

Texas Real Estate Commission
Chapter 535, GENERAL PROVISIONS
Rules Adopted at the November 15, 2010 Commission Meeting

**Subchapter F. Pre-License
Education and Examination**
22 TAC §§535.61 - 535.68

The Texas Real Estate Commission (TREC or the commission) adopts amendments to §535.61, concerning examinations; §535.62, concerning Acceptable Courses of Study; new §535.63, concerning Accreditation of Core Education Schools; new §535.66, concerning Core Education Providers: Audits, Investigations, and Enforcement Actions; new §535.67, concerning Approval of Instructors; and new §535.68, concerning Additional Information Related to an Application without changes to the proposed text as published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8706).

New §535.64, concerning Obtaining Approval to Offer a Course and new §535.65, concerning Operation of Core Education Schools are being adopted with changes and will be republished. The differences between the rules as proposed and the rules as finally adopted are as follows: section 535.64(d) corrects a typographical error referencing §535.62(g) to the correct reference of §535.62(f); 535.65(4) clarifies that a school may rely on published objective information such as pass rates in advertising regarding the school's course of instruction; §535.65(9)(D) regarding records retention is clarified to address records that are maintained in an electronic format; and §535.65(10) is changed to require schools to use, at a minimum, course and instructor evaluation criteria established by the commission, rather than requiring schools to use evaluation forms approved by the commission.

The commission renames the subchapter name from "Education, Experience, Educational Programs, Time Periods and Type of Licensure" to "Pre-License Education and Examination."

The subchapter name as amended more appropriately addresses the new content of the subchapter which TREC is simultaneously adopting as part of a comprehensive rule review of 22 TAC Chapter 535. As the reformation of the

subchapters comprehensively addresses the subjects of the adopted amendments and new rules, it is necessary to avoid confusion and repetition.

Section 535.61 is amended to delete a redundant provision regarding the confidentiality of the examination as contents of the examination are confidential under the Texas Public Information Act, Texas Government Code Chapter 552. The amendments to §535.61(a)(1) and (3) remove the requirements of intent or knowledge. Thus, engaging in any of the listed activities with respect to the TREC exam is considered grounds for disciplinary action regardless of the intent or knowledge of the applicant or licensee. Subsections (f) and (g) are moved to new §535.57.

The amendments to §535.62(a) delete a reference to acceptable real estate related courses as the term "related course" is defined in new §535.50. The following amendments to §535.62 are adopted as part of the reformation of the section to group similar subjects into the same sections and to clarify the subject matter of each rules. Paragraphs (1) and (2) of subsection (a) are moved from existing §535.62(f)(1) and (2); the first sentence of subsection (b) is moved from §535.62(b); paragraph 5 of subsection (b) is amended to track the terminology used in the Act; subsection (c) is reworded for clarity; paragraphs (3) and (4) of subsection (d) are moved from existing §535.62(d)(9) and (e). Subsections (e) - (g) are moved from other parts of existing §535.62 to put like subject matter together. Existing §535.62(d)(6)(B) regarding courses offered by an alternative delivery method were deleted because distance learning certification (required under §535.62(g)(1)) ensures the requirements of that subparagraph and it was therefore redundant. Although the remaining provisions of §535.62 indicate that they were deleted, there were moved to other sections for clarity.

Existing §535.63 was repealed and moved to new §§535.54 - 535.56. Much of new §535.63 is

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moved from existing §535.64 which addresses accreditation of schools. The renewal period for accreditation of schools is changed from five years to four years in §535.63(b). For purposes of calculation a school's passage rate in §535.63(b)(3), the commission will use a four year period instead of a five year period (current). Thus a school's passage rate will be calculated by dividing the number of students affiliated with that school who passed the examination on their first attempt in the four-year period ending on the last day of the previous quarter by the total number of the school's graduates who took the exam for the first time in the same period.

Existing §535.64 is repealed and replaced with new §535.64 which contains the parts of existing §535.64 that deal with obtaining approval to offer a course. There are new course renewal provision in subsections (f) and (g) of new §535.64. A course approval expires four years from the date of approval, and if any school that offers the same course obtains TREC approval to offer the same course, the expiration date remains unchanged. The requirement in existing §535.64 that examination preparation course be submitted to TREC for approval is deleted.

Existing §535.65 is repealed and replaced with new §535.65. The text of new §535.65 comes from existing §535.65 except that it has been rearranged, streamlined and reformatted for clarity and consistency. A new provision in paragraph (2)(D) addresses the requirements for schools which do not maintain an office in the State of Texas. A provision in paragraph (10) clarifies that a school must provide to students and maintain for commission review instructor and course evaluation for each course. At a minimum, schools must use evaluation criteria approved by the commission. Under paragraph (9)(D), a school is required to maintain records of each student enrolled for a minimum of four years; and the full class file and student enrollment agreements must be retained for at least 24 months following completion; records

may be retained electronically if they are held in a common format such as pdf or html.

Existing §535.66 is repealed and replaced with new §535.66. The text of new §535.66 comes from existing §535.66 except that it has been rearranged, streamlined and reformatted for clarity and consistency.

New §535.67 contains the part of existing §535.64 that deals with approval of instructors. The renewal period for instructor approval is changed from five years to two years.

New §535.68 contains the parts of existing §535.64(m) which deal with additional information related to an application for a school, course or instructor; and §535.64(n) which addresses the commission's delegation of authority to staff.

Generally speaking, the amendments and new sections correct typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

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 non-substantive variation from the proposed rules to make the affected rule consistent with other rules.

The reasoned justification for the amendments is more streamlined, consistent and readable rules, and more accountability for schools, instructors, and courses accredited by the commission.

The Texas Association of Realtors and the Texas Apartment Association commented on the rules as proposed.

The commission received 4 comments on the rules as proposed.

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Comment: Three commenters suggested that the commission should not require that schools use a commission approved form for course and instructor evaluations. Instead, the commission should permit schools to use their own forms as long as they use commission approved criteria at a minimum.

Response: The commission agrees with the comments and has changed the rules accordingly.

Comment: Two comments suggested that the commission should clarify that schools may rely on published objective information such as pass rates for advertising purposes.

Response: The commission agrees with the comments and has changed the rules accordingly.

Comment: One commenter disagrees with changing the approval process for instructors from five years to two years.

Response: The commission respectfully disagrees with the commenter and believes it is appropriate to change the renewal period to two years to be consistent with renewal periods for a license from the agency.

Comment: Two commenters suggested that the commission should clarify records retention requirements for records held in an electronic format.

Response: The commission agrees with the comments and has revised §535.65(9)(D) accordingly.

The amendments and new rules 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, Chapter 1101 and Chapter

1102. No other statute, code or article is affected by the adoption.

§535.61. Examinations.

(a) The following conduct with respect to licensing examinations is prohibited and is grounds to impose disciplinary action against any licensee of the commission or any education provider accredited by the commission or instructor approved by the commission, and shall further be grounds for disapproval of an application for any license, accreditation, or approval issued by the commission:

(1) obtaining or attempting to obtain specific questions or answers from an applicant, a commission employee or any person hired by or associated with the testing service;

(2) removing or attempting to remove questions or answers from an examination site; or

(3) providing or attempting to provide examination questions or answers to another person.

(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 70% in each section of the examination.

(c) An applicant will not be admitted to the testing service's examination site unless the applicant provides a government issued photobearing identification card. The testing service may refuse to admit an applicant who arrives after the time the examination is scheduled to begin or whose conduct or demeanor would be disruptive to other persons taking examinations at the site. The testing service may confiscate examination materials,

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dismiss the applicant, and fail the applicant for violating or attempting to violate the confidentiality of the contents of an examination.

(d) Applicants may use silent, battery-operated, electronic, pocket sized calculators which are nonprogrammable. If a calculator has printout capability, the testing service must approve use of such calculator prior to the examination. Applicants may not use calculators with alphabetic keyboards or communication capabilities.

(e) The testing service administering the examinations is required to provide reasonable accommodations for any applicant with a verifiable disability. Applicants must contact the testing service to arrange for a special examination. The testing service shall determine the method of examination, whether oral or written, based on the particular circumstances of each case.

§535.62. Acceptable Courses of Study.

(a) Acceptable core real estate courses are those courses prescribed by §1101.003 of the Act and the following courses.

(1) Promulgated Contract Forms (or equivalent), which shall include but is not limited to unauthorized practice of law, broker-lawyer committee, current promulgated forms, commission rules governing use of forms and case studies involving use of forms.

(2) Residential Inspection for Real Estate Agents (or equivalent), which shall include but is not limited to repair-related contract forms and addenda, inspector and client agreements, inspection standards of practice and standard inspection report form, tools and procedures, electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations) and structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).

(b) Applicants must submit evidence of course completion, such as transcripts or course completion certificates, unless the provider has provided or will provide course completion documentation to the commission.

The commission may require an applicant to furnish supporting materials such as course outlines, syllabi and course descriptions. The commission may require official transcripts to verify course work. Provided all the requirements of this section are satisfied, the commission shall accept core real estate courses or real estate related courses submitted by an applicant for a broker or salesperson license if the course was offered by any of the following providers:

(1) a school accredited by the commission or by the real estate regulatory agency of another state;

(2) a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, or by a recognized national or international accrediting body;

(3) a post-secondary educational institution established by any state;

(4) the United States Armed Forces Institute or other service-related school; or

(5) Texas professional trade association in the real estate industry.

(c) The commission shall grant classroom credit for qualifying courses as follows:

(1) 15 hours of classroom credit will be granted for one semester hour.

(2) 10 hours of classroom credit will be granted for one quarter hour.

(3) 10 hours of classroom credit will be granted for one qualifying continuing education unit.

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

(1) The course contained the content required by §1101.003 of the Act or this section.

(2) The daily course presentation did not exceed ten hours.

(3) The course was of broader applicability than just techniques or procedures utilized by a particular brokerage or organization.

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(4) The course was not awarded credit by an accredited college or university based on life experience or solely by examination.

(e) A classroom course must meet the following additional requirements to be accepted for core credit.

(1) 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.

(2) The student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule.

(3) Successful completion of a final examination or other form of final assessment of the student was a requirement for receiving credit from the provider.

(f) A correspondence course must meet the following additional requirements to be accepted for core credit.

(1) The course was offered by or in association with an accredited college or university, and students receiving credit for the course were required to pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination was 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.

(2) If a correspondence course was offered by a school in association with an accredited college or university, the 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 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.

(g) A course offered by an alternative delivery method must meet the following additional requirements to be accepted for core credit.

(1) The course was certified by a distance learning certification center that is acceptable to the commission.

(2) An approved instructor or the provider's coordinator/director graded the written course work; and

(3) The provider:

(A) ensured that a qualified person was available to answer students' questions or provide assistance as necessary;

(B) certified students as successfully completing the course only if the student:

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

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

(iii) passed either:

(I) 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

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

§535.63. Accreditation of Core Education Schools.

(a) Application for accreditation. A person desiring to offer educational programs or courses of study under approval of the commission pursuant to §1101.301 of the Act shall file an application on the appropriate form

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approved by the commission and submit the required fee.

(1) Standards for approval of application for accreditation. To be accredited by the commission to offer core courses in real estate, the applicant must satisfy the commission as to the applicant's ability to administer courses with competency, honesty trustworthiness and integrity. If the applicant proposes to employ another person such as an independent contractor to conduct or administer the courses, the other person must meet this standard as if the other person were the applicant. The applicant must also demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students attending the school and that the proposed facilities will be adequate and safe for conducting classes. An applicant that is currently accredited will be deemed to meet financial requirements imposed by this subsection once the applicant has provided the statutory bond or other security acceptable to the commission under §1101.301 of the Act if there are no unsatisfied final money judgments against the applicant; otherwise, the application will be subject to the financial review provisions of this section.

(2) Financial review. The commission shall review the financial condition of each applicant for accreditation to determine whether the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis. In making this determination, the commission shall be conservative in the financial assumptions it makes concerning the school's proposed operations and its future cash flows. The applicant shall provide the following information:

(A) business financial statements prepared in accordance with generally accepted accounting principles, which shall include a current statement of financial condition and a current statement of net worth;

(B) on an initial application, a proposed budget for the first year of operation; and

(C) on an initial application, a market survey indicating the anticipated enrollment for the first year of operation.

(3) Approval of application for accreditation. If it determines that the applicant meets the standards for accreditation and has furnished the bond or other acceptable security required by §1101.302 of the Act, the commission shall approve the application and provide a written notice of the accreditation to the applicant. Unless surrendered or revoked for cause, the accreditation will be valid for a period of four years.

(4) Disapproval of application for accreditation. If it determines that an applicant does not meet the standards for accreditation, the commission shall disapprove the application in writing. An applicant may request a hearing before the commission on the disapproval by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Following the hearing, the commission shall issue an order which, in the opinion of the commission, is appropriate in the matter concerned. Venue for any hearing conducted under this section shall be in Travis County. The disapproval and hearing are subject to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and to Chapter 533 of this title (relating to Practice and Procedure).

(b) Renewal of accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another four year period. Approval or disapproval of an application shall be subject to the standards for initial applications for accreditation, as well as the requirement of §1101.301 of the Act.

(1) For purposes of calculating the exam passage rate of a commission-accredited school, each type of licensing examination that a student takes for the first time will have a school affiliation, unless the last core course taken for the purpose of meeting the education requirements for the type of license was taken at a school that is not accredited by the commission or the course was taken more than two years before the date the student submitted the course to the commission.

(2) The school a student is affiliated with for purposes of this subsection is the school where the student took his or her last core course. If the student's last core course was

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taken more than two years before that date, the commission will not count the student in calculating the school's exam pass rate.

(3) A school's passage rate will be calculated and published quarterly by dividing the number of students affiliated with that school, as defined in paragraph (2) of this subsection, who passed the examination on their first attempt in the four-year period ending on the last day of the previous quarter by the total number of the school's graduates who took the exam for the first time in the same period. If a school offers courses toward multiple license types, the exam results for that school will be calculated and posted by license type and aggregated into the school's overall passage rate for that period. The passage rate that will be used to determine whether the accreditation standard has been met is the most current aggregate rate published by the commission as of the date the commission receives the timely application for reaccreditation or, if the accreditation expired before being renewed, the most recent rate published by the commission as of the expiration date of the school's accreditation.

(4) In determining whether a school qualifies for reaccreditation based on its examination passage rate, the commission may consider a variety of factors, including the separate passage rates for sales, broker, and inspector applicants and trends within the school's passage rate over the four-year accreditation period.

(c) Payment of annual fee. A school shall pay the fee prescribed by §1101.152(a)(11) of the Act and by §535.101 of this title (relating to Fees) no later than the anniversary of the date of the school's accreditation. At least 30 days prior to the day the fee is due, the commission shall send a written notice to the school to pay the fee, but the school's obligation to pay the fee is not affected by any failure to receive the notice.

§535.64. Obtaining Approval to Offer a Course.

(a) An applicant shall submit a Course Application form and pay the fee required by §535.101 of this title (relating to Fees) to obtain approval to offer a course. Prior approval

is required for another school to offer the same course.

(b) A school shall submit an instructor's manual for each proposed course. The commission may require a copy of the course materials and instructor's manual to be submitted for each previously approved course a school intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the commission and shall use all materials required in the original or revised course. Each manual must comply with Instructor Manual Guidelines approved by the commission.

(c) The commission is not required to approve a course sooner than 30 days after the filing of an application for course approval.

(d) For the purpose of approval of courses, a correspondence course offered by a school in association with an accredited college or university in accordance with §535.62(f) of this title (relating to Acceptable Courses of Study), is equivalent to a correspondence course offered by an accredited college or university.

(e) Schools may offer a course using an alternative delivery method such as computers if the course satisfies the requirements for such a course contained in §535.62(g) of this title.

(f) A course approval expires four years from the date of approval. A course that has been approved by the commission may be offered by the original applicant until the expiration date, except that courses approved prior to the effective date of this section expire two years after the effective date. If any school other than the original applicant obtains approval from the commission to offer the same course, the expiration date remains unchanged.

(g) Course renewal. No more than six months prior to the expiration of a course approval, a school may obtain a course approval for another four year period. Approval or disapproval of a course shall be subject to the standards for initial course approval.

§535.65. Operation of Core Education Schools. The following provisions apply to schools accredited by the commission to offer core education programs.

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(1) Responsibility of schools. A school is responsible to the commission for the conduct and administration of each course presentation, punctuality of classroom sessions, student attendance records, instructor performance and attendance, examination administration, proper student certification, and certification of records. A school shall establish business hours during which school staff are available for public inquiry and assistance. A school shall ensure that instructors or other persons do not recruit or solicit prospective salespersons or brokers in a classroom during class time.

(2) School facilities.

(A) A school shall ensure that its classroom facilities are adequate for the needs of the school and pose no threat to the health or safety of students.

(B) Except as provided by this section, every school shall be open to the public, and shall advertise all courses publicly so as to encourage reasonably an open enrollment. A school may obtain approval from the commission, however, to hold classes in facilities to which access has been limited by a governmental unit.

(C) If a school maintains an office in the State of Texas, the office must be large enough for maintenance of all records, office equipment, files, telephone equipment, and office space for customer service.

(D) If a school does not maintain a fixed office in this state for the duration of the school's approval to offer courses, the school shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas that the school is required to maintain by these sections. A power-of-attorney designating the resident must be filed with the commission in a form acceptable to the commission.

(3) Instructors.

(A) A school shall select each instructor on the basis of expertise in the subject area of instruction and ability as an instructor. Except as provided by this section, a school may not utilize an instructor unless the instructor has been approved by the commission. A school shall require specialized training or work

experience for instructors for specialized subjects such as law, appraisal, investments, or taxation. A school may use as a guest speaker a person who has not been approved as an instructor, provided that no more than a total of three hours of instruction in a 30-hour course are taught by persons who are not approved instructors.

(B) An instructor shall teach a course in substantially the same manner represented to the commission in the instructor's manual or other documents filed with the application for course approval.

(C) A school shall ensure that at the beginning of each examination preparation course, the instructor reads aloud to all students the provisions of §535.61(a) of this title (relating to Examinations).

(D) Schools may request MCE credit be given to instructors of real estate core courses subject to the following guidelines.

(i) The instructors may receive credit for only those portions of the course which they teach by filing a completed Instructor Credit Request.

(ii) The instructors may receive full course credit by attending all of the remainder of the course.

(4) Advertising. The following practices are prohibited:

(A) using any advertising which does not contain the school's name;

(B) representing that the school's program is the only vehicle by which a person may satisfy educational requirement for licensing;

(C) conveying a false impression of the school's size, importance, location, equipment or facilities;

(D) making unsubstantiated claims that the school's programs are superior to any other course of instruction, except that a school may use objective information published by the commission regarding pass rates;

(E) promoting the school directly or indirectly as a job placement agency, unless the school is participating in a program

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recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program; or

(F) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression.

(5) Pre-enrollment agreements, tuition and fees.

(A) Prior to the start of a course, a school shall provide each student with a pre-enrollment agreement signed by a representative of the school and the student. The agreement must include all of the following information:

(i) the tuition for the course;

(ii) any fees charged by the school for supplies, materials, or books needed in course work, shown in an itemized fashion;

(iii) the school's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;

(iv) attendance requirements;

(v) acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions; and

(vi) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits.

(B) If the school cancels a course, the school shall fully refund all fees collected from students or, at the student's option, the school may credit the student for another course. The school shall inform the commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(C) Any written advertisement by the school that includes a fee charged by the school must display all fees for the course in the same place in the advertisement and with the same degree of prominence.

(6) Course materials.

(A) A school shall update course materials to ensure that current and accurate information is provided to students. The school shall file updated course materials and revisions of the course outline with the commission prior to implementation, and the commission may direct a school to revise the materials further or cease use of materials. The commission may direct that the school withdraw texts.

(B) A school shall provide each student with copies for the student's permanent use of any printed material which is the basis for a significant portion of the course. The school shall provide ample space on handouts for notetaking or completion of any written exercises.

(7) Presentation of courses.

(A) A school shall present core real estate courses prescribed by §1101.003 of the Act and real estate related courses accepted by the commission in no less than 30 classroom hours of instruction. The school shall advertise and schedule a course for the full clock hours of time for which credit is awarded.

(B) A school may give one hour of credit for a minimum of 50 clock minutes of actual classroom session time. A school shall provide a break of at least 20 minutes to be given at least every two hours. While a school is expected to ensure that each student is present in the classroom for the hours of time for which credit is awarded, this section is not intended to penalize students who must leave the classroom for brief periods of time for personal reasons.

(8) Course examinations.

(A) A school shall administer an examination approved by the commission in each course as a component of determining successful completion of a course of study. A school may not permit a student to take a final examination prior to the completion of any makeup required by this section. In the event of failure of a course final examination, a school may permit a student to retake a final examination once after at least a seven day waiting period and completion of additional course work prescribed by the school. A school shall require a student who fails the

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examination a second time to retake the course. A school shall require makeup final examinations to be completed within 90 days of the termination of the original class or report the students who do not timely complete the examination requirement as dropped from the class with no credit.

(B) Except in the case of math courses, which require a minimum of 20 questions, a school shall use final examinations consisting of at least 60 questions with an unweighted passing score of 70%. A school shall revise final course examinations for active courses at least annually and shall furnish the commission copies of all revisions. Each of the subjects required by the Act or Rules for a core course must be covered in the exam of that course. A school shall ensure that an examination proctor who is either a member of the school staff or faculty is present with the class during all regularly scheduled final course examinations.

(9) Course credit and records.

(A) Within ten days following the completion of other than an alternative delivery method course or correspondence course, a school shall provide the commission with a class roster in a format approved by the commission. For an alternative delivery method course or correspondence course, a school shall provide a roster of those students completing the course within 10 days after the end of the month in which the student completed the course. The listing of students must be numbered and in alphabetical order, with each student's last name shown first, and must show after each student's name the final grade of either passed, failed, incomplete, or dropped, in language or symbols that can be correlated with these categories. The school shall explain any other grade concisely but clearly. The school shall list all instructors used in the course on the roster.

(i) "Passed" must be limited to those students who attended all of the scheduled classes or completed acceptable makeup and who successfully passed the final course examination based on passing standards approved by the commission.

(ii) "Failed" must be limited to those students who had acceptable classroom

attendance but failed the final course examination. If, however, the school permits the student to retake the examination in accordance with paragraph (8) of this section, the first failure must be reported as an incomplete grade.

(iii) "Incomplete" must be limited to those students who met the attendance requirements, but did not take the final course examination; those who attended at least two-thirds of the scheduled course hours but did not complete acceptable makeup; or those who fail the final course examination but will be permitted to take a second examination. If a student is reported incomplete and later completes acceptable makeup and the final examination, the school shall file a supplemental report with the commission giving the student's name and final grade report and using the same format and course data as the original class report. The school shall file a separate supplemental report for each individual class but may include more than one student on the report if all students were in the same original class.

(iv) "Dropped" must be limited to those students who missed more than one-third of the scheduled class in which they were originally enrolled; those who voluntarily terminated their enrollment; or those whose enrollment was terminated for cause by a school director.

(B) A school may permit a student who attends at least two-thirds of a scheduled course to complete makeup work to satisfy attendance requirements. Acceptable makeup procedures are the attendance in the corresponding class sessions in a subsequent offering of the same course or the supervised presentation by audio or video recording of the class sessions actually missed. A school shall require all class makeup sessions to be completed within 90 days of the completion of the original course, or the student must be considered dropped with no credit for the course. A member of the school's staff must approve the makeup procedure to be followed. A student attending less than two-thirds of the originally scheduled course must automatically be dropped from the course without credit and reported as dropped. Dropped status may not

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be changed by makeup sessions, and any hours accumulated may not be transferred to any other course.

(C) A school shall issue to the students successfully completing a course of instruction an official certificate which reflects the school's name, branch, course title, course numbers, and the number of classroom hours (or other recognized educational unit) involved in the course. All core course certificates must show the statutory core course title or other identification as prescribed by the commission. Certificates also must show the date of issuance and be signed by an official of the school, or if the certificate is computer printed, the school logo may be substituted for the signature. Letters or other official communications also may be provided to students for submission to the commission as evidence of satisfactory completion of the course. Such letters must fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school, or if the letter is computer printed, the school logo may be substituted for the signature. A school shall maintain adequate security for completion certificates and letters. Compliance with this requirement will be determined by the commission during all school audits. A school may withhold a student's certificate of completion of a course until the student has fulfilled the student's financial obligation to the school.

(D) A school shall maintain records of each student enrolled in any course for a minimum of four years. The full class file, including course and instructor evaluations and student enrollment agreements must be retained for at least 24 months following completion of the class. Records may be maintained electronically but must be in a common format, such as pdf or html, that may be legibly and easily printed or viewed without additional manipulation or unusual software.

(E) A school shall maintain financial records sufficient to reflect at any time the financial condition of the school. A school's financial statement and balance sheets must be available for audit by commission personnel,

and the commission may require presentation of financial statements or other financial records.

(10) Instructor and Course Evaluations. A school shall provide instructor and course evaluation forms for completion by students in every course. A school shall, at a minimum, use evaluation criteria approved by the commission. The school shall file in the school records any comments by the school's management relevant to instructor or course evaluations. On demand by the commission the school shall produce instructor and course evaluation forms for inspection.

(11) Changes in Ownership or Operation. A school shall obtain the approval of the commission in advance of any material change in the operation of the school, including but not limited to, ownership, location of main office and any other locations where courses are offered, management, and course formats. A request for approval of a change of ownership will be considered as if each proposed new owner had applied for accreditation of the school, and each new owner must meet the standards imposed by §535.63 of this title (relating to Accreditation of Core Education Schools). A school requesting approval of a change in ownership shall provide all of the following information or documents to the commission:

(A) the proportion of ownership of each proposed new owner;

(B) a professional resume of each proposed new owner who would hold at least a 10% interest in the school;

(C) business financial statements of each proposed new owner who would hold at least a 10% interest in the school, which shall include the statement of financial condition and statement of net worth for the accounting period in which the application is made, prepared in accordance with generally accepted accounting principles;

(D) a statement of any proposed changes in the operation or location of the school;

(E) a new bond in the amount of \$20,000 for the proposed new owner(s), a statement from the bonding company indicating that the

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former bond will transfer to the proposed new owner(s), or other security acceptable to the commission under §1101.302 of the Act;

(F) a completed Education Provider Application reflecting all required information for the proposed new owner(s); and

(G) a completed Principal Information Form for each proposed new owner who would hold at least a 10% interest in the school.

§535.66. Core Education Providers: Audits, Investigations, and Enforcement Actions.

(a) Audits. Schools are subject to audit by commission employees. Commission employees may conduct on-site audits without prior notice to the school, and may enroll and attend a course without identifying themselves as employees of the commission. An audit report indicating noncompliance with the Act or Rules will be treated as a written complaint against the school or instructor concerned and will be referred to the standards and enforcement services division of the commission for appropriate resolution.

(b) Complaints, investigations and hearings. The commission shall investigate complaints against schools or instructors which allege acts constituting violations of these sections. Complaints must be in writing, and the commission may not initiate an investigation or take action against a school or instructor based on an anonymous complaint. Complaints against a school or instructor received by any division of the commission will be referred to the enforcement division for appropriate resolution. Commission employees may file written complaints against a school or instructor if course completion rosters or other documents filed with the commission provide reasonable cause to believe a violation of these sections has occurred. The school or instructor named in the complaint will be provided with a copy of the complaint. Proceedings against schools and instructors will be conducted in the manner required by §1101.657 of the Act, the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section will be in Travis County.

(c) Grounds for disciplinary action against a school. The commission may issue a reprimand, place on probation, suspend or revoke accreditation of a school, or impose an administrative penalty when it has been determined that the school has been guilty of engaging in any of the following acts:

(1) procuring or attempting to procure approval for a school, course or instructor by fraud, misrepresentation or deceit, or by making a material misrepresentation of fact in an application filed with the commission;

(2) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(3) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(4) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(5) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against the school or instructor;

(6) disregarding or violating a provision of these sections or of the Act; or

(7) failing to maintain sufficient financial resources to continue operation of the school without placing students at risk of financial loss.

(d) The existence of any of the following conditions shall constitute prima facie evidence that a school's financial condition is insufficient for continuing operation:

(1) nonpayment of a liability when due, if the balance due is greater than 5% of the school's current assets in the current or prior accounting period;

(2) nonpayment of three or more liabilities when due, in the current or prior accounting

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period, regardless of the balance due for each liability;

(3) a pattern of nonpayment of liabilities when due, in two or more accounting periods, even if the liabilities ultimately are repaid;

(4) a current ratio of less than 1.75 for the current or prior accounting period, this ratio being total current assets divided by total current liabilities;

(5) a quick ratio of less than 1.60 for the current or prior accounting period, this ratio being the sum of all cash equivalents, marketable securities, and net receivables divided by total current liabilities;

(6) a cash ratio of less than 1.40 for the current or prior accounting period, this ratio being the sum of cash equivalents and marketable securities divided by total current liabilities;

(7) a debt ratio of more than .40 for the current or prior accounting period, this ratio being total liabilities divided by total assets;

(8) a debt-to-equity ratio of greater than .60 for the current or prior accounting period, this ratio being total liabilities divided by owners' or shareholders' equity;

(9) a final judgment obtained against the school for nonpayment of a liability which remains unpaid more than 30 days after becoming final; or

(10) execution of a writ of garnishment on any of the assets of the school.

(e) Grounds for disciplinary action against instructor. The commission may issue a reprimand, place on probation, suspend or revoke approval of an instructor, or impose an administrative penalty when it has been determined that the instructor has been guilty of engaging in any of the following acts:

(1) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(2) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(3) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(4) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against a school or instructor; or

(5) violating or disregarding any provision of the Act or a rule of the commission.

(f) Probation. An order of suspension or revocation issued under this section may be probated upon reasonable terms and conditions as determined by the commission.

§535.67. Approval of Instructors.

(a) Standards for instructor approval. The application for commission approval of an instructor must be filed on a form approved by the commission. To be approved as an instructor, a person must satisfy the commission as to the person's competency in the subject matter to be taught and ability to teach effectively. Each instructor must also possess one of the following qualifications:

(1) a college degree in the subject area or five years of professional experience in the subject area and three years experience in teaching or training; or

(2) the equivalent of paragraph (1) of this subsection as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(b) Approval of application. If the commission determines that the applicant meets the standards for instructor approval, the commission shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a period of two years.

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(c) Disapproval of application. The commission may disapprove an application for approval of an instructor for failure to meet the standard imposed by subsection (a) of this section, failure to satisfy the commission as to the applicant's honesty, trustworthiness or integrity, or for any reason which would be a ground to suspend or revoke a real estate license. If an application is disapproved, the commission shall provide written notice to the applicant detailing the basis of the decision. An applicant may request a hearing before the commission by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Venue for any hearing conducted under this section is in Travis County. Appeals from application disapprovals will be conducted in the manner required by §1101.364 of the Act. Hearings are subject to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and to Chapter 533 of this title (relating to Practice and Procedures).

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(d) Subsequent application for instructor approval. No more than six months prior to the expiration of the current approval, an instructor may apply for approval for another two-year period.

§535.68. Additional Information Related to an Application.

(a) The commission may request an applicant for accreditation of a school, approval of a course, or approval as an instructor to provide additional information related to the application, and the commission may terminate the application without further notice if the applicant fails to provide the information within 60 days after the request was mailed.

(b) Delegation of authority. The commission may authorize its director of education and licensing services division or that person's designee to determine whether applications for schools, courses, and instructors should be approved.

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.

Filed with the Office of the Secretary of State on December 6, 2010