

**Texas Real Estate Commission
Chapter 535, General Provisions
Subchapter F. Education, Experience, Educational Programs, Time
Periods and Types of License.
Rules Adopted at the February 08, 2009 Meeting**

§535.61, Examinations; §535.62, Acceptable Courses of Study; and §535.64, Accreditation of Schools and Approval of Courses and Instructors

The Texas Real Estate Commission (TREC) adopts amendments to §535.61, Examinations; §535.62, Acceptable Courses of Study; and §535.64, Accreditation of Schools and Approval of Courses and Instructors with changes to the proposed text of §535.61 as published in the November 6, 2009, issue of the *Texas Register* (34 TexReg 7762) which will be republished but, without changes to the proposed text of §535.62 and §535.64. The amendment to §535.61 as adopted establishes a broker pre-license examination passing score of at least 75% and a salesperson pre-license examination score of at least 70%. The difference between the rule as originally proposed and the rule as adopted is the proposed rule would have changed the passing score for both salesperson and broker examinations from at least 70% to at least 75%. The amendments to §535.62 and §535.64 define how TREC-approved proprietary schools' passage rates are calculated and published by the commission and implement the statutory requirement that schools demonstrate a 55% examination passage rate to renew their accreditation. In response to comments to previously proposed amendments to these rules, the amendments allow schools that offer correspondence courses in association with accredited colleges or universities to issue certificates of completion in the name of the TREC-approved school and to count the examination passage rates of students in those courses toward the school's overall passage rates. The amendments further state that correspondence courses offered in association with accredited colleges or universities, like correspondence courses offered by accredited colleges and

universities, do not require commission pre-approval because all such courses must comply with the college or university's curriculum accreditation standards. The effective date of the amendments is September 1, 2010.

The reasoned justification for the amendments includes greater public availability of information regarding a TREC accredited school's examination passage rate, and increased agency ability to ensure the quality of education offered by these schools. The reasoned justification is further described below in response to the comments.

Six comments were received on the rules as proposed, including a comment from the Texas Association of Realtors.

Comment: One commenter commented favorably on establishing the pre-license examination passing score for salespersons and brokers at 75%.

Comment: One commenter generally agrees with the amendments.

Comment: One commenter suggested postponing for at least six months changing the passing score from 70% to 75% until the commission has collected additional statistical data on the recent changes to the examination structure and format.

Response: The commission respectfully disagrees with the commenter with respect to the broker examination and believes that increasing the passing score to 75% for the broker examination will further ensure well-qualified and educated brokers to better protect consumers of real estate services in Texas.

Comment: One commenter is not in favor of changing the passing score from 70% to 75%. The commenter indicates that there are no signs of concern with the

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current 70% passing score and such score is sufficient evidence of mastery.

Response: The commission respectfully disagrees with the commenter and believes that increasing the passing score to 75% for the broker examination will further ensure well-qualified and educated brokers to better protect consumers of real estate services in Texas.

Comment: One commenter is not in favor of changing the passing score from 70% to 75% and requested additional clarification on the amendments to §535.62 and §535.64. Regarding the examination passing score, the commenter states that since changing the passing score is not a matter of urgency, the commission should focus its attention on implementing the 55% first time pre-license exam pass rate before in considers raising the actual passing score for the examination.

Regarding the amendments to §535.62, the commenter asks for clarification about the use of the term “aggregate.”

Response: The commission respectfully disagrees with the commenter with respect to the broker examination and believes that increasing the passing score to 75% for the broker examination will further ensure well-qualified and educated brokers to better protect consumers of real estate services in Texas.

As to the request for clarification regarding the use of the term “aggregate,” the aggregate pass rate is the total number of broker, salesperson, real estate inspector, and professional inspector examinees (students) divided by the total number of students who passed the examination on the first attempt for the same period. The aggregate

number of students does not include appraiser examinees.

Comment: One commenter stated that the commenter would be in favor of the amendments to §535.62 and §535.64 if it means that the correspondence courses submitted by a proprietary school in association with an accredited college or university need not be accredited for college credit in a degree program as long as the college or university certifies that the courses meet the college or university standards for adult education.

Response: Under the rule as adopted, correspondence courses submitted to TREC for proposed approval, if offered by a proprietary school in association with an accredited college or university, must include written certification that the course meets the curriculum standards maintained by the college or university for either 1) college credit in a degree awarding program, or 2) credit in a certificate awarding program approved by the college or university, such as a recognized adult education program.

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

§535.61. Examinations.

(a) The contents of examinations administered by the commission or by a testing service under contract with the commission are confidential. The following conduct with respect to licensing examinations is prohibited and is

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grounds to impose disciplinary action against any licensee of the commission or any education provider 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, for the purpose of using the information to pass an examination or for the purpose of providing the questions or answers to another person who is either an applicant or a potential applicant;

(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, knowing the person is an applicant or prospective applicant, or that the person intends to provide the questions or answers to an applicant or potential applicant.

(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 photo-bearing 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, 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.

(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.

(f) Notwithstanding Texas Occupations Code §1101.451(f), the commission shall waive the examination of an applicant for a broker license who has been licensed as a broker in this state no more than two years prior to the filing of the application. The commission shall waive the examination of an applicant for a salesperson license who has been licensed in this state as a broker or salesperson no more than two years prior to the filing of the application.

(g) The commission may waive the national portion of the examination of an applicant for a broker or salesperson license if the applicant maintains a license equivalent to the license being applied for and has passed a comparable national examination accredited or certified by a nationally recognized real estate regulator association.

§535.62. Acceptable Courses of Study.

(a) Acceptable core real estate courses are those courses prescribed by Texas Occupations Code, Chapter 1101 (the Act), §1101.003 and by this section. Acceptable real estate related courses are those courses which have been determined to be acceptable by the commission. The commission will periodically

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publish lists of acceptable real estate related courses.

(b) The commission may require an applicant to furnish materials such as course outlines, syllabi and course descriptions in support of credit instruments. 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 real estate broker or real estate salesperson license if the course was offered by any of the following providers:

(1) a school accredited by the commission or 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) a professional trade association.

(c) The commission shall measure classroom hour credits using the following equivalents:

(1) One semester hour: 15 hours.

(2) One quarter hour: 10 hours.

(3) One continuing education unit: 10 hours.

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

(1) The course contained the content required by Texas Occupations Code, Chapter 1101, (the Act), §1101.003, or this section.

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

(3) With the exception of courses conducted by correspondence or by an alternative delivery method such as by computer, 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.

(4) For a classroom course, successful completion of a final examination or other form of final evaluation was a requirement for receiving credit from the provider.

(5) For a correspondence course, the course must have been offered by or in association with an accredited college or university, and students receiving credit for the course must pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students 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

(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.

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

(7) For a course offered by an alternative delivery method, the course met the following requirements.

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(A) The course must be certified by a distance learning certification center that is acceptable by the commission.

(B) The rationale for the education processes implemented in the course must be based on sound instructional strategies which have been systematically designed and proven effective through educational research and development. The basis and rationale for any proposed instructional approach must be specified in the application for approval. The following types of programs will not be approved:

(i) those which consist primarily of text material; or

(ii) those which primarily consist of questions similar to those on the state licensing examination.

(C) An approved instructor or the provider's coordinator/director shall grade the written course work.

(D) Every provider offering an approved course under this subsection shall:

(i) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(ii) satisfy the commission that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and

(iii) certify students as successfully completing the course only if the student;

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

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

(III) has passed either:

(-a-) 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

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

(8) The student must not have completed more than one course with substantially the same course content within a three year period.

(9) The course did not primarily concern techniques or procedures utilized by a particular brokerage or organization.

(10) For a classroom course, 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.

(e) Course credits awarded by an accredited college or university for life experience or by examination are acceptable only for real estate related courses.

(f) In addition to the courses of study specified in the Act, §1101.003, the following shall be considered core real estate courses.

(1) Promulgated Contract Forms (or equivalent) shall include but not be 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) shall include but not be limited to repair-related contract forms and addenda, inspector and client agreement, 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).

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§535.64. Accreditation of Schools and Approval of Courses and Instructors.

(a) Application. A person desiring to offer educational programs or courses of study under approval of the commission pursuant to Texas Occupations Code, Chapter 1101 (the Act), §1101.301, shall file an application on forms adopted by the commission accompanied by the fee prescribed pursuant to §1101.152(a)(10) of the Act. The commission may request additional information from an applicant which the commission deems to be relevant and material to the consideration of an application.

(b) Standards for approval of application for accreditation. To be accredited as a school, 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 also must 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. If the applicant is currently accredited, the applicant 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 and there are no unsatisfied final money judgments against the applicant; otherwise, the application will be subject to the financial review provisions of this section.

(c) Financial review. The commission shall review the financial condition of each proposed school to determine whether the school 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:

(1) 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;

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

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

(d) 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 the Act, §1101.302, 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 five years.

(e) Subsequent application for accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another five year period.

(1) To renew its accreditation, at least 55 percent of the school's graduates must have passed a commission licensing exam the first time the exam is taken by the graduates.

(2) The school a graduate is affiliated with for purposes of this subsection is the school where the graduate took his or her last core course, unless the course was taken more than two years before the date the graduate submitted an education evaluation to the commission. If the graduate's last core course was taken more than two years before that date, the commission will not count the course or the graduate in calculating the school's exam pass rate.

(3) For purposes of calculating the exam passage rate of a commission-accredited

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school, each type of licensing examination that a graduate 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 graduate submitted an education evaluation to the commission.

(4) A school's passage rate will be calculated and published quarterly by dividing the number of that school's graduates, as defined in subsection (e)(2) of this section, who passed the examination on their first attempt in the five-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.

(5) 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 five-year accreditation period.

(f) Disapproval of application. 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).

(g) Forms. The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(1) Form ED 1-0, Education Provider Application;

(2) Form ED 2-0, Principal Information Form;

(3) Form ED 3-1, Course Application;

(4) Form ED 4-2, Instructor Application - Core, Legal Update and Ethics;

(5) Form ED 5-2, Real Estate Provider Bond;

(6) Form ED 6-0; Evaluation Form; and

(7) Form ED 7-1, Instructor Manual Guidelines. (h) Obtaining approval to offer course. An applicant shall submit Form ED 3-1 the first time approval is sought to offer a course. Once a course has been approved, no further approval is required for another accredited school to offer the same course. Prior to advertising or offering the course, however, the subsequent provider shall complete Form ED 3-1, file the form with the commission and receive written or oral acknowledgment from the commission that all necessary documentation has been filed. 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 the school intends

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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 Form ED 7-1, Instructor Manual Guidelines. 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(d)(7) of this title (relating to Acceptable Courses of Study). For the purpose of approval of courses, a correspondence course offered in association with an accredited college or university in accordance with §535.62(d)(6) of this title, is equivalent to a correspondence course offered by an accredited college or university.

(i) Standards for instructor approval. The application for commission approval of an instructor must be filed on forms adopted 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 the following qualifications:

(1) a college degree in the subject area or five years 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.

(j) Approval of instructor. 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 five years.

(k) 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 five year period. If an instructor was approved prior to the effective date of this section, the approval of the instructor expires January 1, 2001, and the instructor may apply for approval at any time.

(l) Disapproval of application. The commission may disapprove an application for approval of an instructor for failure to meet the standard imposed by subsection (i) 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 the Act, §1101.364. Hearings are subject to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and to Chapter 533 of this title.

(m) Additional information related to application. The commission may request an applicant 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 mailing of a request by the commission.

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

(o) Examination preparation courses.

(1) No school may be accredited or operate under commission approval for the sole purpose of offering courses of instruction designed to prepare its students for the state examination for any license issued by the

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commission. A school may offer an examination preparation course on a non-credit basis, provided the requirements of subsection (h) of this section have been met.

(2) Once an examination preparation course has been approved by the commission, the school may offer the course until the course approval expires. The approval for a course expires December 31 of the odd-numbered year following approval of the course. A school may apply for approval to offer a subsequent course no earlier than September 1 of the year in which the course approval expires. If the course was approved by the commission prior to the effective date of this subsection, the approval of the course expires December 31, 2001, and the school may apply for approval of another course beginning September 1, 2001. The commission is not required to approve a course sooner than 30 days after the filing of an application for course approval.

(3) Schools shall update examination preparation course materials in the manner required by §535.65 of this title (relating to Change in Ownership or Operation of School; Presentation of Courses, Advertising, and Records).

(4) In the presentation of examination preparation courses, schools must ensure that the students are advised of the confidentiality of the contents of examinations administered for the commission and of the punishments for a violation of §535.61 of this title (relating to Examinations).

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.

Issued in Austin, Texas on February 9, 2010.

TRD #: 201000617
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
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