



**PROPOSED RULE ACTION FROM  
AUGUST 13, 2012 MEETING OF THE COMMISSION**

**Chapter 533 Practice and Procedure.**

**§533.4. Failure to Answer, Failure to Attend Hearing and Default; §533.7. Proposals for Decision; and  
§533.8. Final Orders, Motions for Rehearing, and Emergency Orders**

The Texas Real Estate Commission (TREC) proposes amendments to §533.4 regarding Failure to Answer, Failure to Attend Hearing and Default; §533.7 regarding Proposals for Decision; and §533.8 regarding Final Orders, Motions for Rehearing, and Emergency Orders.

The amendments §533.4 address situations in which a respondent fails to answer after receiving a notice of alleged violation or fails to attend a hearing. Failure to answer or attend a hearing will result in a default order against the respondent where findings of fact and conclusions of law set out in the notice of violation will be considered as admissions. If a case is dismissed from SOAH, the commission will be required to enter a default order against the respondent. If SOAH enters a default proposal for decision, the allegations contained in the petition filed with SOAH will be considered admissions. The amendments to §533.7 clarify that while the commission welcomes SOAH judge recommendations regarding sanctions, the commission is responsible for imposing disciplinary action or assessing administrative penalties. The amendments to §533.8 require the commission to explain why the commission did not follow the SOAH judge recommendations regarding disciplinary action or administrative penalties; amendments to subsection (f) describe the requirements for filing a motion for rehearing; and amendments to subsection (g) address situations in which new evidence may be presented in a case.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the proposed amendments are effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated

significant impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendment.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between sections in Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed 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; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

**§533.4 Failure to Answer, Failure to Attend Hearing and Default.**

(a) If, within twenty days after receiving a Notice of Alleged Violation, the Respondent fails to accept the commission's determination and recommended administrative penalty and/or

sanction, or fails to make a written request for a hearing on the determination, the commission shall enter a default order against the Respondent, incorporating the findings of fact and conclusions of law in the Notice of Alleged Violation, which shall be deemed admitted.

(b)-(c) (No Change.)

(d) 1 TAC §155.501 and §155.503 (relating to Default Proceedings and Dismissal Proceedings) (SOAH rules) apply where a Respondent fails to appear on the day and time set for administrative hearing. In that case, the commission's staff may move either for dismissal of the case from SOAH's docket or for the issuance of a default proposal for decision by the judge. If the judge issues an order dismissing the case from the SOAH docket or issues a default proposal for decision, the factual allegations against the Respondent contained in the petition filed at SOAH shall be deemed admitted and the commission shall enter a default order against the Respondent as set out in the Notice of Hearing sent to the Respondent. No additional proof is required to be submitted to the commission before the commission enters the final order.

### §533.7. Proposals for Decision.

(a) Proposals for decision ~~[Proposed decisions]~~ shall be brought before the commission for final decision. The commission shall render the final decision in a contested case and is responsible for imposing disciplinary action and/or assessing administrative penalties against Respondents who are found to have violated any of the commission's laws or rules. The commission welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the commission is not required to give presumptively binding effect to the judges' recommendations and is not bound by such recommendations.

(b) (No Change.)

(c) It is the policy of the commission to change a finding of fact or conclusion of law in a proposal for decision ~~[or to vacate or modify the proposed order]~~ of a judge when, the commission determines:

(1) -(3) (No Change.)

### §533.8 Final Orders, Motions for Rehearing, and Emergency Orders.

(a) Unless otherwise authorized under subsection (f) of this section, a final order in a contested case shall be in writing and shall be signed by the presiding officer of the commission. Final orders shall include findings of fact and conclusions of law separately stated from disciplinary actions imposed and administrative penalties assessed.

(b) If the commission modifies, amends, or changes a finding of fact or conclusion of law in a proposal for decision, the order shall reflect the commission's [commissions] changes as stated in the record of the meeting and state the specific reason and legal basis for the changes made according to §533.7(c) (relating to Proposals for Decisions) of this chapter. If the commission does not follow the recommended disciplinary action and/or administrative penalty in a proposal for decision, the order shall explain why the commission chose not to follow the recommendation as stated in the record of the meeting.

(c) -(e) (No Change.)

(f) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion ~~[was error]~~. In the absence of specific grounds in the motion, the commission shall presume that the motion should be overruled.

(g) The chairperson or the member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties. The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence such as excerpts of the record before the presiding officer may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidenced can establish that the new evidence was not reasonably available at the time of the original hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(h)-(n) 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 August 20, 2012.

TRD No. 201204414

Loretta R. DeHay  
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Texas Real Estate Commission

Earliest possible date of adoption: November 5,  
2012