) – (f) (No change.)

December 1, 2009

The Honorable John Eckstrum  
Texas Real Estate Commission  
PO Box 12188  
Austin, TX 78711-2188

REF: Comments to Proposed Rule Change  
535.61, 535.62, 535.64

Dear Mr. Chairman:

Following are comments and observations regarding the above referenced proposed rule changes.

**FM 1960 Campus**

5627 FM 1960 West, Suite 100  
Houston, Texas 77069  
phone (281) 893-4484  
fax (281) 587-9602  
toll free (800) 284-1525

**Galleria Campus**

4543 Post Oak Place, Suite 130  
Houston, Texas 77027  
phone (713) 629-4543  
fax (713) 627-3436

**West Houston Campus**

738 Highway 6 South, Suite 150  
Houston, Texas 77079  
phone (281) 496-7386  
fax (281) 496-0044

**North Dallas Campus**

17390 Preston Road, Suite 390  
Dallas, Texas 75252  
phone (972) 713-0055  
fax (972) 713-0101

**Dallas/Ft. Worth Campus**

550 N. Denton Tap Road  
Coppell, Texas 75019  
phone (972) 316-2020  
fax (972) 316-2041

**San Antonio Campus**

10000 San Pedro  
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**Online Campus**

4543 Post Oak Place, Suite 222  
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phone (713) 963-8264  
fax (713) 963-8504  
toll free (800) 969-2599

**535.61**

The proposed rule to change the examination passing score from 70% to 75% is not a matter of urgency. There is nothing professionally or publicly pressing for a change in the pass rate. If anything, we should work on the first time pass rate before we consider raising the bar for the state exam.

Of the four largest states, Texas, California and New York require 70% passing grade, only Florida has a 75% passing requirement. On the other hand Florida has the lowest educational requirement at 63 hours vs. Texas which has the highest at 210 hours. California and New York each have a 90 hour requirement. Considering the number of educational hours required it would appear that a newly licensed Texas salesperson is and should be better prepared for their new occupation than those newly licensed agents in the other 49 states.

As a comparison, the passing grade for the State Bar of Texas is 675 points out of 1000. That equates to an exam pass grade of 67.5%.

Finally the increase would negatively impact minorities and culturally diverse people the hardest. Often times the language barrier is more of a problem than actual real estate knowledge. Harris County, the state's largest county, is now a minority majority county. It is my opinion many culturally diverse residents of Harris County and counties along the border would be negatively impacted.

**535.64 (4)**

The first part of the formula for calculating a school's passage rate is clear. The number of students taking the exam divided into the number of students who passed the exam on their first attempt for the same period. (i.e. 1000 took the exam 750 passed on their first attempt = a 75% passing ratio).

The question arises when the term "aggregate" is used for schools offering multiple license types. How will the aggregate be applied? Allow me to pose the following scenario; 1,000 total students take exams in four separate disciplines. 750 take their real estate salesman exam with a first time passing ratio of 74%.

150 take their real estate broker exam with a first time passing ratio of 64%. 50 inspectors take their exam with a first time passing ratio of 46% and 50 take the appraiser exam with a 56% passing ratio. The question becomes two fold, how is the aggregate score calculated and using the above passing ratios, what is the schools overall passing ratio?

Using the above scenario, we came out with a 70.2% first time passing ratio for that school. We arrived at that percentage by the following:

	No of Students	Passing Ratio	No of Students Passed
Salesman	750	74%	555
Brokers	150	64%	96
Inspectors	50	46%	23
Appraisers	50	56%	28
	1000		702
Aggregate Passing Ratio			70.2%

### 535.64 (5)

This appears to be a rather ambiguous paragraph. It says "the commission **may** consider a variety of factors" in determining whether a school qualifies for reaccreditation. It goes on to define some of the varieties as sales, broker and inspector pass rates.

The word "may" is too vague. Depending on who interprets the rule, the commission staff is given the latitude to use or not to use the variety of factors mentioned in determining a schools qualifications for recertification.

Secondly, say a school does not meet the performance standard in one of the disciplines but its aggregate passing ratio exceeds the mandated performance standard overall. Is this rule designed to empower the commission to preclude a school from offering courses in all disciplines where the performance of one discipline is failing or in only the one faltering discipline? The purpose of the rule once again seems vague. What exactly is this rule empowering the staff to do?

In the past schools have requested their passing ratios from the commission but were told the research data to provide that information was not gathered and therefore not available. How soon can the schools find out what their passing ratios are currently? Schools have not been given the necessary data to know where they stand but the commission is now prepared to enact rules with an end result that may prove to be very punitive considering that proprietary schools have not been provided the specific data which the commission is now prepared to take action on.

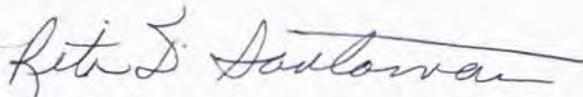
We wish to recommend the following:

1. If a school has an aggregate passing ratio above the mandated 55% no other standard should be applied.
2. If a school offers more than one discipline, the passing ratios for each discipline should be published individually.

3. If a school has an aggregate passing ratio of less than 55% then the commission should be required to consider each discipline individually, as well as their overall 5 year trend and to work with the school to achieve a satisfactory aggregate score.
4. With the implementation of these rules, schools will need to know where they stand regarding their passing ratios on a very regular basis. We respectfully request that as part and parcel to these rules becoming effective, that the staff be required to provide the schools with specific information detailing the number of students taking the exam in each discipline and the number that passed on the first attempt and this information be available to the schools on a monthly basis.

Thank you for considering these observations and recommendations in your deliberations.

Sincerely,



Rita D. Santamaria

- CC. Commissioner Avis Wukasch - Vice Chairperson
- Commissioner Adrian Arriaga - Secretary
- Commissioner Troy C. Alley, Jr.
- Commissioner Robert C. Day
- Commissioner Jaime Blevins Hensley
- Commissioner Joanne Justice
- Commissioner Tom C. Mesa, Jr.
- Commissioner Dona Scurry
- ✓ Ms. Devon J. Bijansky – Assistant General Counsel

comment 2

Phone: 512-465-3909

E-Mail: douglas.oldmixon@trec.state.tx.us

----- Original Message -----

From: "Benny McMahan" <benny@texasrealtors.com>

To: "Douglas Oldmixon" <douglas.oldmixon@trec.state.tx.us>

Sent: Tuesday, October 27, 2009 7:26:13 PM GMT -06:00 US/Canada Central

Subject: RE: Cooperative Efforts

Doug, sorry for the delay in responding to your e-mail. I will respond in the order of your questions: 1) The TAR Leadership Team is totally supportive of raising the minimum "passing" score on Sales and Broker exams from 70% to 75%. 2) We will work with our local associations to encourage them to allow TREC staff to audit GRI classes at no cost to TREC. There could be a small charge for the manual, but I believe that would be waived as well. 3) Doug the MLS issue is something beyond our (TAR) control. I will continue to discuss this issue with our local associations. If providing TREC full access free does not work out we should be able to get great cooperation from the locals to provide information on an as needed basis. 4) TAR agrees with what you are attempting to accomplish with the e-mail delivery of the license, but we do have concerns regarding the security issues. I feel sure we could totally support TREC on this issue after we see the final process. 5) TAR does support your position on "late renewals". We have never felt it was fair to put someone out of business because they were a few days late on renewal. Doug, we want to thank you for taking such positive action in your short tenure at TREC. The consumer and licensees are being well served. We look for a long working relationship with you and TREC.

Benny McMahan

President/CEO

Texas Association of REALTORS®

800/873-9155, ext. 101

[bmcmahan@TexasRealtors.com](mailto:bmcmahan@TexasRealtors.com)

[www.TexasRealtors.com](http://www.TexasRealtors.com)

Help protect your business and the real estate industry ...

[Spread the Word: TREPAC](#)

---

**From:** Douglas Oldmixon [mailto:douglas.oldmixon@trec.state.tx.us]

**Sent:** Thursday, October 22, 2009 8:59 AM

**To:** Benny McMahan

**Cc:** jdeckstrum; Avis Wukasch; loretta dehay

**Subject:** Re: Cooperative Efforts

Benny,

Any update on the TAR response? Thank you. Doug

Douglas E. Oldmixon

Administrator, Texas Real Estate Commission

Commissioner, Texas Appraiser Licensing and Certification Board

Phone: 512-465-3909

E-Mail: douglas.oldmixon@trec.state.tx.us

Zimbra Collaboration Suite

loretta.dehay@trec.state.tx.us

Fwd: Comments regarding rule 535.61 Exam  
passing score

Thursday, November 12, 2009  
9:13:34 AM

From: loretta.dehay@trec.state.tx.us  
To: pat.holder@trec.state.tx.us

comments for the meeting book and rule file. Thanks

----- Forwarded Message -----

From: "Douglas Oldmixon" <douglas.oldmixon@trec.state.tx.us>  
To: "gwen jackson" <gwen.jackson@trec.state.tx.us>  
Cc: "loretta dehay" <loretta.dehay@trec.state.tx.us>  
Sent: Thursday, November 12, 2009 9:09:12 AM GMT -06:00 US/Canada Central  
Subject: Re: Comments regarding rule 535.61 Exam passing score

Please do. Thank you.

Douglas E. Oldmixon

Administrator, Texas Real Estate Commission  
Commissioner, Texas Appraiser Licensing and Certification Board

Phone: 512-465-3909

E-Mail: douglas.oldmixon@trec.state.tx.us

----- Original Message -----

From: "gwen jackson" <gwen.jackson@trec.state.tx.us>  
To: "douglas oldmixon" <douglas.oldmixon@talcb.state.tx.us>, "loretta dehay" <loretta.dehay@trec.state.tx.us>  
Sent: Tuesday, November 10, 2009 6:55:09 PM GMT -06:00 US/Canada Central  
Subject: Fwd: Comments regarding rule 535.61 Exam passing score

FYI

At your direction I will send Ms. Williams an email indicating that we are in receipt of her comments and that they will be forwarded to the Commissioners.

Gwen Jackson  
Director of Education & Licensing Services  
Texas Real Estate Commission  
512-465-3983  
www.trec.state.tx.us

----- Forwarded Message -----

From: "Sue Williams" <swilliams@reiccar.com>  
To: "Gwen Jackson" <Gwen.Jackson@TREC.state.tx.us>  
Sent: Tuesday, November 10, 2009 1:20:38 PM GMT -06:00 US/Canada Central  
Subject: Comments regarding rule 535.61 Exam passing score

comment 3

I have reviewed the proposed 535.61 (b) rule change proposing to increase the applicant attaining a passing score of at least 75% in each section of the licensing exam. Frankly, I am gravely concerned that such an increase at this time is premature and most probably even unnecessary unless TREC that the average passing score for Texan's is dramatically higher than that in other states.

Proprietary schools are still waiting to find out if they have attained the 55% first-time-pass rate which is now state law. TREC has also not had the opportunity to evaluate the impact of the recent changes PSI made to the scope and format of the state exam which went into effect on October 1. Will it cause the first-time pass rate to measurably go up or down? If TREC also changes the passing score, then neither TREC nor the schools will be able to determine which variable had the most impact: the change in exam format, or the increase in passing score.

I honestly do not see the rush to change benefiting anyone at this time other than the financial bottom line for PSI. During these difficult economic times, I realize the number of applicants has dropped dramatically thus decreasing their revenue. No doubt changing the format and scope of the exam was partially intended to increase the first-time failure rate thus requiring applicants to retake the exam which in turn increases revenue for PSI. PSI's suggestion to each state to also increase their state's passing score will undoubtedly have the same impact on PSI's bottom line: increased revenue. Also of interest would be to know how many other states require a minimum first-time pass rate for school accreditation?

Mathematicians wishing to measure statistical variances NEVER change two or more variables at the same time. Doing so makes it impossible to determine which variable caused the delta. If the first-time pass rate dramatically drops, then it begs the question: Was the drop caused by the exam format change or the demand for a higher passing score?

I very strongly recommend delaying the increase in the passing score for at least six months to first determine the impact on the pass rate caused by the exam format change.

Thank you,

Sue Williams (MS, GRI)  
Executive Director  
Real Estate Institute of Corpus Christi, Inc. \*

5151 Flynn Parkway, Suite 106  
Corpus Christi, TX 78411  
361.852.2000 (W)  
361.852.2222 (F)  
361.779.8593 (M)  
email: swilliams@reiccar.com  
Web: www.reiccar.com

\*A Subsidiary of the Corpus Christi Association of REALTORS



TEXAS A&M  
UNIVERSITY  
COMMERCE

Comment 4

RECEIVED  
TEXAS REAL ESTATE COMMISSION

NOV 16 2009

CASHIER'S SECTION  
OPERATOR 8

in conjunction with

## CELI

### Continuing Education for Licensing, Inc.

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Canton, Texas 75103

(903) 567-1309

1-888-333-3735

Fax: (903) 567-1078

[www.celi-edu.com](http://www.celi-edu.com)

November 12, 2009

Devon V. Bijansky  
Assistant General Counsel  
Texas Real Estate Commission  
P.O. Box 12188  
Austin, Texas 78711-2188

REF: 535.61, 535.62 and 535.64

Dear Ms. Bijansky:

I applaud the efforts of the Commission in trying to "clean up" the obvious fraud by some providers as to their affiliation with certain colleges. This "rent a college" "certificate mill" process is what several of us have been fighting for years but to no avail. This proposal and rule change will finally have college involvement as originally designed for protection of the quality and integrity of a correspondence program. As described in the TREC letter submitted by Champions Real Estate School to the Commission in 2008 (copy enclosed) it is self-proclaimed and evident they are just using a college affiliation to scam the Commission and public. The change in 535.62 (6) will finally eliminate these types (both college and proprietary school) from doing business in this state and hopefully will be a deterrent of such activities by others wishing to enter this field. One thing I don't understand is the absence of enforcement after this letter was received but I guess TREC was just waiting for a clarification of the rule to act.

It is my opinion that with these changes, TREC will see an improvement in the quality and a sense of pride in courses offered. The majority of colleges really do care about affiliations they have and anything that is offered under that affiliation. Look forward to the implementation date and full enforcement of the new rules finally. Great job!

Sincerely,

Ken Trussell

Instructor and Course Development - C.E.L.I.

Cc: Dr. Hal Langford, Dean - School of Business and Technology / Texas A&M University-Commerce  
Ms. Sharon Ray/ CELI  
file



RECEIVED  
TEXAS REAL ESTATE COMMISSION

MAR 24 2008

CASHIERS SECTION  
OPERATOR #

March 17, 2008

Mr. John Walton, Chairman  
Texas Real Estate Commission  
PO Box 12188  
Austin, TX 78711-2188

REF: Proposed Rule changes to  
535.62 (5), 535.71 (1) & 535.212 (3)

Dear Chairman Walton:

Pursuant to the Commission's action to amend the above referenced rules which would effectively eliminate the requirement for TREC accredited schools to offer correspondence courses through an accredited college or university, we would respectfully ask the members of the commission to consider the following comments.

We support the Commissions action to change the rules as it will allow TREC regulated schools to adhere to a single set of regulators rather than being licensed by one regulator but having to conciliate another. Further, in at least our case, it would eliminate the pretense that the college we are using was in fact providing real estate education. We do all the work from course preparation, submission to TREC, marketing, registration of the student etc. plus bear 100% of the cost. The job of the college defaults to monitoring what we do from time to time, a duty already performed by TREC.

The current system however lopsided works and we would not encourage change if the rule changes would lead to "Certificate Mills" which would diminish the value of distance learning. That is to say the current rule is better than entering into an era of no control. If allowing every "Tom, Dick and Harry" to provide correspondence courses without certain safeguards we fear the correspondence course avenue for obtaining real estate training could become a charade.

In the spirit of preserving the integrity of the correspondence course approach to real estate education, we would like to propose certain safeguards. Whereas no system is solidly fool proof we can maintain a level of competence using a little caution as we move forward.

We believe only proprietary schools offering a complete complement of on site classroom real estate education and MCE courses be accredited to offer correspondence courses. This is important for a number of very valid reasons.

- a. Those requesting to be correspondence course providers should be required to provide and maintain (a) a physical location meeting current TREC standards (b) staffed with TREC certified instructors and (c) qualified counselors available to

FM 1960 Campus  
5627 FM 1960 West, Suite 100  
Houston, Texas 77069  
phone (281) 893-4484  
fax (281) 587-9602  
toll free (800) 284-1525

Galleria Campus  
4543 Post Oak Place, Suite 130  
Houston, Texas 77027  
phone (713) 629-4543  
fax (713) 627-3436

West Houston Campus  
738 Highway 6 South, Suite 150  
Houston, Texas 77079  
phone (281) 496-7386  
fax (281) 496-0044

North Dallas Campus  
17390 Preston Road, Suite 390  
Dallas, Texas 75252  
phone (972) 713-0505  
fax (972) 713-0101

Dallas/Ft. Worth Campus  
550 N. Denton Tap Road  
Coppell, Texas 75019  
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fax (972) 316-2041

San Antonio Campus  
10000 San Pedro  
San Antonio, Texas 78216  
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fax (210) 349-7609  
toll free (866) 428-9900

Online Campus  
4543 Post Oak Place, Suite 222  
Houston, Texas 77027  
phone (713) 963-8264  
fax (713) 963-8504  
toll free (800) 969-2599

- assist the student at every level. Just mailing them a course and telling them to get a proctor is not in the best interest of the student or the real estate industry.
- b. We regularly encounter students who find that correspondence courses really does not suit them so they are encouraged and do transfer into a classroom setting with an instructor. Only a full service provider can offer this type of back-up policy to support the student's needs.
  - c. Each provider location should have and maintain a dedicated testing room with a viewing window. This allows the proctor to verify all students are independently taking their exam. The testing room should be conducive for exam testing and manned by full time staff.
  - d. A TREC certified staff instructor should be available to answer any questions the correspondence student may have.

Using the criteria outlined above, correspondence courses become a natural outreach for committed proprietary schools in Texas who have a brick and mortar school. Further, these criteria would minimize those looking to make a "quick buck" by adding correspondence to their curriculum.

We invite the members of the commission and staff to visit any one of the six (6) Champions School of Real Estate locations to inspect what we believe is a quality environment from which our students can achieve their real estate education goals through the classroom, correspondence or an online experience.

We are available to answer any questions you may have.

Kindest regards,



Rita D. Santamaria  
President  
Champions School of Real Estate

CC: Mr. Troy C. Alley, Jr.  
Con-Real, Inc  
1900 Ballpark Way  
Arlington, TX 76006

Mr. Adrian A. Arriaga  
AAA Real Estate and Investment  
Chase Tower Bank  
200 S. 10<sup>th</sup> Suite 904  
McAllen, TX 78501

Ms. Mary Frances Burlison  
Ebby Halliday Real Estate, Inc  
4455 Sigma Rd  
Dallas, TX 75244

Mr. Robert C. Day  
Norman, Thrall, Angle, Guy and Day  
215 E Commerce St  
Jacksonville, TX 75766

Mr. John D. Eckstrum  
First Group  
312 Longmire Rd  
Conroe, TX 77304

Mr. William H. Flores  
Phoenix Exploration Company  
1200 Smith St. Suite 1700  
Houston, TX 77002

Ms. Elizabeth Leal  
Keller Williams Realty  
1400 N Zaragoza, Suite A  
El Paso, TX 79936

Mr. Tom C. Mesa  
P.O. Box 5232  
Pasadena, TX 77508

Ms. Loretta DeHay  
General Counsel & Assistant Administrator  
Texas Real Estate Commission  
P.O. Box 12188  
Austin, TX 78711-2188

comment 5

Zimbra Collaboration Suite

loretta.dehay@trec.state.tx.us

70% Pass Rate

Monday, November 23, 2009 7:09:13 PM

From: Rebecca.Ray@kaplan.com

To: gwen.jackson@trec.state.tx.us; loretta.dehay@trec.state.tx.us

Hey there team,

I need to voice concern about the proposed 75% pass rate on the Texas Real Estate State Exams. We stand as NOT in favor of the change. There are absolutely no signs for concern surrounding our current pass rate of 70%. This is a statewide pass rate standard that in our opinion has proven for many years to be sufficient evidence of mastery. Please let us know if there is any further information we can provide to help TREC maintain the 70% pass rate.

Thank You,

~Rebecca

---

Rebecca Ray, Director  
Kaplan Professional Schools  
Kaplan Financial & Kaplan University - Texas  
1900 Ballpark Way, Suite 106  
Arlington, TX 76006  
Direct: 214-415-5918  
[Rebecca.Ray@Kaplan.com](mailto:Rebecca.Ray@Kaplan.com)  
Info Center: 1-800-442-4593

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## ***RULES FOR POSSIBLE ADOPTION***

- 15. Discussion and possible action to adopt new §535.93 Late Renewal Applications**

## **Agenda Item 15**

### **SUMMARY**

The agenda item adopts new §535.93 concerning Late Renewal Applications without changes to the proposed text as published in the January 1, 2010, issue of the *Texas Register* (35 TexReg26). The rule allows a licensee whose license has been expired for not more than a year to renew the license by paying an increased fee depending on how long the license has been expired. New §535.93 permits a person with an expired salesperson or broker license to retroactively renew the previous license if the application to renew was filed less than one year from the expiration of the previous license. The new rule requires the commission to renew the license in an active status except as provided by the section. In order to retroactively renew a salesperson's 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.

The reasoned justification for the amendment is full implementation of the statutory waiting period.

No comments were received regarding the amendment as proposed.

### **STAFF RECOMMENDATION**

Adopt the rule as submitted by staff.

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit new §535.93 concerning Late Renewal Applications, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, and with substantive changes as have been approved by the Commission in the *Texas Register* for adoption.

**Agenda Item 15**  
**Subchapter I. Licenses**  
**§535.93. Late Renewal Applications**

The Texas Real Estate Commission (TREC) adopts new §535.93 concerning Late Renewal Applications without changes to the proposed text as published in the January 1, 2010, issue of the *Texas Register* (35 TexReg26). The rule allows a licensee whose license has been expired for not more than a year to renew the license by paying an increased fee depending on how long the license has been expired. New §535.93 permits a person with an expired salesperson or broker license to retroactively renew the previous license if the application to renew was filed less than one year from the expiration of the previous license. The new rule requires the commission to renew the license in an active status except as provided by the section. In order to retroactively renew a salesperson's 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 addition \$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.

The reasoned justification for the amendment is full implementation of the statutory waiting period.

No comments were received regarding the amendment as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of Chapter 1102 to ensure compliance with the provisions of the chapter.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendment.

**Section 535.93 Late Renewal Applications.**

(a) A licensee who files a late application to renew a previous license less than one year after the expiration of the license must do so on a form approved by the commission for that purpose and is subject to the requirements of this section and Tex. Occ. Code §1101.451(e). The commission shall renew the license in an active status except as provided by this section. A license issued under this section is effective the day following the expiration of the previous license.

(b) To renew a license on active status without any lapse in active licensure, a salesperson must also submit a Salesperson Sponsorship Form certifying sponsorship

for the period from the day after the previous license expired to the day the renewal license issued, and for the period beginning on the day after the renewal license issued. The same broker may be the sponsor for both periods. The commission shall renew the license on inactive status for the period(s) in which the salesperson was not sponsored.

(c) A licensee who has not completed all Mandatory Continuing Education (MCE) before the expiration of the previous license and who files a late application not later than the 60<sup>th</sup> day after the expiration of the previous license may renew the license on active status subject to the following conditions.

(1) Not later than the 60<sup>th</sup> day after the expiration of the previous license, the licensee must:

(A) pay an MCE deferral fee of \$200, and

(B) complete the MCE.

(2) If, within 15 days after the end of the 60-day period set out in paragraph (1) of this subsection, the commission has not been provided with evidence that the licensee has completed the MCE and paid the MCE deferral fee of \$200, the renewed license shall be placed on inactive status. In order to reactivate a license placed on inactive status under this subsection, the licensee must:

(A) provide the commission with evidence that the licensee has completed the MCE;

(B) pay the \$200 MCE deferral fee if it has not yet been paid;

(C) complete and submit a Request to Return to Active Status Form if a broker or a Salesperson Sponsorship Form if a salesperson and pay the appropriate fee; and

(D) pay a late reporting fee of \$250.

(d) If a licensee who has not completed all MCE before the expiration of the previous license files a late application to renew the license in an active status more than 60 days but less than one year from the expiration of the license, the licensee must:

(1) provide the commission with evidence that the licensee has completed the MCE;

(2) pay the \$200 MCE deferral fee;

(3) complete and submit a Salesperson Sponsorship Form if a salesperson;  
and

(4) pay a late reporting fee of \$250.

(e) If a licensee files a late application to renew a license in an active status and has completed all MCE before the expiration of the previous license, the licensee is not required to pay the \$200 MCE deferral fee or the \$250 late reporting fee.

(f) MCE completed after expiration of the previous license under this section may not be applied to any subsequent renewal of the license.

(g) A licensee may file a late application to renew a license on inactive status under this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

## ***RULES FOR POSSIBLE ADOPTION***

**16. Discussion and possible action to adopt amendments to 535.208 Application for Licensure as an Inspector**

## **Agenda Item 16**

### **SUMMARY**

This agenda item adopts an amendment to §535.208, Application for a License, without changes to the proposed text as published in the January 1, 2010 issue of the *Texas Register* (35 TexReg 27). The amendment better implements the statutory requirement that applicants for inspector licenses who fail the examination three times must wait six months before reapplying. Prior to this amendment, applicants were able to the six-month wait requirement by filing a new application after the second failure, so that a third failure would be registered in the agency's licensing database as occurring under a different application. The amendment will prevent applicants from filing a new application while another application is pending.

The reasoned justification for the amendment is full implementation of the statutory waiting period.

No comments were received regarding the amendment as proposed.

### **STAFF RECOMMENDATION**

Adopt the rule as submitted by staff.

### **MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.208, Application for a License, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, and with substantive changes as have been approved by the Commission in the *Texas Register* for adoption.

**Agenda Item 16**  
**Application for Licensure as an Inspector**  
**22 TAC § 535.208**

The Texas Real Estate Commission (TREC) adopts an amendment to §535.208, Application for a License, without changes to the proposed text as published in the January 1, 2010 issue of the *Texas Register* (35 TexReg 27), which will not be republished. The amendment better implements the statutory requirement that applicants for inspector licenses who fail the examination three times must wait six months before reapplying. Prior to this amendment, applicants were able to the six-month wait requirement by filing a new application after the second failure, so that a third failure would be registered in the agency's licensing database as occurring under a different application. The amendment will prevent applicants from filing a new application while another application is pending.

The reasoned justification for the amendment is full implementation of the statutory waiting period.

No comments were received regarding the amendment as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of Chapter 1102 to ensure compliance with the provisions of the chapter.

The statute affected by this adoption is Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the amendment.

**22 TAC 535.208. Application for a License.**

(a) –(d) (No change.)

(e) **A person may not file an application while another application for the same license type is pending. An application submitted while another is pending will be returned to the applicant with no further processing.**

**(f) [~~e~~]** An application for a license may be denied if the commission determines that the applicant has failed to satisfy the commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines). Notice of the denial and any hearing on the denial shall be as provided in Texas Occupations Code, §1101.364, and §533.34 of this title (relating to Disapproval of an Application for a License or Registration). For the purposes of this section, the term "late renewal" means an application for a license by a person who held the same type of license no more than two years prior to the filing of the application.

**(g) [~~f~~]** Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the commission in an application for a license or late renewal of a license for an apprentice or a real estate inspector.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

## ***PENDING BUSINESS***

- 17. Discussion regarding appointments to the Broker Responsibility Committee**
- 18. Discussion regarding appointments to the Education Committee**

## **Agenda Item 17**

### **SUMMARY**

This agenda item allows for discussion regarding appointments to the Broker Responsibility Committee.

## **Agenda Item 18**

### **SUMMARY**

This agenda item allows for the discussion regarding appointments to the Education Committee.

## ***NEW BUSINESS***

- 19. Discussion and possible action regarding self-executing clauses in agreed orders**

## **Agenda Item 19**

### **SUMMARY**

This agenda item allows for the discussion and possible action regarding self-executing clauses in agreed orders.

## ***NEW BUSINESS***

- 20. Discussion and possible action to approve a plan to identify savings in priority increments totaling 5% of the general revenue and general revenue-dedicated appropriations for the 2010-11 biennium, pursuant to the request dated January 15, 2010, from Texas Governor Rick Perry, Lieutenant Governor David Dewhurst, and Speaker of the House Joe Straus**

## **Agenda Item 20**

### **SUMMARY**

This agenda item allows for the discussion and possible action to approve a plan to identify savings in priority increments totaling 5% of the general revenue and general revenue-dedicated appropriations for the 2010-2011 biennium, pursuant to the request dated January 15, 2010, from Texas Governor Rick Perry, Lieutenant Governor David Dewhurst, and Speaker of the House, Joe Straus.

### **STAFF RECOMMENDATION**

Approve the plan as submitted by staff.

### **MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit a plan to identify savings in priority increments totaling 5% of the general revenue and general revenue-dedicated appropriations for the 2010-2011 biennium, pursuant to the request dated January 15, 2010, from Texas Governor Rick Perry, Lieutenant Governor David Dewhurst, and Speaker of the House, Joe Straus. Staff may submit the information to the required entities upon approval by the Chairman.



STATE OF TEXAS

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JOE STRAUS  
SPEAKER OF THE HOUSE  
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(512) 463-3000

January 15, 2010

TO: State Agency Board/Commission Chairs  
State Agency Heads/Executive Directors  
Appellate Court Chief Justices  
Chancellors, Presidents and Directors of Institutions of Higher Education  
Presidents and Directors of Health-Related Institutions  
Presiding Officers of the Texas House and Texas Senate

In Texas, we have been fortunate that our economy has fared better than most other states during the current national recession. Nevertheless, Comptroller Susan Combs noted in her November 2009 economic update that our revenues have "weakened substantially as the national recession began exerting its full influence on Texas." Due to the uncertainty of the state's short-term economic future, as well as potentially substantial long-term costs associated with the passage of federal legislation currently being debated in Washington, D.C., we are asking each state agency to thoroughly review all planned expenditures for the remainder of the biennium.

We respectfully request that each state agency submit a plan to identify savings in priority increments totaling 5 percent of the general revenue and general revenue-dedicated appropriations for the 2010-11 biennium. Please submit these plans to the Legislative Budget Board and the Office of the Governor's Budget, Planning and Policy division, no later than February 15, 2010. Agencies under the jurisdiction of the Texas Health and Human Services Commission should work with the commissioner to present a unified plan. Likewise, each institution of higher education represented by a system office should submit a unified plan for the system and its components.

Your plan should represent prudent, efficient reductions that minimize the impact on direct services. For purposes of this review, we expect you to analyze the necessity of all administrative expenses and purchases. Reducing direct services should be your last option, but should be identified, if necessary, in order to meet the 5 percent target. Specifically, there should be no reductions to benefits or client eligibility levels in the Medicaid entitlement, Children's Health Insurance Program and foster care programs, and no reductions to eligibility staffing. Programs exempt from this request include the Foundation School Program, Social Security contributions, contributions to the Teacher and Employees Retirement Systems' retirement programs, contributions to the Higher Education Fund, and debt service for previously issued obligations.

Texas has a balanced budget and comparatively sound economic conditions. However, we owe it to the taxpayers to be especially prudent with their hard-earned dollars during these difficult times. Thank you in advance for your assistance.

Sincerely,

Handwritten signature of Rick Perry in black ink.

Rick Perry  
Governor

Handwritten signature of David Dewhurst in black ink.

David Dewhurst  
Lieutenant Governor

Handwritten signature of Joe Straus in black ink.

Joe Straus  
Speaker of the House

**Texas Real Estate Commission & Texas Appraiser Licensing & Certification Board  
Proposed 5% Budget Reduction**

	FY2010			FY2011			Biennial Total
	TREC	TALCB	Total	TREC	TALCB	Total	
<b>Basis of Reduction</b>							
General Revenue per GAA	6,999,678	1,013,673	8,013,351	7,293,001	838,233	8,131,234	16,144,585
TX Online	(22,000)	22,000	0	(22,000)	22,000	0	0
General Revenue Dedicated	0	120,000	120,000	0	120,000	120,000	240,000
Less Master Lease Purchase Payments	(68,700)		(68,700)	(14,700)		(14,700)	(83,400)
Total GR & GR Dedicated	6,908,978	1,155,673	8,064,651	7,256,301	980,233	8,236,534	16,301,185
<b>x 5% = GR/GRD Reduction</b>	<b>345,449</b>	<b>57,784</b>	<b>403,233</b>	<b>362,815</b>	<b>49,012</b>	<b>411,827</b>	<b>815,059</b>
<b>1. Delay Imaging</b>							
Imaging (FY2010: Reserve allowed for \$19,000 est. imaging costs YTD; ongoing storage of records already scanned; plus 25% of imaging capital budget rider for Versa transfer contingency)	97,587	25,147	122,734	299,040	49,760	348,800	471,534
Building Remodeling - delay in moving Communications downstairs to reduce square footage by FY2012			0	40,000		40,000	40,000
Movers-delay in moving Communications downstairs			0	3,000		3,000	3,000
<b>Total - Delay Imaging</b>	<b>97,587</b>	<b>25,147</b>	<b>122,734</b>	<b>342,040</b>	<b>49,760</b>	<b>391,800</b>	<b>514,534</b>
<b>2. Unfilled FTE Positions</b>							
Salary - 1 unfilled position		25,800	25,800		25,800	25,800	51,600
Equipment - 5 unfilled positions granted by 81st Legislature:							
Computer Hardware (\$1,000 each)	1,000	4,000	5,000			0	5,000
Computer Software (\$1,000 each)	1,000	4,000	5,000			0	5,000
Printers (\$400 each)	400	1,600	2,000			0	2,000
Modular Furniture (\$5,200 each)	5,200	20,800	26,000			0	26,000
Chair (\$400 each)	400	1,600	2,000			0	2,000
File Cabinet (\$260 each)	260	1,040	1,300			0	1,300
Telephones for new FTEs (\$600 each)	600	2,400	3,000			0	3,000
<b>Total - Unfilled Positions</b>	<b>8,860</b>	<b>61,240</b>	<b>70,100</b>	<b>0</b>	<b>25,800</b>	<b>25,800</b>	<b>95,900</b>
<b>3. Technology</b>							
DIR Controlled Penetration Study (assume DIR won't charge for FY2011)	16,000		16,000	16,000		16,000	32,000
Computer Programming (115 hrs. @ \$80)	9,200		9,200	0		0	9,200
Bandwidth Increase	10,800		10,800	10,800		10,800	21,600
PC Refresh reduced	10,000		10,000	10,000		10,000	20,000
<b>Total - Technology</b>	<b>46,000</b>	<b>0</b>	<b>46,000</b>	<b>36,800</b>	<b>0</b>	<b>36,800</b>	<b>82,800</b>
<b>4. Registration &amp; Memberships</b>							
IS Training	3,000		3,000	3,000		3,000	6,000
Conferences			0			0	0
Other Training			0			0	0
<b>Total Registration &amp; Memberships</b>	<b>3,000</b>	<b>0</b>	<b>3,000</b>	<b>3,000</b>	<b>0</b>	<b>3,000</b>	<b>6,000</b>
<b>5. Reduce printing/postage</b>							
E-mail renewal notices (\$2,000/mo for TREC; \$150/mo for TALCB)	10,000	750	10,750	24,000	1,800	25,800	36,550
Remote print licenses (\$1,800/mo for TREC; \$200/mo for TALCB)	9,000	1,000	10,000	21,000	2,400	23,400	33,400
Change complaint letters to postcards; reduce from quarterly to 3 times annually (\$175/mo)	875		875	2,100		2,100	2,975
<b>Total - Reduce printing/postage</b>	<b>19,875</b>	<b>1,750</b>	<b>21,625</b>	<b>47,100</b>	<b>4,200</b>	<b>51,300</b>	<b>72,925</b>

**Texas Real Estate Commission & Texas Appraiser Licensing & Certification Board  
Proposed 5% Budget Reduction**

	FY2010			FY2011			Biennial Total
	TREC	TALCB	Total	TREC	TALCB	Total	
<b>6. Travel:</b>							
Commissioners			0	0	0	0	0
Broker Lawyer Committee	1,000		1,000	1,000		1,000	2,000
Inspector Committee	1,000		1,000	1,000		1,000	2,000
Adm/Directors	1,000		1,000	1,000		1,000	2,000
Enforcement			0			0	0
Miscellaneous	600		600	600		600	1,200
<b>Total - Travel</b>	<b>3,600</b>	<b>0</b>	<b>3,600</b>	<b>3,600</b>	<b>0</b>	<b>3,600</b>	<b>7,200</b>
<b>7. 1/800 Lines</b>							
1/800 Lines			0			0	0
TREC: \$2,000/mo	10,000		10,000	24,000		24,000	34,000
TALCB: \$100/mo		500	500		1,200	1,200	1,700
<b>Total 1/800 Lines</b>	<b>10,000</b>	<b>500</b>	<b>10,500</b>	<b>24,000</b>	<b>1,200</b>	<b>25,200</b>	<b>35,700</b>
<b>Total Proposed Reduction</b>	<b>188,922</b>	<b>88,637</b>	<b>277,559</b>	<b>456,540</b>	<b>80,960</b>	<b>537,500</b>	<b>815,059</b>

## ***NEW BUSINESS***

- 21. Discussion and possible action regarding the Texas Real Estate Commission Strategic Plan for the fiscal years 2011-2015**

## **Agenda Item 21**

### **SUMMARY**

This agenda item allows for the discussion and possible action regarding the Texas Real Estate Commission Strategic Plan for the fiscal years 2011-2015

### **STAFF RECOMMENDATION**

Permit staff to develop the process and schedule for the Strategic Plan.

### **MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to develop the process and schedule concerning the Texas Real Estate Commission Strategic Plan for the fiscal years 2011-2015.

## ***FUTURE MEETINGS***

- 22. Discussion and possible action to schedule future meetings**
- 23. Adjourn**

## **Agenda Item 22**

### **SUMMARY**

Schedule future meetings and adjourn

### **STAFF RECOMMENDATION**

At this time meetings are scheduled May 17, 2010, August 9, 2010 and November 15, 2010. All meetings scheduled would begin at 10:00 a.m.

### **MOTION**

**MOVED**, that staff is hereby authorized, on behalf of this Commission, to schedule meetings of the Commission on the following dates:

# Texas Real Estate Commission

## February 8, 2010

March 10						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

### March

- 17** St. Patrick's Day
- 28** Palm Sunday
- 30** Passover

### April

- 1** April Fools Day
- 2** Good Friday
- 4** Daylight Savings--set ahead 1 hour
- Easter

### May

- 1** May Day
- 5** Cinco de Mayo
- 9** Mother's Day
- 13** Ascension Day

- 15** Armed Forces Day
- 17** *Commission Meeting*

- 23** Pentecost
- 31** Memorial Day (Observed)

### June

- 3** Corpus Christi
- 14** Flag Day
- 20** Father's Day

### July

- 4** Independence Day

### August

- 9** *Commission Meeting*

### September

- 6** Labor Day

### September

- 9** Rosh Hashanah
- 18** Yom Kippur

### October

- 11** Columbus Day (Observed)
- 31** Daylight Savings--set back 1 hour
- Halloween

### November

- 2** Election Day
- 11** Veterans Day
- 15** *Commission Meeting*
- 25** Thanksgiving

### December

- 2** Hanukkah
- 25** Christmas Holidays
- 31** New Year's Eve

### January

- 1** New Year's Day
- 17** Martin Luther King, Jr.

### February

- 2** Groundhog Day
- 12** Lincoln's Birthday
- 14** Valentine's Day
- 21** President's Day
- 22** Washington's Birthday

September 10						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

October 10						
S	M	T	W	T	F	S
				1	2	
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

November 10						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

December 10						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

January 11						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

February 11						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28				

May 10						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

June 10						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

July 10						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

August 10						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				