

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

Subchapter H. Recovery Fund
§535.82

The Texas Real Estate Commission (TREC) adopts new §535.82, concerning Proration of Payments from the Recovery Trust Account, without changes to the proposed text as published in the December 30, 2011, issue of the Texas Register (36 TexReg 9173). The new rule will not be republished. Under Subchapter M of Chapter 1101, Occupations Code, the commission administers the Real Estate Recovery Trust Account. The new rule clarifies provisions of Subchapter M, regarding proration of claims in the event of multiple claims that exceed the payment limitations of \$50,000 per transaction and \$100,000 per licensee.

The reasoned justification for the new rule is clarity in the process of prorating claims and an emphasis on paying actual damages first, consistent with Texas Occupations Code, §1102.610(c), and the consumer protection objectives of Chapter 1101.

No comments were received on the new rule as proposed.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102.

The statutes affected by this new rule are Texas Occupations Code, Chapter 1102. No other statute, code, or article is affected by the new rule.

§535.82. Proration of Payments from the Recovery Trust Account. In the event of multiple valid pending claims against a licensee or certificate holder in excess of the limitations in §1101.610 of the Act, the claims shall be prorated as follows:

(1)Actual damages shall be allocated first. If the total of the eligible actual damages of all claims exceeds the maximum that may be paid from the Recovery Trust Account, the actual damages shall be prorated, and no interest, attorney fees, or court costs shall be paid.

(2)If, after allocating the actual damages as provided by paragraph (1) of this section, the limitations in §1101.610 of the Act are not reached, interest on actual damages (pre-judgment and post-judgment) shall be allocated second. If the total of the interest on eligible actual damages of all claims exceeds the amount remaining to be paid from the Recovery Trust Account, the interest on eligible actual damages shall be prorated, and no other interest, attorney fees, or court costs shall be paid.

(3)If, after allocating the actual damages and interest thereon as provided by paragraphs (1) and (2) of this section, the limitations in §1101.610 of the Act are not reached, other interest, attorney fees, and court costs shall be allocated third. If the total of the other interest, attorney fees, and court costs of all claims exceeds the amount remaining to be paid from the Recovery Trust Account, the other interest, attorney fees, and court costs shall be prorated.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2012

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