

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

Subchapter G. Mandatory Continuing Education

22 TAC §§535.71-535.74

The Texas Real Estate Commission (TREC or the commission) adopts amendments §535.73, regarding Compliance and Enforcement; and new §535.74, regarding Additional Information Related to an Application without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8257).

Section 535.71, regarding Mandatory Continuing Education: Approval of Providers, Courses and Instructors and §535.72, regarding Mandatory Continuing Education: Presentation of Courses, Advertising and Records are adopted with changes. The differences between the rules as proposed and the rules as finally adopted are as follows: A typographical error in §535.71(bb) was corrected to reference “subsection (r)” instead of “subsection (l).” Section 535.72(i) 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.

TREC is simultaneously adopting the amendments and new rule as part of a comprehensive rule review of 22 TAC Chapter 535.

The amendments to §535.71(a) delete the definitions as they have been moved to Subchapter E. Subsection (b) is deleted because the requirements are referenced under §535.92; subsection (c) is deleted because the application forms will be approved by the commission but not promulgated by rule; all the subsections are relettered; the renewal term for instructor approval is changed from five to two years in subsections (i) and (j); alternative delivery method courses for required legal credit will need to be certified by a distance learning certification center that is acceptable to the commission under new subsection (z); some of the paragraphs of subsection (z) are deleted and renumbered

because distance learning certification ensures the requirements of that subparagraph and it was therefore redundant. Currently, the only distance learning certification center deemed acceptable by the commission is the International Distance Education Certification Center approved by the commission as acceptable in 2007 based on the alternative delivery method course requirements in place at the time the rule was adopted.

The amendments to §535.72 delete the reference to specific form numbers as they will no longer be promulgated by rule. Subsection (i) is a new provision which requires a provider to make available to students and maintain for commission review instructor and course evaluation for each course. Schools are required to use, at a minimum, course and instructor evaluation criteria established by the commission.

Under relettered subsection (k), a provider is required to maintain the same types of records and for the same period of time as required of schools accredited under Subchapter F regarding core education providers.

The amendments to §535.73 delete the reference to evaluations as evaluations are now covered in the amendments to §535.72.

New §535.74(a) deals with additional information related to an application for an MCE provider, course or instructor; and subsection (b) which addresses the commission's delegation of authority to staff.

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

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 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

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

The commission received four comments on the rules as proposed.

Comment: Two commenters expressed concern about the criteria used by the commission to determine acceptability of distance education certification centers.

Response: The commission determined in 2007 that the ARELLO International Distance Education Certification Center or IDECC met the commission standards to approve distance education courses. While other entities may provide similar certification services, the commission would need to approve the entity before the commission would accept distance education certification from the entity for distance learning courses. The criteria used to approve IDECC were based on the commission rules in place at the time.

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: One commenter expressed concerns about the amendments to §535.71(z)(2) regarding certification of required legal and ethics MCE courses offered by alternative delivery method. The commenter believes that certification by a

distance learning certification center should not be required because existing rules require that such courses meet certain criteria that the certification center would evaluate and therefore certification by such entity would be redundant with the criteria that TREC staff currently evaluates.

Response: The commission respectfully disagrees with the commenter. Similar to the determination made by the commission in 2007 to require distance education certification for core courses offered by alternative delivery method, certification by an independent entity created for the purpose of evaluating such things as mastery, timing, security, etc. (those criteria unique to courses offered by alternative delivery method) is a reasonable requirement for MCE providers to meet prior to submitting the course for TREC approval so that TREC staff may more appropriately focus on whether such courses meet substantive requirements.

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 subchapter F, §535.65(9)(D) and referenced such requirements in subchapter G, §535.72(k).

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.

§535.71. Approval of Providers, Courses, and Instructors.

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(a) Provider application. To be approved as an MCE provider, a person must satisfy the commission as to the person's ability to administer with honesty, trustworthiness and integrity a course of continuing education in MCE subjects registered with the commission. If the person proposes to employ independent contractors to conduct or to administer the courses, any independent contractor named in the application must meet this standard as if the independent contractor were the applicant; however, the applicant is responsible for responding to communications from the commission relating to the application.

(b) Additional information related to application. The commission may request that an applicant provide additional information, and the commission may terminate an application without further notice if the applicant fails to provide the additional information within 60 days of the mailing of a request by the commission.

(c) Fees. The commission shall establish fees in accordance with the provisions of §1101.152 of the Act, at such times as the commission deems appropriate. Fees are not refundable and must be submitted in the form of a check or money order, or, in the case of state agencies, colleges or universities, in a form of payment acceptable to the commission.

(d) Approval of applicants. The commission may authorize the manager or director of the education and licensing services division of the commission, or a designate, to determine whether applications for MCE providers or instructors should be approved or certified. The commission may disapprove an application for 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.

(e) Appeal. An applicant may appeal disapproval by filing with the commission a written request for a hearing within 10 days after the receipt of the notice of disapproval. Following the hearing, the commission may sustain or withdraw the disapproval or establish conditions for the approval of a provider,

course or instructor. Proceedings involving applications shall be conducted in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. Venue for any hearing conducted under this section shall be in Travis County.

(f) Power of attorney. If a provider does not maintain a fixed office in this state for the duration of the provider's approval to offer courses, the provider 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 which the provider 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.

(g) Subsequent application for provider approval or course registration. Unless withdrawn earlier for cause as provided by these sections, a provider's authority to offer courses for which MCE credit is given expires two years from the date the provider is approved by the commission. Authority to offer any MCE courses ends with the expiration of the provider's approval, and the provider must pay current fees and reapply for approval as a provider in order to offer MCE courses again. An elective credit course registered with the commission may be offered by the provider for a period of two years after the course is registered or until the provider's authority to act as a provider finally expires or is withdrawn for cause, whichever first occurs. If a course was originally registered by another provider, the registration period is measured from the date of registration for the original provider. A provider may apply for approval to be a provider for another two years no sooner than six months prior to the expiration of existing provider approval.

(h) Approval of instructor. A person who wishes to be an instructor of any MCE course shall apply to the commission for approval using an application form approved by the commission. To be approved as an instructor of any MCE course, an applicant must satisfy the commission as to the applicant's honesty, trustworthiness and integrity. Subsections (b)-(e) of this section apply to an applicant for approval of an instructor.

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(i) Term of instructor approval. 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.

(j) 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.

(k) Required legal update and ethics courses. The commission shall approve bi-annually a legal update course and a legal ethics course which shall be conducted through providers by instructors certified by the commission under this subchapter. The subject matter and course materials for the courses shall be created for and approved by the commission. The courses expire on December 31 of each odd-numbered year and shall be replaced with new courses approved by the commission. A provider may not offer a new course until an instructor of the course obtains recertification by attending a new instructor training program. Providers must acquire the commission-developed course materials and utilize such materials to conduct the required legal courses. The required legal courses must be conducted as prescribed by the rules in this subchapter and the course materials developed for the commission.

(l) Modification of the required legal courses. Providers and instructors may modify a required legal course only to provide additional information on the same or similar topics covered in the course or to create distance learning courses that are substantially similar to the live courses developed for the commission. To the extent that a required legal course is modified or integrated into a longer course for which additional elective credit is requested, the commission shall grant elective and legal credit for the combined course.

(m) Instructor certification. Only instructors certified by the commission may teach the required legal courses or develop distance learning courses for the presentation of required legal courses. An instructor must obtain prior commission approval under

subsection (n) of this section prior to attending an instructor training program. The commission shall issue a written certification to an instructor to teach the applicable required legal course(s) upon the instructor's satisfactory completion of a training program to teach the required legal course(s) that is acceptable to the commission. An instructor may obtain certification to teach either one or both required legal courses. A certified legal course instructor may teach the required legal courses for any approved provider after the instructor has attended an instructor training program. A certified legal course instructor may not independently conduct a required legal course unless the instructor has also obtained approval as a provider. An instructor must obtain written certification from the commission prior to teaching the required legal courses and prior to representing to any provider or other party that he or she is certified or may be certified as a legal course instructor. An instructor's certification to teach a required legal course expires on December 31 of every odd-numbered year. An instructor may obtain recertification by attending a new instructor training program.

(n) Standards for approval of instructors of required legal courses. Prior to attending an instructor training course, a person must obtain commission approval to be an instructor using Instructor Application - Core, Legal Update, and Ethics, approved by the commission. To be approved as an instructor of a required legal update or ethics course, a person must possess the following qualifications:

(1) a college degree in the subject area of Real Estate, or five years of professional experience in the subject areas of Principles of Real Estate, Law of Agency, and Law of Contracts; and

(2) three years experience in teaching or training; or

(3) the equivalent of paragraphs (1) and (2) 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.

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(o) 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 two years.

(p) Elective credit courses. To be approved to offer a course for MCE elective credit, the provider must demonstrate that the course subject matter is appropriate for a continuing education course for real estate licensees and that the information provided in the course will be current and accurate by submitting a brief statement that describes the objective of the course and explains how the subject matter is related to activities for which a real estate license is required, including but not limited to relevant issues in the real estate market or topics which increase or support the licensee's development of skill and competence.

(q) Elective course application. A provider applicant must submit an MCE Course Application and receive written acknowledgment from the commission prior to offering an MCE elective course. Prior to advertising or offering a course offered by another provider, the subsequent provider must submit a Course Application Supplement and receive written acknowledgment from the commission.

(r) Legal update and legal ethics course application. A provider must submit a MCE Course Application Supplement and receive written acknowledgment from the commission prior to offering a required legal update or required legal ethics course.

(s) Core courses for elective credit. Courses approved by the commission for core real estate course credit provided in §1101.356 and §1101.358 of the Act may be accepted for satisfying MCE elective credit course requirements provided the student files a course completion certificate with the commission.

(t) Acceptable combined courses. An elective credit course offered by a provider to satisfy all or part of the nine hours of other than legal topics required by §1101.455 of the Act may

be offered with the required legal update course or required legal ethics course.

(u) Required legal courses for real estate related courses. MCE legal update and legal ethics courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §1101.356 and §1101.358, of the Act.

(v) Correspondence courses for elective credit. An MCE provider may register an MCE elective course by correspondence with the commission if the course is subject to the following conditions:

(1) the course must be offered by 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, which offers correspondence courses, whether credit or noncredit, in other disciplines;

(2) the content of the course must satisfy the requirements of §1101.455 of the Act and this section; and

(3) the course does not include a request for required legal course credit.

(w) Alternative delivery method courses for elective credit. An MCE provider may register an MCE elective course by alternative delivery method with the commission if the course is subject to the following conditions:

(1) the content of the course must satisfy the requirements of §1101.455 of the Act and this section;

(2) the course does not include a request for required legal course credit; and

(3) every provider offering a registered course under this subsection shall:

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

(B) provide that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and

(C) certify students as successfully completing the course only if the student:

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(i) has completed all instructional modules; and

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

(x) Correspondence courses for required legal credit. The commission may approve a provider to offer an MCE required legal ethics course by correspondence subject to the following conditions:

(1) the course must be offered by 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, which offers correspondence courses, whether credit or noncredit, in other disciplines;

(2) the content of the course must satisfy the requirements of §1101.455 of the Act and this section and must be substantially similar to the legal courses disseminated and updated by the Commission;

(3) students receiving MCE credit for the course must pass 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 MCE credit; and

(4) written course work required of students must be graded by an approved instructor or the provider's coordinator or director, who is available to answer students' questions or provide assistance as necessary, using answer keys approved by the instructor or provider.

(y) Each required legal course offered by correspondence must contain the following:

- (1) course description;
- (2) learning objectives;

(3) evaluation techniques;

(4) lessons;

(5) learning activities;

(6) final examination;

(7) source materials disseminated by the Commission including all updates; and

(8) instructor grading guidelines, including acceptable answers for lessons, assessments and examinations.

(z) Alternative delivery method courses for required legal credit. The commission may accept required legal courses offered by alternative delivery method subject to the following conditions.

(1) The content of the course must satisfy the requirements of §1101.455 of the Act and this section and must be substantially similar to the legal courses disseminated and updated by the Commission.

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

(3) An approved instructor or the provider's coordinator/director graded the written course work.

(4) 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

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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; and

(III) provided the students with the same materials given to students who attend the same course by live instruction.

(aa) Supervised Video Instruction for elective course credit. A provider may register a course under subsection (q) of this section to be taught by supervised video instruction if:

(1) the provider complies with §535.72 of this chapter when offering and advertising the course and when completing rosters and retaining records;

(2) a proctor is present during the time the video is shown; and

(3) the provider discloses in any advertisement for the course that the instruction will be by supervised video instruction.

(bb) Supervised Video Instruction for required legal course credit. A provider may register a course under subsection (r) of this section to be taught by supervised video instruction if the provider:

(1) complies with subsection (aa) (1) - (3) of this section;

(2) ensures that a certified instructor is available to answer students' questions or provide assistance as necessary; and

(3) ensures that students receiving MCE credit for the course passed 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.

(cc) An applicant must submit an MCE Course Application Supplement to seek approval to offer an MCE distance learning required legal course and receive written acknowledgment

from the commission prior to offering the course.

(dd) For a distance learning course, an online course will not be considered complete until credit is awarded by the provider. The provider shall award the student credit for the course no earlier than 24 hours after the student starts the course and after the student completes the course requirements for credit. The provider shall report the awarding of credit to the commission either by filing a completed Alternative Instructional Methods Reporting Form, signed by the student, or submitting the information contained in the form by electronic means acceptable to the commission.

(ee) A provider may use as guest speakers persons who have not been approved as instructors, provided that no more than a total of 50% of the course is taught by the unapproved persons for a registered MCE elective credit course. The commission-registered instructor must remain in the classroom during the guest speaker's presentation.

(ff) A provider may use guest speakers who have not been approved as instructors to conduct a registered MCE elective credit course if:

(1) the provider is an accredited college or university or a professional trade association; and

(2) the course is supervised and coordinated by a commission-approved instructor who is responsible for verifying the attendance of all who request MCE credit.

§535.72. Presentation of Courses, Advertising and Records.

(a) Course completion roster. A provider offering each MCE course shall file an MCE Course Completion Roster with the commission within 10 days following completion of the course for licensees who have attended the entire course registered with the commission. Course completion rosters may be transmitted for filing by facsimile machine. The roster shall be signed by an authorized representative of the provider who was in attendance and for whom an authorized signature exemplar is on file with the commission or the instructor for

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the course. Providers are responsible for the security of the course completion rosters. The commission may not accept signature stamps or unsigned forms. Providers must make every reasonable effort to ensure that no student is certified for full MCE credit who has not attended all class sessions.

(b) Partial credit.

(1) A provider may, but is not required, to permit a student to claim partial credit for a course if:

(A) the course is approved for elective credit only;

(B) the course is not a distance learning course;

(C) the student attends less than the complete number of hours in the course;

(D) the student, by completing an MCE Partial Credit Request Form, requests credit only for the hours the student completed and the student does not claim credit for an hour that the student did not attend in its entirety except as provided by subsection (c) of this section.

(E) the provider signs the MCE Partial Credit Request Form as evidence that the provider has no reason to believe the amount of credit claimed is inaccurate;

(F) the provider submits the MCE Partial Credit Request Form to the commission within the time required to submit the course completion roster under subsection (a) of this section.

(2) Partial credit may not be granted for any course that contains as part of its curriculum all or part of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(c) Attendance. While a provider 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. Providers shall make every reasonable effort to ensure that no student is given course credit if the student persists in disrupting the orderly conduct of a class after being cautioned

by the provider or the instructor to cease disruptive behavior. Providers may not use students for administration or monitoring duties during the course if the use prevents the student's participation in a significant portion of the course.

(d) Proof of distance learning course completion. In a distance learning course, the provider shall award the student credit for the course no earlier than 24 hours after the student starts the course and after the student completes course requirements for credit. The provider shall report the awarding of credit to the commission. Course credit must be reported either by the provider filing a completed Alternative Instructional Methods Reporting Form signed by the student, or submitting the information contained in the form by electronic means acceptable to the commission. If the provider chooses to use an electronic reporting process, the process must ensure that only students who complete the course are reported to the commission as receiving course credit and that the process does not compromise the security of commission records.

(e) Pre-course announcements. A provider shall, prior to commencement of a course, announce that the provider will not certify a student for full MCE credit unless the student attends all sessions of the course, that no makeups or written work will be allowed for MCE credit, that students may evaluate the course and instructor by downloading an evaluation form from the TREC web site and submitting the form electronically or by mail, and that the student must determine if the course is timely and appropriate for the student's MCE requirement. If the provider accepts partial credit for partial attendance at an elective credit course, the provider shall explain the procedure for granting partial credit. If the provider has not advertised or otherwise made students aware of the provider's refund policy, the pre-course announcement must also contain the refund policy. The provider may allow a ten-minute break for every 50 minutes of session time, but a break must be given at least every two hours, using all accumulated break time, and the daily course presentation may not exceed ten hours.

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(f) Facilities. Facilities used by providers for classroom presentations must be adequate to accommodate students. Providers shall ensure each student has seating, a writing surface and writing materials. Rigid tablets or clipboards may be provided as a writing surface. For a classroom course, the provider must offer the course 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.

(g) Course materials. Providers must furnish students with copies, for students' permanent use, of any material which is the basis for a significant portion of the course. Providers offering any of the required legal courses must provide the students with the materials identified as student course materials for the required legal courses. The course materials provided to the students may be in printed form or electronic media such as a CD-ROM or diskette that the student may access through commonly available software such as common word-processing programs and slide presentation programs. Ample space must be provided on handouts for note taking or completion of any written exercises. If a provider charges fees for supplies, materials, or books needed in course work, the fees must be itemized in a written statement provided to each student by the provider before the student registers for the course.

(h) Open enrollment. All MCE courses must be open to enrollment by the general public. Providers may give preference in enrollment to persons who need MCE credit to obtain, renew or activate a license and may enroll all others on a space available basis.

(i) Instructor and Course Evaluations. A provider shall make available instructor and course evaluation forms for completion by students in every course. The forms shall, at a minimum, contain 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.

(j) Advertising. Advertising of MCE shall be subject to the following conditions.

(1) A provider applicant may not advertise a specific MCE course or represent in advertising that the applicant is a provider until the applicant has received written approval from the commission for the providership and registered at least one course. A provider applicant may advertise an intention to offer MCE courses if no specific course is described and the advertisement clearly indicates the applicant has not been approved as a provider.

(2) A provider may not advertise a course as acceptable for MCE credit until the provider has received written acknowledgment of registration of the course. A provider may advertise that approval of the course for MCE credit is pending provided that an application has been submitted to the commission and is awaiting approval.

(3) A provider may not offer a course until the provider has received written acknowledgment of registration of the course.

(4) Any advertisement or promotional material used by a provider must indicate the MCE provider's name or assumed business name as reflected in the commission's records and the MCE provider number assigned by the commission. The advertisement or promotional material also must include the specific MCE course numbers and course titles or a statement that MCE course numbers and titles are available from the provider; or, if approval of the course is pending, the course title and a statement that MCE approval is pending. When a provider offers a course that is hosted by another person or organization, the advertisement or promotional material must show clearly that the approved MCE provider is offering the course.

(5) A provider may not publish advertisements which are misleading or which are likely to deceive the public.

(6) Any name a provider uses in advertising must not be deceptively similar to the name of any other approved MCE provider or school accredited by the commission or falsely imply a governmental relationship.

(7) Any written advertisement which contains a fee charged by the provider shall display all fees for the course in the same place in the advertisement and with the same degree

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of prominence. If a provider requires students to purchase course materials which are not included in the tuition, any such fees must appear in the advertisement of the course.

(k) Record retention. A provider shall maintain the same types of records and for the same period of time as required of schools accredited under Subchapter F of this chapter (relating to Pre-License Education and Examination). Providers shall make copies of the records available to former students. A provider may charge a reasonable fee to defray the cost of copying student records. A provider's records must be kept at the location designated in the MCE Provider Application. Providers must obtain prior approval from the commission to change the location at which the provider's records are kept.

(l) Course administration. Providers of MCE courses are responsible to the commission for the conduct and administration of each course presentation, the punctuality of classroom sessions, verification of student attendance, and instructor performance. Providers shall ensure that the required legal courses are administered by instructors in substantially the same manner as disseminated and updated by the commission. During the presentation of a course, providers may not promote the sale of goods or services.

(m) Updates. If the commission determines that it is in the public interest to update the required legal courses about changes in the law, the commission may require the provider to furnish each student with a copy of the information. The commission also may require the provider to ensure that the provider's instructors include the material in the presentation of the course. The commission shall furnish the provider with a copy of the information and notify the provider that the commission requires compliance with this subsection in a required legal course or any elective course combined with a legal course offered after the provider's receipt of the notice.

(n) Change in ownership. In the event of a change of ownership, the provider must obtain approval from the commission prior to the change, and proposed new owners shall submit a Principal Information Form. Providers shall

report a change in business name, street or mailing address, email address, person responsible for records or day-to-day operations, or persons authorized to sign MCE forms at least 15 days prior to the desired date of change. Providers shall report any change in refund policy, attorney-in-fact, address of attorney-in-fact or business telephone number as the change occurs.

(o) MCE credit for instructors. Providers may request MCE credit be given to instructors of MCE courses subject to the following guidelines.

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

(2) The instructors may receive full course credit by attending all of the remainder of the course and signing the course completion roster.

(p) Written policies. Each provider shall establish written policies governing refunds and contingency plans in the event of course cancellation. If the provider cancels a course, the provider shall fully refund all fees collected from students, or at the student's option, the provider may credit the student for another course of equal or greater credit hours.

§535.73.Compliance and Enforcement.

(a) Complaints. The commission shall investigate complaints against MCE providers or instructors that allege acts constituting violations of these sections. Complaints must be in writing and the commission shall not initiate an investigation or take action against a provider or instructor based on an anonymous complaint. Commission employees may file written complaints against providers or instructors if documents filed with the commission provide reasonable cause to believe a violation of these sections has occurred.

(b) Complaint investigation. Complaints received by the MCE section of the education division of the commission or by any other division of the commission shall be referred to the enforcement division for appropriate resolution. The provider or instructor named in the complaint shall be provided with a copy of

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the complaint. Proceedings involving MCE providers or instructors shall be conducted in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001 and the commission's general rules of practice and procedure. Venue for any hearing conducted under this section shall be in Travis County.

(c) Audits. Commission employees may conduct on-site audits of any course offered by an approved MCE provider. Audits shall be conducted without prior notice to the MCE provider and commission employees may enroll and attend an MCE course without identifying themselves as employees of the commission. An audit report indicating noncompliance with these sections will be treated as a written complaint against the provider or instructor concerned and will be referred to the enforcement division for appropriate resolution.

(d) Cooperation with investigation. A provider or instructor shall fully assist any employee of the commission engaged in the performance of an audit or investigation of a complaint and shall provide records in his possession for examination by the commission or provide such information as is requested by the commission within 15 days of receiving a request for examination of records or information.

(e) Disciplinary action. The commission may reprimand, suspend or revoke the authority of a provider to offer MCE courses or suspend or revoke the approval of an instructor to teach MCE courses when it has been determined that the provider or instructor has been guilty of:

(1) procuring or attempting to procure approval for a provider, 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 portion of a course for which MCE credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for an MCE course;

(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 completion of an MCE course;

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

(6) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against the provider or instructor.

(f) Instructor teaching skills. Instructors must conduct themselves in a professional and courteous manner when performing their instructional duties. An instructor must have reasonable experience or education in the subject matter to be taught. An instructor must maintain an appropriate learning environment and effective control of the class. An instructor must present information in an accurate, logical, and orderly manner. Providers are responsible to utilize instructors who meet the requirements under this section.

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

§535.74. Additional Information Related to an Application.

(a) The commission may request an applicant for MCE provider, 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.

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

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