

# Texas Real Estate Commission

## Chapter 535, General Provisions

### Rules Adopted at the August 1, 2011 Commission Meeting

#### **§535.219. Schedule of Administrative Penalties**

The Texas Real Estate Commission (TREC) adopts §535.219, Schedule of Administrative Penalties, without changes to the text as proposed in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3258), which will not be republished. The new rule establishes a penalty matrix for the assessment of administrative penalties for different violations of the statute and rules governing real estate inspectors. The matrix was drafted in accordance with Section 1102.403 of the Texas Occupations Code (relating to administrative penalties imposed against inspectors) and Subchapter O, Chapter 1101 (relating to administrative penalties assessed by the Commission). As such, the highest category of administrative penalties provides for a maximum penalty of \$5,000 per violation, and each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty. The rule was developed by the Texas Real Estate Inspector Committee's enforcement subcommittee and endorsed by the Committee.

The reasoned justification for the rule as adopted is fairness and objectivity in imposing administrative penalties in enforcement cases.

TREC received twelve comments during the notice and comment period regarding the rule as proposed, including from the Texas Professional Real Estate Inspector Association and the Texas Association of Real Estate Inspectors. Seven commenters, including a statewide inspector trade association, stated that the penalties outlined in the matrix are too high and/or unfair to inspectors, including two commenters who believed that assessing certain penalties on a "per violation" or "per day" basis is excessive. Three commenters objected to the matrix as establishing administrative penalties that are disproportionate to the inspector's fee and/or repair costs resulting from violations. Six commenters further objected to the matrix because they believe it does not give

the agency the discretion to impose no administrative penalty when appropriate. (Several commenters expressed more than one basis for concern). The Commission respectfully disagrees with these commenters, as Section 1101.702 of the Texas Occupations Code provides for administrative penalties of up to \$5,000 for any violation of Chapter 1102 or the agency rules relating to inspectors. Section 1101.702 further provides for the assessment of administrative penalties on a "per violation"/"per day" basis. Additionally, the "may be assessed" language makes clear that administrative penalties are not mandatory but rather are discretionary. Three commenters suggested that the penalty matrix will increase inspection costs for consumers. The Commission respectfully disagrees with this concern, as the matrix limits administrative penalties to no more than – and in most cases less than – those currently allowed by law. Only inspectors who do not comply with the law need to be concerned about the impact of administrative penalties on their businesses, and any such inspectors have likely already taken the \$5,000 maximum penalty into account in setting their fees. Five commenters, including another statewide trade association, objected to the matrix on the basis that it does not take into account the totality of the circumstances and what the inspector has done correctly. In fact, the Commission has long taken into account the totality of the circumstances, including the extent and seriousness of the violation(s), as required by Section 1101.702(b). Last, one commenter opposed the matrix because of a belief that disciplinary action is sufficient to deter violations. The Commission respectfully disagrees, as both methods have deterrent effects and are authorized by Chapter 1102.

The rule 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

**Texas Real Estate Commission**  
**Chapter 535, General Provisions**  
**Rules Adopted at the August 1, 2011 Commission Meeting**

---

keeping with the purpose and intent of Chapter 1102 to ensure compliance with the provisions of the chapter.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code, or article is affected by the adoption.

**§535.219 Schedule of Administrative Penalties**

(a) The commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1102 of the Texas Occupations Code in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration the criteria listed in §1101.702(b) of the Texas Occupations Code.

(c) An administrative penalty range of \$100-\$1,500 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.118;
- (2) §1102.364;
- (3) 22 TAC §535.216(d);
- (4) 22 TAC §535.220(a)-(d);
- (5) 22 TAC §535.221; and
- (6) 22 TAC §535.223;

(d) An administrative penalty range of \$500-\$3,000 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.301;
- (2) 22 TAC §535.222;
- (3) 22 TAC §535.224(b)(1)-(3);
- (4) 22 TAC §535.226(d)-(e); and

(5) 22 TAC §535.227-.233.

(e) An administrative penalty of \$1,000-\$5,000 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.101;
- (2) §1102.102;
- (3) §1102.103;
- (4) §1102.302;
- (5) §1102.303;
- (6) §1102.304;
- (7) 22 TAC §535.208(f);
- (8) 22 TAC §535.211;
- (9) 22 TAC §535.215;
- (10) 22 TAC §535.220(e)(1),(3)-(7); and
- (11) 22 TAC §535.224(b)(4)-(5).

(f) The commission may assess an administrative penalty of up to two times that outlined under subsections (c), (d), and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Texas Occupations Code, if a person has a history of previous violations.

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.

Filed with the Office of the Secretary of State on August 4, 2011.

**TRD-201102963**

Devon V. Bijansky  
Deputy General Counsel  
Texas Real Estate Commission  
Effective date: September 1, 2011