

Texas Real Estate Commission
Chapter 535, General Provisions
Rules Adopted at the October 10, 2011 Commission Meeting

Subchapter E. Requirements for Licensure

§535.50, §535.51, §535.53, §535.55, §535.56

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.50, regarding Definitions; §535.51, regarding General Requirements; §535.53, regarding Corporations and Limited Liability Companies; §535.55, regarding Education Requirements for a Salesperson License; and §535.56, regarding Education and Experience Requirements for a Broker License. Sections 535.50, 535.51, and 535.55 are adopted without changes to the proposed text as published in the August 19, 2011, issue of the *Texas Register* (36 TexReg 5185). Section 535.53 and §535.56 are adopted with changes to the proposed text and will be republished.

The difference between §535.53 as proposed and as adopted is that subsection (b) is rewritten for additional clarification. In addition, a typographical error in Form BL-B, adopted by reference in §535.56, indicating "250 points" for a closed purchase or sale of a farm and ranch property is changed to "300 points" to track the rule. The "Farm and Ranch, Unimproved Lot" section of Forms BL-A and BL-B, adopted by reference in §535.56, is changed to clarify that experience credit for closed sales of any unimproved lot, whether farm and ranch, commercial or residential, should be noted under "Farm and Ranch, Unimproved Lot." Finally, an effective date provision of January 1, 2012 was added to §535.56.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed versions and do

not materially alter the issues raised in the proposed rules. The changes in the rules reflect a nonsubstantive variation from the proposed rules to make the affected rules consistent with other rules.

The amendments implement and further explain the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, Senate Bill 747 amends Texas Occupations Code, §1101.401 to expand from six months to one year the period of time in which an applicant may satisfy an examination requirement from the date the application is filed. In addition, the application and renewal requirements for business entities were changed in §1101.355 and §1101.453 to require that business entities applying for and renewing a broker license must provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million if the designated broker owns less than 10 percent of the entity. Finally Senate Bill 747 amends Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in §1.002 of the Business Organizations Code. Because the effective date of the relevant provisions of Senate Bill 747 is September 1, 2011, the commission simultaneously took emergency action to amend §§535.50, 535.51, and 535.53 to be consistent with Senate Bill 747.

The amendments to §535.50 amend the list of definitions to define a designated broker of a business entity, to clarify that the designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership, and to incorporate the relevant provisions regarding the new broker responsibility continuing education course required under amendments to §1101.458. The amendments to §535.51 clarify that an applicant must meet education and experience requirements before the applicant may take a qualifying examination. The amendments to

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§535.53 change the title of the rule to apply to all business entities, not just corporations and limited liability companies, to add partnerships to the types of business entities that must be licensed, and to address the requirement that business entities must maintain errors and omissions insurance if the designated broker owns less than 10 percent of the entity.

Regarding the amendments to §535.55 and §535.56, the commission has the authority under §1101.362 of the Act to waive some or all of the education and experience requirements for someone who has been licensed within the six years preceding the date the application is filed. Under current §535.55, the commission has waived the education required for a salesperson license for an applicant who was licensed in the preceding six years and otherwise meets the requirements of the section. The amendment to §535.55 changes the period from six years to two years so that an applicant who was licensed as a salesperson or broker in the preceding two years and otherwise meets the requirements of the section regarding mandatory continuing education (MCE) could apply for a salesperson license. Similarly, under current §535.56(a), the commission has waived the education and experience required for a broker license for a broker who was licensed in the preceding four years and otherwise meets the requirements of the subsection. The amendments to the rule change the period from four years to two years and delete the reference to a salesperson so that a broker who had an active license in two of the preceding four years and otherwise meets the requirements of the section regarding MCE could apply for a broker license without meeting the new experience requirements.

In addition, amendments to §535.56 add the rules required by amendments to §1101.356(b-1) of the Act to establish active experience requirements to apply for a broker license under §1101.356 and §1101.357 of the Act. An applicant is required to establish that the applicant has obtained 3,600

points of active experience with documentary evidence and a statement from the applicant's sponsoring broker at the time the experience was earned. Certain types of transactions are worth a certain number of points and the applicant is required to use the forms adopted by reference in the rule to summarize the transactions. An applicant may continue to gain experience after an application has been submitted until such time that the applicant meets the total number required but before the applicant may take the qualifying examination. Experience earned after the application is submitted is to be reported on a different form adopted by reference in the rule. If an applicant is unable to obtain sufficient documentation and/or the signature of the sponsoring broker, the applicant is required to use an affidavit adopted by reference in the rule to describe the applicant's efforts to obtain the documentation and/or signatures. In addition, the applicant is required to provide two additional affidavits each signed by a different individual familiar with the applicant's circumstances and attesting to the applicant's efforts to obtain the appropriate documentation. The application forms and affidavits are adopted by reference in the rule. Finally, the rule gives the commission the discretion to request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by §1101.356 of the Act and §535.56.

The reasoned justification for the amendments is to have consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535 and to meet the statutory requirement of adoption of rules to establish active experience for purposes of applying for a broker license.

As of September 27, 2011, four comments were received on the amendments as proposed, including a comment from the MetroTex Association of Realtors.

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Comment: One commenter agreed with and expressed approval of the point system for measuring active experience.

Comment: One commenter agreed with the point system but suggests an additional line item for "closed purchase or sale - unimproved" in the residential section of the forms.

Response: The recommendation will be submitted to the Broker Responsibility Working Group for consideration on October 3, 2011.

Comment: One commenter had concerns about releasing confidential information to TREC if an applicant is asked to provide documentary proof of transactional experience, such as copies of contracts and HUD 1's.

Response: The commission understands the concerns about the release of confidential information, but notes that licensees are already required to provide such information upon request by agency staff during the investigation of complaints.

Comment: One commenter believes that the statutory requirements of active experience are allegedly a restraint of trade for salespersons wishing to create their own real estate business. The commenter appears to be advocating for single licensure as the commenter points out that insurance agents and securities agents only have one license type.

Response: The commission is bound by the statutory requirements for salesperson and broker licenses and is unable to provide for single license types without a change to the statute. As to the restraint of trade argument, salespersons may currently own their own real estate business; however, if the company is a "domestic entity" as defined in the Business Organization Code, the business entity would need to be licensed as a broker and would be required to have a designated agent who is a licensed broker in active status and good standing.

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, and 1303; and Texas Property Code, Chapter 221. No other statute, code or article is affected by the amendments.

§535.50. Definitions. The following words and terms, when used in Subchapter E, F or G of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1)Alternative delivery method--A method of course delivery other than classroom or correspondence. Alternative delivery method courses include online courses and webinars.

(2)Applicant--A person seeking approval to be a provider or instructor of a course for which core or mandatory continuing education credit is given.

(3)Broker Responsibility Course--The course required by §1101.458 of the Act.

(4)Certified MCE instructor--An instructor approved by the Texas Real Estate Commission and certified to teach the required legal update course, the required ethics course, or the broker responsibility course.

(5)Designated broker--An individual holding an active Texas real estate broker license designated by a business entity licensed by the commission to act on its behalf. The designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership.

(6)Distance learning course--A correspondence course, alternative delivery method course or course offered through video presentation.

(7)Elective credits--The hours of mandatory continuing education required to renew a license for which a specific course is not required.

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(8)Hour--Fifty minutes of actual session time.

(9)Instructor--A person approved by the Texas Real Estate Commission to teach core or mandatory continuing education courses.

(10)MCE--Mandatory Continuing Education.

(11)Non-elective Courses--The legal and ethics courses required by §1101.455 of the Act and the broker responsibility course required by §1101.458 of the Act.

(12)Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the commission.

(13)Provider--Any person offering a course for which credit may be granted by the Commission to a licensee or applicant, regardless of whether the Commission must approve or certify the person to offer the course.

(14)Related course--A course determined to be acceptable by the commission to count towards related credit. The commission will periodically publish lists of acceptable real estate related courses.

(15)Required legal course or legal credits--The required legal update or legal ethics courses or credits earned for attending such courses.

(16)Required legal ethics course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(17)Required legal update course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(18)School--A person accredited by the Texas Real Estate Commission to offer courses for which core credit is given.

(19)Student--An individual taking a core or MCE course for TREC credit.

§535.51. General Requirements for a License.

(a)A person who wishes to be licensed by the commission must file an application for the license on the form prescribed by the commission for that purpose.

(b)A person also may apply for a license by accessing the commission's 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.

(c)The commission shall return the application of an applicant who:

(1)is not 18 years of age;

(2)does not meet any applicable residency requirement;

(3)is not a citizen of the United States or a lawfully admitted alien;

(4)submits the application in pencil; or

(5)submits an incorrect filing fee or no filing fee.

(d)An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1)the applicant fails to satisfy a current education, experience or examination requirement within one year from the date the application is filed;

(2)the applicant fails to submit a required fee within twenty (20) days after the commission makes written request for payment;

(3)the applicant, having satisfied any education or examination requirement, fails to provide information or documentation within sixty (60) days after the commission makes written request for correct or additional information or documentation;

(4)the applicant fails to provide fingerprints to the Department of Public Safety within six months from the date the application is filed.

(e)An applicant must complete relevant education and experience requirements before the applicant is eligible to take a qualifying examination for a license.

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§535.53. Business Entities.

(a) For the purposes of qualifying for, maintaining, or renewing a license, a business entity must designate a broker to act for it. The business entity may not act as a broker during any period in which it does not have a designated broker to act for it who meets the requirements of the Act. Upon any change in the business entity's designated broker, the entity must provide proof to the commission of the designated broker's current status as an officer, manager or general partner for that entity and proof that the business entity maintains appropriate errors and omissions insurance if the designated broker owns less than 10 percent of the entity. A broker may not act as a designated broker at any time while the broker's license is inactive, expired, suspended or revoked.

(b) Section 1101.355 of the Act applies only to business entities which are created under the laws of this state, provided, however, that a business entity formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of this section if it is qualified to do business in Texas; its officers, managers, or general partners are Texas residents and its principal place of business and all of its assets are located in Texas.

(c) If a licensed corporation or limited liability company is dissolved with the Office of the Secretary of State, then the license immediately becomes null and void.

§535.55. Education Requirements for a Salesperson License.

Notwithstanding §1101.451(f) of the Act, the commission may waive the education required for a real estate salesperson license if the applicant:

(1) was licensed either as a Texas real estate broker or as a Texas real estate salesperson within two years prior to the filing of the application; and

(2) completed any core real estate courses or real estate related courses that would have been required for a timely renewal of the prior license, or, if the renewal of the prior license was not subject to the completion of core real estate courses or real estate related courses, completed at least 15 hours of mandatory continuing

education (MCE) courses within the two-year period prior to the filing of an application for an active license.

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

(a) An applicant for a broker license must have four years of experience actively practicing as a broker or salesperson in Texas during the 60 months prior to filing the application, as follows:

(1) Experience is measured from the date a license is issued, and inactive periods caused by lack of sponsorship, or any other reason, cannot be included as active experience.

(2) Under §1101.357 of the Act, a person who is the designated broker of a business entity that is licensed as a real estate broker in another state is deemed to be a licensed real estate broker in another state. A person licensed in another state may derive the required four years' experience from periods in which the person was licensed in one or more states.

(b) An applicant for a broker license must possess four years of active experience as a licensed real estate broker or salesperson during the 60 months preceding the date the application is filed.

(c) An applicant for a broker license must demonstrate not less than 3600 points of qualifying practical experience obtained during the period required by subsection (b) of this section, using TREC No. BL-A, Supplement A-Qualifying Experience Report for a Broker License. An applicant must use TREC No. BL-B, Supplement B-Qualifying Experience Report for a Broker License After an Application Has Been Filed, to report qualifying experience after an application for a broker license is filed. An applicant must demonstrate experience for four out of five years.

(1) An applicant will receive credit for such experience according to the point system set forth in subsection (d) of this section.

(2) Upon request by the commission, either prior to or after licensure, an applicant shall provide documentation to substantiate any or all of the experience claimed by the applicant.

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(3) Failure to promptly provide the requested documentation or proof shall be grounds to deny the application. Any false claim of experience shall be grounds to deny the application, or shall be grounds to suspend or revoke the applicant's current license.

(d) Experience points shall be credited to an applicant in accordance with the following schedule for active licensed salesperson or broker activity only:

(1) Residential transactions including single family, condo, co-op unit, multi-family (1 to 4-unit):

(A) Closed purchase or sale--300 points per transaction.

(B) An executed lease, renewal or extension for a landlord or tenant--50 points per transaction.

(C) Residential rental property management rent collection--25 points per property per year.

(2) Commercial transactions, including apartments (5 units or more), office, retail, industrial, mixed use, hotel/motel, parking facility/garage, and specialty:

(A) Closed purchase or sale--450 points.

(B) An executed lease, renewal or extension for a landlord or tenant--100 points per transaction.

(C) Commercial rental property management rent collection--100 points per property per year.

(3) Farm and Ranch transactions:

(A) Closed purchase or sale on a farm and ranch contract--300 points.

(B) Closed purchase or sale on an unimproved contract--25 points.

(4) Brokerage branch office or team management--20 points per month with a maximum of 1200 points credit toward the 3,600 points total requirement.

(5) Listing or buyer representation agreements--10 points each.

(e) An applicant shall have the burden of establishing to the satisfaction of the commission that the applicant actually performed the work

associated with the real estate transaction claimed for experience credit.

(f) If an applicant is unable to obtain documentation and/or the signature of a sponsoring broker to support their claim for experience, the applicant must use TREC No. AFF-A, Affidavit in Lieu of Documentation and/or Signature, to explain that the applicant made a good faith effort to obtain the documentation and/or signature, describing the effort to obtain the documentation and reasons why it is not available. In addition, the applicant must submit two TREC No. AFF-B, Affidavit in Support of Applicant's Claim of Experience, each signed by a different individual who knows the applicant or is familiar with the transaction(s) at issue attesting to the applicant's efforts to obtain the documentation and/or signature, and attesting to the fact that the applicant performed the work for which the applicant is requesting points.

(g) The commission may request additional documentation, rely on the documentation provided under this section, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by §1101.356 of the Act and this section.

(h) Notwithstanding §1101.451(f) of the Act and subsections (a) - (f) of this section, the commission may waive education and experience required for a real estate broker license if the applicant satisfies each of the following conditions.

(1) The applicant was licensed as a Texas real estate broker within two years prior to the filing of the application.

(2) The applicant has completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license. If the applicant was previously licensed as a Texas real estate salesperson, the applicant satisfies all current education requirements for an original broker license.

(3) The applicant has at least two years of active experience as a licensed real estate broker or salesperson during the four-year period prior to the filing of the application.

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(i)Forms and affidavits required to be used to report experience under this section are adopted by reference, published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(j)The effective date of this section is January 1, 2012.

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 October 12, 2011.

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