

Texas Real Estate Commission
Chapter 535, General Provisions
Rules Adopted at the February 27, 2012 Commission Meeting

Subchapter T. Easement of Right-of-Way Agents

§535.400, §535.403-535.405

The Texas Real Estate Commission (TREC) adopts amendments to §535.400, concerning Registration of Easement or Right-of-Way Agents, and §535.403, concerning Renewal of Registration, and new §535.404, concerning Fees, and new §535.405, concerning Employee of Owner or Purchaser, without changes to the proposed text as published in the December 30, 2011, issue of the Texas Register (36 TexReg 9175). The new and amended rules will not be republished. The amendments increase the registration fee from \$80 for a one-year registration to \$200 for a two-year registration; and the renewal fee \$160 (\$80 per year) to \$200 for a two-year registration. New §535.405 clarifies that an employee of an owner or purchaser of an easement or right-of-way is not required to be registered under the Act.

The justification for the fee increases is to generate sufficient revenue to fund operations of the agency and to comply with requirements of Senate Bill 1000, 82nd Texas Legislature, Regular Session (2011).

Senate Bill 1000 makes the Texas Real Estate Commission self-directed and semi-independent. The bill removes the agency from the legislative budgeting process and requires the commission to adopt and approve an annual budget. The bill requires that the commission collect sufficient fees to fund operations to carry out its function and to fund the budget. In relevant part, the bill also requires the agency to remit \$750,000 to the general revenue fund not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the State Auditor of \$10,000 per fiscal year, a nonrefundable retainer to the Attorney General of \$75,000 per fiscal year, and a nonrefundable retainer to the State Office of Administrative Hearings of \$75,000 per fiscal year. TREC will be

required to reimburse each agency for all costs incurred in excess of the retainers for providing services to the commission. In addition, the bill requires the agency to pay rent in a reasonable amount to be determined by the Texas Facilities Commission with aggregate rent payments to be not less than \$550,000 per fiscal year for state fiscal years ending August 31, 2012 and August 31, 2013; and not less than \$425,000 per fiscal year for each year ending August 31, 2014, August 31, 2015, and August 31, 2016.

The amendments and new sections are adopted under Texas Occupations Code, §1101.051, which authorizes the Texas Real Estate Commission to adopt rules necessary to implement Chapter 1101.

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

§535.400. Registration of Easement or Right-of-Way Agents.

(a)An individual desiring to be registered by the commission as an easement or right-of-way agent must file an application on form ERW 1-3 approved by the commission. If the applicant is a business, the applicant must file form ERW 2-3. All applicants must submit the required fee. The commission will not accept an application which has been submitted without the correct filing fees or which has been submitted in pencil. A person also may apply for registration by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. If the person is an individual, the person must provide the commission with the person's photograph and signature prior to issuance of a registration certificate. The person may provide the

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photograph prior to the submission of an electronic application. If the applicant does not complete the application process as required by this subsection, the commission shall terminate the application.

(b)After the commission has accepted an application for filing, the commission shall process the application and promptly issue a certificate of registration, request any information required to complete the registration, or advise the applicant that the application has been terminated or disapproved, as the case may be.

(c)The commission shall assign a registration number to each registrant and shall provide each registrant with a certificate of registration. Each registration issued by the commission is valid until the last day of the month one year from the day the registration was issued. Each registrant shall display the certificate of registration issued by the commission in a prominent location in the registrant's place of business, as required by the Act, §1101.507. If the registrant maintains more than one place of business, the registrant shall display either the certificate or a copy of the certificate in each place of business.

(d)The commission may terminate an application with written notice to the applicant for failure to submit information or documentation within 60 days after the commission makes written request for the information or documentation.

(e)The commission may disapprove an application for registration with written notice to the applicant 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) or the applicant has engaged in conduct prohibited

by the Act. Provided a timely written request for a hearing is made by the applicant in accordance with the Act, §1101.364, an applicant whose application for registration has been disapproved is entitled to a hearing. The hearing on the application will be conducted in accordance with the provisions of the Act, §1101.364, and Chapter 533 of this title (relating to Practice and Procedure).

§535.403. Renewal of Registration.

(a)The commission shall establish a time period for renewal of each registration, which shall end with the expiration date of the current registration. Each registrant has the responsibility to apply for renewal of a registration by making proper application as specified by this section. Applications must be made on the current renewal application form approved by the commission accompanied by the required fee. Failure to receive a registration renewal application form from the commission does not relieve a registrant of the obligation to obtain the appropriate form and to apply for renewal to maintain registration. A registrant also may renew an unexpired registration by accessing the commission's Internet web site, entering the required information on the renewal application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Failure to provide information requested by the commission in connection with a renewal application is grounds for disciplinary action under the Act, §1101.653. A registrant who fails timely to pay a renewal fee must apply for and receive a new registration in order to act as an easement or right-of-way agent.

(b)The commission shall advise each registrant of the time period for filing a renewal application and paying the renewal fee by mailing

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a renewal application form to the registrant's last known permanent mailing address as shown in the commission's computerized records at least three months before expiration of the current registration. Each registrant shall furnish a permanent mailing address to the commission and report a change in permanent mailing address within 10 days after the change occurs. If a registrant fails to provide a permanent mailing address, the last known mailing address for the registrant will be deemed to be the registrant's permanent mailing address. The commission shall have no obligation to so notify a business entity such as a corporation, limited liability company or partnership, that has failed to designate an officer, manager or partner who meets the requirements of §1101.502 of the Act. The commission may not renew a registration issued to a business entity unless the entity has designated an officer, manager or partner who meets the requirements of the Act.

(c)An application for renewal will be deemed to have been timely filed if it shows a postmark on or before the expiration date of the registration. When the last day of the renewal period falls on a non-business day, renewal applications also will be deemed to have been timely filed if received or postmarked no later than the first business day following the last day of the renewal period. "Non-business" days are Saturday, Sunday and any other day upon which the commission offices are closed due to a state holiday designated in the General Appropriations Act or by other law.

(d)Renewals by registrants who are on active duty in the United States armed forces or who are subject to the provisions of the Texas Education Code, §57.491, concerning certain student loans also will be governed by §535.92 of this title (relating to Renewal: Time for Filing;

Satisfaction of Mandatory Continuing Education Requirements).

§535.404. Fees. The commission shall charge and collect a fee of \$200 for the application or renewal of a registration for a two-year period.

§535.405. Employee of Owner or Purchaser.

(a)An easement or right of way registration is not required for an individual employed by an owner or purchaser for the purpose of selling, buying, leasing or transferring an easement or right-of-way for the owner. A person is considered to be an owner if it holds an interest in or wishes to acquire an easement or right-of-way or has an equitable title or right acquired by contract with the record title holder.

(b)An easement or right of way agent employed by an owner means a person employed and directly compensated by an owner. An independent contractor is not an employee.

(c)Withholding income taxes and Federal Insurance Contributions Act (F.I.C.A.) taxes from wages paid another person is considered evidence of employment.

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.

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