

Texas Real Estate Commission
Chapter 533, PRACTICE AND PROCEDURE
Rules Adopted at the August 9, 2009 Meeting

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22 TAC §§533.1, 533.3, 533.4, 533.8, 533.20, 533.31, 533.34

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §533.1, Definitions; §533.3, Filing and Notice; §533.4, Failure to Answer; Failure to Attend Hearing and Default; §533.8, Final Orders, Motions for Rehearing, and Emergency Orders; §533.20, Informal Proceedings; §533.31, Referral of Contested Matter for Alternative Dispute Resolution Procedures; and §533.34, Commencement of ADR. Sections 533.1, 533.3, 533.4, 533.8, 533.31 and 533.34 are adopted without changes to the proposed text as published in the June 11, 2010, issue of the *Texas Register* (35 TexReg 4848) and will not be republished. Section 533.20 is adopted with changes and will be republished.

The amendment to §533.1 adds the definition of "last known mailing address" to the list of definitions. The amendment to §533.3 clarifies that the Notice of Alleged Violation required by Texas Occupations Code §1101.703 will be mailed to the respondent's last known mailing address, corrects typographical errors, and makes conforming changes to the rule. The amendment to §533.4 corrects typographical errors and makes conforming changes to the rule. The amendment to §533.8 provides a procedure for motions for rehearing before the commission, and provides that a person appealing a decision of the commission is responsible for paying for the costs of preparation of an original or certified copy of the transcript of the proceedings required by a reviewing court. The amendments to §533.20 and §533.31 make conforming changes. The amendments to §533.34 delete the procedures for alternative dispute resolution of employment matters as those matters are provided for in the TREC employee handbook.

The reasoned justification for the amendments is clarification of the practice and procedure before

the commission and the State Office of Administrative Hearings.

No comments were received on the amendments to the rules as proposed.

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 statutes affected by this adoption are Texas Occupations Code, Chapters 1101, 1102, 1303, and Texas Property Code, Chapter 221. No other statute, code or article is affected by the amendments.

§533.20. Informal Proceedings.

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

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

(c) A respondent may request an informal conference; however, the decision to hold a conference shall be made by the Director of Standards and Enforcement Services.

(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 Standards and Enforcement Services or the director's designee shall decide upon the time, date and place of the informal conference, and provide written notice to the respondent. Notice shall be provided by certified mail no less than ten days prior to the date of the conference to the last known mailing address of the respondent. The ten days shall begin on the date of mailing. The

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respondent 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 respondent of the following:

(1) that the respondent may be represented by legal counsel;

(2) that the respondent 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 respondent'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 mailing 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 respondent, the respondent's attorney, the commission member, and the staff members 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 respondent, the respondent'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 members 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 members may also recommend that no further action be taken.

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

(q) If the respondent rejects the proposed settlement recommendation, the matter shall be referred to the Director of Standards and Enforcement Services for appropriate action.

(r) If the respondent signs and accepts the proposed agreed order, it shall be signed by the staff attorney and submitted to the administrator for approval.

(s) If the administrator does not approve a proposed agreed order, the respondent shall be

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so informed and the matter shall be referred to the Director of Standards and Enforcement Services 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 pursuant to Texas Occupations Code §1101.659. 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 12, 2010.

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