

**Texas Real Estate Commission
Rules Proposed at the May 7, 2012 Meeting
Chapter 535, General Provisions**

Subchapter J. Fees

22 TAC §535.101. Fees.

The Texas Real Estate Commission (TREC or the commission) proposes amendments to §535.101, concerning Fees. The amendments would increase from \$20 to \$50 the fee for filing a request for, or renewal of, a branch office license; increase from \$20 to \$50 the fee to request an inactive license be returned to active status; increase from \$20 to \$40 the fee for preparing a license history; increase from \$25 to \$50 the fee for the filing of a moral character determination; add a fee of \$50 plus \$20 per classroom hour for each core education course for a period of four years; add a fee of \$50 plus \$10 per classroom hour for each MCE course for a period of two years; increase from \$25 to \$150 the fee for the filing of an application for approval as an instructor for a two-year period for real estate core or MCE courses, or both; clarify the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or background check in connection with a license application or renewal; clarify the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system; and increase from \$25 to \$30 the fee for processing a returned check.

The justification for the fee increases is to generate sufficient revenue to fund operations of the agency and to comply with requirements of Senate Bill (SB) 1000, 82nd Texas Legislature, Regular Session (2011).

Senate Bill 1000 makes the Texas Real Estate Commission self-directed and semi-independent. The bill removes the agency from the legislative budgeting process and requires the commission to adopt and approve an annual budget. The bill requires that the commission collect sufficient fees to fund operations to carry out its function and to fund the budget. In relevant part, the bill also requires the agency to remit \$750,000 to the general revenue fund not later than August 31 of each fiscal year, to remit a non-refundable retainer to the State Auditor of \$10,000 per fiscal year, a non-refundable

retainer to the Attorney General of \$75,000 per fiscal year, and a non-refundable retainer to the State Office of Administrative Hearings of \$75,000 per fiscal year. TREC will be required to reimburse each agency for all costs incurred in excess of the retainers for providing services to the commission. In addition, the bill requires the agency to pay rent in a reasonable amount to be determined by the Texas Facilities Commission with aggregate rent payments to be not less than \$555,100 per fiscal year for state fiscal years ending August 31, 2012 and August 31, 2013; and not less than \$425,000 per fiscal year for each year ending August 31, 2014, August 31, 2015, and August 31, 2016.

Karen Alexander, Staff Services Director, has determined that for the first five-year period the amendments are in effect there will be fiscal implications for the state, but not to units of local government as a result of enforcing or administering the amendments. Per year, the agency receives approximately 600 branch office applications and renewal applications per year; 367 requests for inactive license to be returned to active status; 612 requests for preparing a license history; 147 requests for a moral character determination; and processes 196 returned checks. Over a four-year period, the agency receives 406 requests for approval of core education courses. Over a two-year period, the agency receives 2,163 requests for MCE course approval; 4,000 applications for approval as an instructor for real estate core or MCE courses, or both. For FY 2013, the total estimated revenue increase would be \$152,770; for FY 2014, \$39,790; FY 2015 \$432,345; and FY 2016 \$241,730.

Ms. Alexander has determined that there is no anticipated impact on local or state employment as a result of implementing the amendments. However, there is an anticipated impact on small businesses and micro-businesses. The Commission has approximately 50 core education providers, 307 MCE education providers, 5,000 instructors, and processes approximately 1,100 course approval requests per year. The agency receives 600 branch office

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applications and renewal applications per year; 367 requests for inactive license to be returned to active status; 612 requests for preparing a license history. It is estimated that nearly all of the transactions with the agency listed above are conducted by small businesses and many of them are micro-businesses. The projected economic impact of this rule amendment on these small businesses will be negative due to the increased filing and new course approval fees. Under §2006.002, Texas Government Code, an agency is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety and environmental and economic welfare of the state. TREC has developed this proposed rule in accordance with a legislative mandate to cover all costs of operation under SB 1000, 82nd Legislature, Regular Session (2011). Consequently, any variance from the legislative mandate would not be consistent with the health, safety, and environmental and economic welfare of the state, and no alternative regulatory methods have been considered.

Ms. Alexander also has determined that for each year of the first five years the increased fees under §535.101 are in effect the public benefit anticipated as a result of enforcing the amendments is that the agency will raise sufficient revenue to fund costs of agency operations and required payments to the General Revenue Fund and other state agencies under SB 1000, 82nd Legislature, Regular Session (2011).

The amendments are proposed 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 proposal are Texas Occupations Code, Chapter 1101 and Chapter 1102. No other statute, code or

article is affected by the proposed amendments.

§535.101 Fees.

(a)(No change.)

(b)The commission shall charge and collect the following fees:

(1) - (5)(No change.)

(6)a fee of \$50 ~~[\$20]~~ for filing a request for, or renewal of, a license for each additional office or place of business for a period of two years;

(7)a fee of \$20 for filing a request for a license for a change of place of business, change of a licensee name, ~~[return to active status]~~ or to terminate or establish a relationship with a ~~[change of]~~ sponsoring broker;

(8)a fee of \$50 to request an inactive license be returned to active status;

(9)a fee of \$40 for preparing a license history;

(10)a fee of \$50 for the filing of a moral character determination;

(11) a fee of \$400 for filing an application for accreditation of a core education program for a period of four years under Texas Occupations Code (the Act), §1101.301;

(12) after approval, a fee of \$200 a year for operation of a core real estate education program under the Act, §1101.301;

(13)a fee of \$50 plus \$20 per classroom hour approved by the commission for each core education course for a period of four years;

(14)a fee of \$400 for filing an application for accreditation as a Mandatory Continuing Education (MCE) provider for a period of two years under the Act, §1101.302;

(15)a fee of \$50 plus \$10 per classroom hour approved by the commission for each MCE course for a period of two years;

~~[(8)a fee of \$20 for filing a request to replace a license lost or destroyed;]~~

~~[(9)a fee of \$400 for filing an application for accreditation of an education program~~

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~~under Texas Occupations Code (the Act), §1101.301;~~

~~[(10) a fee of \$200 a year for operation of a real estate education program under the Act, §1101.301;~~

~~[(11) a fee of \$20 for preparing a license history;~~

~~[(12) a fee of \$25 for the filing of a moral character determination;~~

(16)[(13)] a fee of \$150 [-\$25] for the filing of an [instructor] application for approval as an instructor for a two-year period for real estate core or MCE courses, or both;

(17)[(14)] a fee of \$58.50 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less;

(18)[(15)] a fee of \$78 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than six months;

(19)[(16)] the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or other service for a national or state criminal history check in connection with a license application or renewal;

(20) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(21) an MCE deferral fee of \$200 if MCE is not completed by scheduled license expiration date;

(22)[(17)] a late reporting fee of \$250 to reactivate a license under §535.92(f) of this chapter (relating to Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements); [and]

(23) a fee of \$30 for processing a check or other equivalent instrument returned by a bank or depository as dishonored for insufficient funds; and

(24)[(18)] a fee of \$20 for filing any application, renewal, change request, or other record on paper that a person may otherwise

file with the commission electronically by accessing the commission's website [web-site], entering the required information online, and paying the appropriate fee.

(c)(No change.)

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 May 14, 2012.

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Texas Real Estate Commission

Earliest possible date of adoption: 8/13/12