TEXAS REAL ESTATE INSPECTOR COMMITTEE
MEETING AGENDA
TREC Headquarters Office
Room 400A, Stephen F. Austin Building
1700 North Congress Avenue, Austin, Texas

Friday, August 7, 2015 at 9:00 AM

1. Call to order
2. Ratification of the minutes of the April 13, 2015 meeting
3. General comments from visitors on non-agenda items
4. Reports from Subcommittees
5. Staff reports from Administration & Management Services, Standards & Enforcement Services and Education & Licensing Services
6. Discussion and possible action regarding recommended amendments to 22 TAC, Chapter 535 Subchapter R (Real Estate Inspectors)
7. Discussion and possible action regarding recommended amendments to 22 TAC, Chapter 535 Subchapter F (qualifying education)
8. Discussion and possible action regarding recommended amendments to 22 TAC, Chapter 535 Subchapter G (continuing education)
9. Request for future meeting agenda items
10. Discussion of future meeting dates
11. Adjourn

The Texas Real Estate Inspector Committee may meet with its attorney in executive session on any item listed above as authorized by the Texas Open Meetings Act, Tex. Gov't Code, §551.071.

Inspector Complaints Resulting in Disciplinary Action (since last Inspector Committee Meeting)

Date Closed	File No. / Disposition	Reason For Disciplinary Action	Parts, Component, or System Involved	Other
4/20/2015	150720/Agreed Order - Probationary License Professional Inspector	Two-year probationary license due to a previous crime. License holder cannot sponsor a real estate or apprentice inspector until probation is completed.	N/A	TREC
4/22/2015	151186/Agreed Order $200 administrative penalty	Failed to use the proper form.	N/A	Complainant was buyer
4/23/2015	141725/Advisory Letter	Failed to file DBA.	N/A	Complainant was buyer
4/24/2015	142079/Agreed Order $300 administrative penalty	Failed to use the proper form.	N/A	Complainant was buyer
4/24/2015	150789/Agreed Order $200 administrative penalty	Failed to use the proper form; failed to file DBA.	N/A	Complainant was seller
6/9/2015	151146/Agreed Order $200 administrative penalty	Failed to use the proper form; failed to file DBA.	N/A	Complaint was buyer
6/9/2015	151146/Agreed Order $200 administrative penalty	Failed to use the proper form; failed to notify the Commission of DBA.	N/A	Complainant was buyer
6/22/2015	151347/Agreed Order reprimand, $600 administrative penalty	Failed to use the proper form; failed to note deficiencies in gas appliance connector materials.	gas appliance	Complainant was buyer
6/29/2015	151093/Agreed Order $100 administrative penalty	Failed to use the proper form.	N/A	Complainant was seller
7/15/2015	151429/Advisory Letter	Failed to file DBA; incorrect formatting of inspection report.	N/A	Complainant was buyer

Inspector Complaints Resulting in Disciplinary Action
FY 2015

Date Closed	File No. / Disposition	Reason For Disciplinary Action	Parts, Component, or System Involved	Other
9/8/2014	141455/Advisory Letter	Failed to file DBA.	N/A	Complainant was buyer
10/23/2014	131336/Agreed Order - $500 administrative penalty	Failed to report improper or inadequate grading around foundation and deficiencies in installed gutter and downspout systems.	foundation, grading, gutter/downspout systems	Complainant was buyer
11/7/2014	150277/Final Order - $5,000 administrative penalty & Cease and Desist	Unlicensed activity.	N/A	Complainant was agent of seller
11/7/2014	140807/Final Order - $1,000 administrative penalty	Failed to render a written opinion as to the performance of the foundation.	foundation	Complainant was buyer
11/18/2014	140244/Final Order - $7,750 administrative penalty and suspension for 12 months	Failed to note the lack of arc-fault circuit interrupting devices, performed inspection in negligent or incompetent manner as to the structural system, did not maintain professional liability insurance coverage.	electrical, foundation/structural, and liability insurance	Complainant was buyer
11/21/2014	150271/Advisory Letter	Failed to file DBA	N/A	Complainant was buyer
11/24/2014	141614/Advisory Letter	Failed to file DBA	N/A	Complainant was agent of buyer
12/15/2014	141540/Advisory Letter	Failed to file DBA	N/A	Complainant was buyer
12/16/2014	150265/Advisory Letter	Negligence for stating the property was occupied even though it was vacant	N/A	Complainant was buyer
12/29/2014	141836/Agreed Order - $100 administrative penalty	Failure to use the proper form.	N/A	Complainant was buyer

Inspector Complaints Resulting in Disciplinary Action
FY 2015

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1/20/2015	150067/Advisory Letter	Failed to include name and license number with other inspector on inspection report.	N/A	Complainant was seller
1/20/2015	150784/Advisory Letter	Failed to file DBA.	N/A	Complainant was third party
2/11/2015	150327/Advisory Letter	Failed to file DBA.	N/A	Complainant was buyer
2/24/2015	150457/Agreed Order - $100 administrative penalty	Failure to use the proper form	N/A	Complainant was an inspector
3/25/2015	151001/Agreed Order $1000 administrative penalty	Unlicensed activity.	N/A	Complainant was seller
3/27/2015	150964/Advisory Letter	Failed to file DBA.	N/A	Complainant was buyer
4/2/2015	150248/Final Order - $5,000 administrative penalty & Cease and Desist	Unlicensed activity.	N/A	Complainant was seller
4/20/2015	150720/Agreed Order - Probationary License Professional Inspector	Two-year probationary license due to a previous crime. License holder cannot sponsor a real estate or apprentice inspector until probation is completed.	N/A	TREC
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Education & Licensing Services Division

Fiscal Year Comparison

Fiscal Year 2015 - Year-to-Date
JUNE

	This YTD 09/14 – 06/15		Last YTD 09/13– 06/14		Change Count	Change Percent
Applications Received						
Professional Inspector Original Applications Received	475		380		95	25.00%
Real Estate Inspector Original Applications Received	28		22		6	27.27%
Apprentice Inspector Original Applications Received	78		73		5	6.85%
Total Original Applications	581		475		106	22.32%
Professional Inspector Reinstatement Applications	19		11		8	72.73%
Real Estate Inspector Reinstatement Applications	3		1		2	200.00%
Apprentice Inspector Reinstatement Applications	4		4		0	0.00%
Total Reinstatement Applications Received	26		16		10	62.50%
Licenses Issued from Applications						
Professional Inspector Licenses from Original Applications	405		313		92	29.39%
Real Esate Inspector Licenses from Original Applications	28		18		10	55.56%
Apprentice Inspector Licenses from Original Applications	74		65		9	13.85%
Total Licenses from Original Applications	507		396		111	28.03%
Professional Inspector Licenses from Reinstatement Applications	29		4		25	625.00%
Real Estate Inspector Licenses from Reinstatement Applications	3		1		2	200.00%
Apprentice Inspector Licenses from Reinstatement Applications	4		3		1	33.33%
Total Licenses from Reinstatement Applications	36		8		28	350.00%
Renewal Activity						
Professional Inspector Renewals and Percentage	918	65.90%	554	72.61%	364	65.70%
Real Estate Inspector Renewals and Percentage	30	68.18%	20	71.43%	10	50.00%
Apprentice Inspector Renewals and Percentage	22	47.83%	3	37.50%	19	633.33%
****Total Renewals from Inspectors***	970	65.40%	577	72.21%	393	68.11%

Education & Licensing Services Division

Licensee and Registrant Status

JUNE 2015

Real Estate Licensees

	Jun 14	Jul 14	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	Jan 15	Feb 15	Mar 15	Apr 15	May 15	Jun 15
Broker Licensees													
Individual (Active)	34,543	34,469	34,407	34,325	34,295	34,222	34,164	34,126	34,126	34,085	34,045	34,002	33,934
Corporation (Active)	3,746	3,739	3,733	3,736	3,742	3,741	3,739	3,745	3,743	3,743	3,732	3,735	3,728
LLC (Active)	4,420	4,452	4,504	4,529	4,560	4,578	4,608	4,662	4,698	4,729	4,739	4,801	4,837
Non-resident (Active)	587	592	594	597	601	609	609	609	607	604	599	598	593
Partnership (Active)	73	76	79	81	80	82	82	84	84	85	87	88	87
Total Active Status	43,369	43,328	43,317	43,268	43,278	43,232	43,202	43,226	43,258	43,246	43,202	43,224	43,179
Inactive Status	1,365	1,382	1,364	1,392	1,379	1,374	1,379	1,395	1,395	1,407	1,418	1,424	1,434
Total Brokers	**44,734**	**44,710**	**44,681**	**44,660**	**44,657**	**44,606**	**44,581**	**44,621**	**44,653**	**44,653**	**44,620**	**44,648**	**44,613**
Sales Licensees													
Active Status	78,678	79,524	80,405	81,042	81,870	82,328	82,098	82,207	83,255	84,376	85,480	86,115	86,178
Inactive Status	25,345	25,393	25,329	25,368	25,737	25,793	26,684	27,432	27,143	27,065	26,550	26,502	27,243
Total Sales	**104,023**	**104,917**	**105,734**	**106,410**	**107,607**	**108,121**	**108,782**	**109,639**	**110,398**	**111,441**	**112,030**	**112,617**	**113,421**
Total Active	122,047	122,852	123,722	124,310	125,148	125,560	125,300	125,433	126,513	127,622	128,682	129,339	129,357
Total Inactive	26,710	26,775	26,693	26,760	27,116	27,167	28,063	28,827	28,538	28,472	27,968	27,926	28,677
Total Brokers & Sales	**148,757**	**149,627**	**150,415**	**151,070**	**152,264**	**152,727**	**153,363**	**154,260**	**155,051**	**156,094**	**156,650**	**157,265**	**158,034**

	Jun 14	Jul 14	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	Jan 15	Feb 15	Mar 15	Apr 15	May 15	Jun 15
Inspector Licensees													
Professional Inspectors(active)	2,217	2,233	2,255	2,274	2,302	2,308	2,307	2,311	2,318	2,327	2,354	2,367	2,379
Real Estate Inspectors (active)	105	102	107	108	110	112	113	116	118	119	120	121	123
Apprentice Inspectors(active)	115	113	118	118	117	117	114	117	114	114	114	113	124
Professional Inspectors(inactive)	566	560	564	551	541	528	531	534	514	501	497	494	496
Real Estate Inspectors(inactive)	11	13	10	10	10	11	11	11	12	13	15	16	16
Apprentice Inspectors(inactive)	17	18	19	20	20	18	18	19	22	27	27	26	25
Total Active	2,437	2,448	2,480	2,500	2,529	2,537	2,534	2,544	2,550	2,560	2,588	2,601	2,626
Total Inactive	594	591	593	581	571	557	560	564	548	541	539	536	537
Total Inspectors	**3,031**	**3,039**	**3,073**	**3,081**	**3,100**	**3,094**	**3,094**	**3,108**	**3,098**	**3,101**	**3,127**	**3,137**	**3,163**

Easement & Right-of-way Registrants

	Jun 14	Jul 14	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	Jan 15	Feb 15	Mar 15	Apr 15	May 15	Jun 15
ERW Registrants													
Businesses	50	51	51	51	52	52	53	51	53	51	47	47	44
Individuals	1,935	1,949	1,939	1,956	1,989	2,035	2,045	2,063	2,116	2,132	2,151	2,137	2,149
Total Registrants	**1,985**	**2,000**	**1,990**	**2,007**	**2,041**	**2,087**	**2,098**	**2,114**	**2,169**	**2,183**	**2,198**	**2,184**	**2,193**

Total Licensees and Registrants

	Jun 14	Jul 14	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	Jan 15	Feb 15	Mar 15	Apr 15	May 15	Jun 15
All Licensees & Registrants	**153,773**	**154,666**	**155,478**	**156,158**	**157,405**	**157,908**	**158,555**	**159,482**	**160,318**	**161,378**	**161,975**	**162,586**	**163,390**

Education & Licensing Services Division - TREC: L3 Report

Inspector Examination Activity

JUNE

Year-to-Date Comparison	2015		2014	
	R.E. Inspector	Prof. Inspector	R.E. Inspector	Prof. Inspector
Examinations Passed	29	317	23	246
Examinations Failed	31	259	17	168
Examinations Taken	**60**	**576**	**40**	**414**
Applicants Examined	41	408	29	301
Passed on First Attempt	21	237	16	176
Examination Pass Rate	48.3%	55.0%	57.5%	59.4%
Applicant Pass Rate	70.7%	77.7%	79.3%	81.7%
First Attempt Pass Rate	51.2%	58.1%	55.2%	58.5%

Education & Licensing Services Division - L4 Report

Instructor Distribution

JUNE 2015

Approved Real Estate Instructor Distribution

	June 14	July 14	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	Jan 15	Feb 15	Mar 15	Apr 15	May 15	June 15
CE Electives Only - Real Estate	2,396	2,425	2,456	2,476	2,494	2,505	2,511	2,530	2,565	2,611	2,657	2,690	2,726
Qualifying and CE Electives	1,205	1,203	1,212	1,225	1,229	1,237	1,238	1,204	1,219	1,227	1,280	1,289	1,300
CE Legal Update	479	477	479	482	483	483	490	490	493	495	497	497	498
CE Ethics	478	476	478	481	482	482	489	489	492	494	497	497	498
Broker Responsibility	227	228	229	230	231	240	247	247	248	246	248	259	260

Approved Inspector Instructor Distribution

	June 14	July 14	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	Jan 15	Feb 15	Mar 15	Apr 15	May 15	June 15
ICE Electives Only - Inspector								20	20	21	24	23	23
Qualifying and ICE Electives								76	77	81	91	94	96
Texas SOP/Legal/Ethics Update								23	24	27	27	27	29
Ride Along Course								21	22	24	24	25	28

Separate line items were created for inspector instructors beginning January 2015

§535.201, Definitions.

The following definitions shall apply to this subchapter.

(1) Code organization--A non-profit organization whose primary mission is to develop and advocate scientifically-based codes and standards relating to one or more of the systems found in an improvement to real estate.

(2) Committee--The Texas Real Estate Inspector Committee.

(3) Texas Standards of Practice/Legal/Ethics Update--Course addressing developments related to the inspection field, including the requirements of Chapter 1102, rules of the Commission, case law, and agency enforcement actions.

[~~(4) Trade association--A cooperative, voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.~~]

535.1 Definitions

The following terms and phrases, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

(1) Act--Texas Occupations Code, Chapter 1101.

(2) Business entity--A **domestic or foreign** corporation, limited liability, partnership or other entity authorized under the Texas Business Organizations Code to engage in the real estate brokerage business in Texas and required to be licensed under the Act.

(3) Chapter 1102--Texas Occupations Code, Chapter 1102.

(4) Commission—The Texas Real Estate Commission.

(5)[~~(4)~~] Compensation--A commission, fee or other valuable consideration for real estate brokerage services provided by a license holder under the Act.

(6)[~~(5)~~]Delivered--Sent by United States Mail to the last known mailing address or by email to the last known email address of a license holder or an applicant.

(7) Executive Director—The Executive Director of the Texas Real Estate Commission.

(8)[~~(6)~~] Foreign broker--A real estate broker licensed in another country, territory or state other than Texas.

(9)[~~(7)~~] License--Any Commission license, registration, certificate, approval, or similar form of permission required by law.

(10)[~~(8)~~] License holder--A person licensed or registered by the Commission under Chapter 1101 or 1102, Texas Occupations Code.

(11)[~~(9)~~] Place of business--A place where the license holder meets with clients and customers to transact business.

(12) Trade Association--a nonprofit voluntary member association or organization:

(A) whose membership consists primarily of persons who are licensed as real estate license holders and pay membership dues to the association or organization;

(B) that is governed by a board of directors elected by the members; and

(C) that subscribes to a written code of professional conduct or ethics.

Comment [AS1]: Subchapter R is part of this Chapter 535.

535.208 Application for a License

(a) Application.

(1) A person who intends to be licensed by the Commission must file an application for the license:

(A) through the online process approved by the Commission; or

(B) on a form approved by the Commission for that purpose; and

(C) submit the required fee under §535.210 of this title.

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) General Requirements for Licensure.

(1) To be eligible for a real estate license, an applicant must:

(A) meet the following requirements at the time of the application:

(i) be 18 years of age;

(ii) meet any applicable residency requirement;

(iii) be a citizen of the United States or a lawfully admitted alien;

(B) comply with the fingerprinting, education, experience and examination requirements of the Act, Chapter 1102, or the rules of the Commission;

(C) meet the honesty, trustworthiness, and integrity requirements under the Act;

(D) provide proof of financial responsibility as required by of Chapter 1102; and

(E) An applicant for an apprentice inspector license must provide the Commission with the applicant's photograph prior to issuance of a license certificate.

(2) Texas residents who enter military service and resume their Texas residence immediately upon separation from the military are not considered to have lost their Texas residence unless they have affirmatively established legal residence elsewhere.

(3) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

(c) **License** **[~~Expedited license~~]** for military **service members, military veterans, or military** spouses. This subsection applies to an applicant who is **a military service member, a military veteran, or** the spouse of a person serving on active duty as a member of the armed forces of the United States.

(1) The Commission shall waive the license application and examination fees for an applicant who is:

(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(B) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(2) The Commission shall issue on an expedited basis a license to an applicant who holds a current certificate or license issued by a country, territory, or state other than Texas for other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas.

(d) **Credit for military service.** [~~Expedited license for military spouses.~~] This subsection applies to an applicant who is [~~the spouse of a person~~] serving on active duty as a member of the armed forces of the United States. [~~The Commission shall~~

~~issue on an expedited basis a license to an applicant who holds a current certificate or license issued by a country, territory, or state other than Texas for other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas.~~]

(1) The Commission shall credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(2) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(3) The applicant must pass the qualifying examination for the type of license sought.

(e) A person applying for license under subsections (c) or (d) of this section must also:

(1) submit the Commission's approved application form for the type of license sought;

(2) submit the appropriate fee for that application;

(3) submit the supplemental form approved by the Commission applicable to subsections (c) or (d) of this section;

(4) provide proof of financial responsibility as required by of Chapter 1102; and

(5) comply with fingerprinting requirements for all license applicants and satisfy the Commission as to the applicant's honesty, trustworthiness and integrity.

(f) The **Executive Director** **[~~administrator~~]** may **waive any prerequisite to obtaining a license for an applicant issued** **[~~issue a license~~]** under subsection (c) or (d) **~~by endorsement in the same manner as the Texas Commission of Licensing and Regulation to an applicant under this subsection~~]**.

(g) Terminated application. An application will be terminated and subject to no further evaluation or processing if the applicant fails to satisfy the requirements of subsection (b)(1) of this section within one year from the date the application is filed.

(h) Denial of application.

(1) An application for a license may be denied if the Commission determines that the applicant has failed to satisfy the Commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title. Notice of the denial and any hearing on the denial shall be as provided in Texas Occupations Code, §1101.364, and §533.34 of this title.

(2) Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the Commission in an application for a license for an apprentice or a real estate inspector.

535.209 Examinations

(a) Examinations for licensure.

(1) The examination for a real estate inspector license and for a professional inspector license consists of a national part and a state part.

(2) The Commission adopts the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors for the national portion of the examination. For the state portion of the examination, questions shall be used which measure competency in the subject areas required for a license by Chapter 1102, and which demonstrate an awareness of its provisions relating to inspectors.

(3) Each real estate inspector applicant must achieve a score of at least 70% on the state portion of the examination. Each professional inspector applicant must achieve a score of at least 75% on the state portion of the examination.

(b) Administration of examination. Except as otherwise required by Chapter 1102 or this section, examinations shall be conducted as provided by §535.57 of this title. An applicant is not eligible to take a qualifying examination for a license until the Commission has received evidence of completion of all education and experience required by this subchapter.

(c) Waiver of national portion of examination requirement. The Commission may waive the national portion of the examination of an applicant for a real estate or professional inspector license if the applicant:

(1) currently holds[~~maintains~~] an active real estate inspector license in another state or actively practices as a home inspector in compliance with the laws of another state; and

(2) has passed the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors.

(d) If the applicant has not satisfied all requirements within one year from the time the commission accepted an application for filing, including passing both parts of the examination, the application is terminated and a new application is required.

(e) Examination results are valid for a period of one year from the date the examination is passed. An examination is considered passed when an applicant has received a passing grade on both parts of the examination.

(f) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the commission that the applicant has completed additional core education as follows, after the date the applicant failed the examination for the third time:

(1) for an applicant who failed the national part of the examination, 32 hours;

(2) for an applicant who failed the state part of the examination, 8 hours; and

(3) for an applicant who failed both parts of the examination, 40 hours.

§535.216 Renewal of License

(a) A person licensed by the Commission under Chapter 1102 may renew the license by timely filing the prescribed application for renewal, complying with the fingerprinting and TGSLC requirements in §535.95 of this title, paying the appropriate fee to the Commission and satisfying applicable continuing education requirements as required by Chapter 1102 and this subchapter, and providing to the Commission proof of financial responsibility as required by Chapter 1102 using a form approved by the Commission for that purpose.
(b) A license holder also may renew an unexpired license by accessing the Commission's website, entering the required information on the renewal application form, satisfying applicable education and professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 requirements and paying the appropriate fee in accordance with the instructions provided at the site by the Commission.
(c) The Commission shall send a renewal notice to each license holder at least 90 days prior to the expiration of the license. An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license on an active status. It is the responsibility of the license holder to apply for renewal, and failure to receive a renewal notice does not relieve the license holder of the responsibility of applying for renewal.
(d) A license holder shall provide information requested by the Commission in connection with an application to renew a license within 30 days after the Commission requests the information. Failure to provide information requested by the Commission in connection with a renewal application within the required time is grounds for disciplinary action under the Act.
(e) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status. Inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status but must satisfy continuing education requirements before returning to active status.
(f) If the license has expired, the license holder may not renew but must file an original application to reinstate the license and may not practice until the new license is received. If the applicant for reinstatement has held a professional inspector or real estate inspector license during the 24 months preceding the date the application is filed, no examination is required.
(g) To renew a license on active status without any lapse in active licensure, an apprentice or real estate inspector must also submit a Real Estate Apprentice and Inspector Sponsorship Form certifying sponsorship for the period from the day after the previous license expired to the day the renewal license issued, and for the period beginning on the day after the renewal license issued. The same inspector may be the sponsor for both periods. The Commission shall renew the license on inactive status for the period(s) in which the apprentice or real estate inspector was not sponsored.
(h) If the license has been expired for six months or more, the licensee may not renew but must file an original application to reinstate the license and may not practice until the new license is received. If the applicant for reinstatement has held a professional inspector or real estate inspector license during the 24 months preceding the date the application is filed, no examination is required.
(j) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:
(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder

was on active duty during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the previous license expired.

535.219 Schedule of Administrative Penalties

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1102 in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section consider the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of $100 - $1,500 per violation per day may be assessed for violations of the following sections of **Chapter 1101,** Chapter 1102 and this subchapter:

(1) **§1101.652(a)(7);**
(2)§1102.118;
(2) §1102.364;
(3) 22 TAC §535.216(d);
(4) 22 TAC §535.217;
(5)[~~(4)~~] 22 TAC §535.220(a) - (d);
(6)[~~(5)~~] 22 TAC §535.221; and
(7)[~~(6)~~] 22 TAC §535.223.

(d) An administrative penalty range of $500 - $3,000 per violation per day may be assessed for violations of the following sections of **Chapter 1101,** Chapter 1102 and this subchapter:

(1) **§§1101.652(a)(3)-(4);**
(2) §1102.301;
(3)[~~(2)~~] 22 TAC §535.222;
[~~(3) 22 TAC §535.224(b)(1) - (3);~~]
(4) 22 TAC §535.226(d) - (e); and
(5) 22 TAC §§535.227 - 535.233.

(e) An administrative penalty of $1,000 - $5,000 per violation per day may be assessed for violations of the following sections of **Chapter 1101,** Chapter 1102 and this subchapter:

(1) **§§1101.652(a)(2), (5)-(6);**
(2) §1102.101;
(3)[~~(2)~~] §1102.102;
(4)[~~(3)~~] §1102.103;
(5)[~~(4)~~] §1102.302;
(6)[~~(5)~~] §1102.303;
(7)[~~(6)~~] §1102.304;
(8)[~~(7)~~] 22 TAC §535.208(f);
(9)[~~(8)~~] 22 TAC §535.211;
(10)[~~(9)~~] 22 TAC §535.215;
(11)[~~(10)~~] 22 TAC §535.220(e)(1), (3) - (7); and
(12)[~~(11)~~] 22 TAC §535.224(b)**(1)-(2)**[~~(4) - (5)~~].

(f) The Commission may assess an administrative penalty of up to two times that outlined under subsections (c), (d), and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the, if a person has a history of previous violations Act.

§ 535.220 Professional Conduct and ethics.

(a) The responsibility of those persons who engage in the business of performing independent inspections of improvements in real estate transactions imposes integrity beyond that of a person involved in ordinary commerce. Each inspector must maintain a high standard of professionalism, independence, objectivity and fairness while performing inspections in a real estate transaction. Each inspector license holder must also uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession.
(b) The relationship between an inspector and a client should at a minimum meet the following guidelines.
(1) In accepting employment as an inspector, the inspector should protect and promote the interest of the client to the best of the inspector's ability and knowledge, recognizing that the client has placed trust and confidence in the inspector.
(2) In the interest of the client and the inspector's profession, the inspector should endeavor always to maintain and increase the inspector's level of knowledge regarding new developments in the field of inspection.
(3) The inspector should conduct the inspector's business in a manner that will assure the client of the inspector's independence from outside influence and interests that might compromise the inspector's ability to render a fair and impartial opinion regarding any inspection performed.
(c) The relationship between an inspector and the public should at a minimum meet the following guidelines.
(1) The inspector should deal with the general public at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector's, the inspector's business and the inspection industry.
(2) The inspector should attempt to assist the general public in recognizing and understanding the need for inspections, whether the inspector is selected to perform such inspection or not.
(3) The inspector accepts the duty of protecting the public against fraud, misrepresentation or unethical practices in the field of real estate inspections.
(d) The relationship of the inspector with another inspector should at a minimum meet the following guidelines.
(1) The inspector should bind himself to the duty of maintaining fairness and integrity in all dealings with other inspectors and other persons performing real estate inspections.
(2) The inspector should cooperate with other inspectors to insure the continued promotion of the high standards of the real estate inspection profession and pledges himself to the continued pursuit of increasing competence, fairness, education and knowledge necessary to achieve the confidence of the public.
(3) If an inspector has knowledge of a possible violation of the rules of the Commission or Chapter 1102, the inspector should report the possible violation to the Commission.
(e) An inspector shall comply with the following requirements.
(1) An inspector shall not inspect a property when any compensation or future referrals depend on reported findings or on the closing or settlement of a property.
(2) In this section, "settlement service" means a service provided in connection with a prospective or actual settlement, and

"settlement service provider" includes, but is not limited to, any one or more of the following:

(A) federally related mortgage loan originator;

(B) mortgage broker;

(C) title service provider;

(D) attorney;

(E) a person who prepares documents, including notarization, delivery, and recordation;

(F) appraiser;

(G) inspector;

(H) settlement agent;

(I) a person who provides mortgage insurance services;

(J) a person who provides services involving hazard, flood, or other casualty insurance or homeowner's warranties;

(K) real estate agent or broker; and

(L) a person who provides any other services for which a settlement service provider requires a borrower or seller to pay.

(3) An inspector shall not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following:

(A) the referral of inspections;

(B) inclusion on a list of inspectors, preferred providers, or similar arrangements; or

(C) inclusion on lists of inspectors contingent on other financial agreements.

(4) An inspector shall not receive a fee or other valuable consideration, directly or indirectly, for referring services that are not settlement services or other products to the inspector's client without the client's consent.

(5) This section does not prohibit an inspector from paying or receiving a fee or other valuable consideration, such as to or from a contractor, for services actually rendered.

(6) An inspector shall not accept employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice under this Subchapter on which the inspector has performed an inspection under a real estate contract, lease, or exchange of real property within 12 months of the date of the inspection.

(7) Inspectors shall not disclose inspection results or client information without prior approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible.

(8) This subsection does not prohibit an inspector from:

(A) engaging in legal promotional or educational activities to or with settlement service providers that are not conditioned on the referral of business; or

(B) purchasing advertising and promoting the inspector at market rates from any person in any publication, event or media.

(f) The inspector should make a reasonable attempt to cooperate with other professionals and related tradespersons at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector, the inspector's business, and the inspection industry.

(g) Each active real estate inspector licensed by the Commission shall provide the notice adopted under Section 531.18 of this title by:

(1) displaying it in a readily noticeable location in each place of business the inspector maintains; and

(2) providing a link to it labeled "Texas Real Estate Commission Consumer Notice",

in at least a 10 point font, in a readily noticeable place on the homepage of the business website of the inspector.

THE TEXAS REAL ESTATE COMMISSION (TREC) REGULATES
REAL ESTATE BROKERS AND SALES AGENTS, REAL ESTATE INSPECTORS,
HOME WARRANTY COMPANIES, EASEMENT AND RIGHT-OF-WAY AGENTS,
AND TIMESHARE INTEREST PROVIDERS

YOU CAN FIND MORE INFORMATION AND
CHECK THE STATUS OF A LICENSE HOLDER AT

WWW.TREC.TEXAS.GOV

YOU CAN SEND A COMPLAINT AGAINST A LICENSE HOLDER TO TREC

A COMPLAINT FORM IS AVAILABLE ON THE TREC WEBSITE

TREC ADMINISTERS TWO RECOVERY FUNDS WHICH MAY BE USED TO
SATISFY A CIVIL COURT JUDGMENT AGAINST A BROKER, SALES AGENT,
REAL ESTATE INSPECTOR, OR EASEMENT OR RIGHT-OF-WAY AGENT,
IF CERTAIN REQUIREMENTS ARE MET

IF YOU HAVE QUESTIONS OR ISSUES ABOUT THE ACTIVITIES OF
A LICENSE HOLDER, THE COMPLAINT PROCESS OR THE
RECOVERY FUNDS, PLEASE VISIT THE WEBSITE OR CONTACT TREC AT

TEXAS REAL ESTATE COMMISSION
P.O. BOX 12188
AUSTIN, TEXAS 78711-2188

(512) 936-3000

535.224 Practice and Procedure

(a) Proceedings shall be conducted in the manner contemplated by §§533.1 - 533.8, 533.20, 533.30 - 533.37 and 533.40 of this title and with the Texas Government Code, Chapter 2001, et seq.

(b) In addition to the grounds for disciplinary action provided in Chapter 1102, a license of an inspector may be suspended or revoked by the Commission if the inspector:

(1) [~~fails to make good a payment issued to the Commission not later than the 15th day after the date the Commission mails a request for payment by certified mail to the inspector's last known mailing address as reflected by the Commission's records;~~

~~(2) fails or refuses on demand to produce a document, book or record in his possession concerning a real estate inspection conducted by him for examination by the Commission or its authorized agent;~~

~~(3) fails within 10 days to provide information requested by the Commission or its authorized agent in the course of an investigation of a complaint;~~]

[~~(4)~~] fails to maintain professional liability insurance coverage, a bond or any other security acceptable by the Commission[~~insurance~~] that provides coverage for violations of Subchapter G of Chapter 1102 during the period a license is active; or

(2)[~~(5)~~] fails to notify the Commission within 10 days of the cancellation or non-renewal of professional liability insurance coverage, a bond or any other security acceptable by the Commission[~~insurance~~] that provides coverage for violations of Subchapter G of Chapter 1102.

TEXAS REAL ESTATE COMMISSION

DOUGLAS E. OLDMIXON, ADMINISTRATOR

PROPOSED RULE ACTION FROM THE AUGUST 17, 2015, MEETING OF THE COMMISSION
CHAPTER 535 GENERAL PROVISIONS
Subchapter F. Requirements for Education Providers, Courses and Instructors for Qualifying Education

535.60 Definitions The following words and terms, when used in Subchapter F of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

[~~(1) Alternative delivery--A method of course delivery other than classroom delivery where the course has been certified by a distance learning certification center acceptable to the Commission.~~]

(1)[~~(2)~~] Applicant--A person seeking approval to be an education provider or instructor of qualifying courses.

(2)[~~(3)~~] Classroom delivery--A method of course delivery where the instructor and students interact face to face and in real time, in either the same physical location, or through the use of technology.

(3) Distance Education delivery—A method of course delivery other than classroom delivery, including alternative delivery and correspondence delivery.

[~~(4) Correspondence delivery--A method of course delivery other than classroom delivery where the course has not been certified by a distance learning certification center acceptable to the Commission.~~]

(4)[~~(5)~~] Instructor--A person approved by the Commission to teach qualifying courses.

(5)[~~(6)~~] Mandatory qualifying course--A qualifying course that an applicant is required to take to fulfill licensing requirements as mandated by §1101.358 of the Act.

(6)[~~(7)~~] Other qualifying course--A qualifying course, other than a mandatory qualifying course, for which the subject matter of the course is specified by the Act or Commission rule, that an applicant is required to take to fulfill licensing requirements.

(7)[~~(8)~~] Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(8)[~~(9)~~] Provider--Any person approved by the Commission; or specifically exempt by the Act, Chapter 1102, or Commission rule; that offers a course for which qualifying credit may be granted by the Commission to a license holder or applicant.

(9)Scenario-based learning—The use of scenarios to support active learning strategies such as problem-based or case-based learning where students must apply their subject knowledge, critical thinking, and problem-solving skills in a real-world context.

(10)Topic—Subject categories of what must be covered in a specific course as defined by the Act, Chapter 1102 and this chapter.

(11)Unit—A subtopic within a topic.

535.61 Approval of Providers of Qualifying Courses

(a) Application for approval.

(1) Unless otherwise exempt under subsection (b), a person desiring to be approved by the Commission to offer real estate or real estate inspection qualifying courses shall:

(A) file an application on the appropriate form approved by the Commission, with all required documentation;

(B) submit the required fee under §535.101 or §535.210 of this title;

(C) submit the statutory bond or other security acceptable to the Commission under §1101.302 of the Act; and

(D) maintain a fixed office in the state of Texas or 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 this Subchapter.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(3) An approved provider is permitted to offer courses in both real estate and real estate inspection that have been approved by the Commission.

(b) Exempt Providers.

(1) The following persons may submit real estate qualifying courses for approval for credit under §535.62(i) of this subchapter without becoming an approved provider of qualifying courses:

(A) a person approved by a real estate regulatory agency to offer qualifying real estate courses in another state;

(B) an accredited college or university in accordance with §535.66 of this subchapter;

(C) a post-secondary educational institution established in and offering qualifying real estate courses in another state;

(D) a United States armed forces institute; and

(E) a nationally recognized professional designation institute or council in the real estate industry.

(2) The following persons may submit real estate inspector qualifying courses for approval for credit under §535.62(i) of this subchapter without becoming an approved provider of qualifying courses:

(A) a provider approved by an inspector regulatory agency of another state;

(B) an accredited college or university in accordance with §535.66 of this subchapter;

(C) a United States armed forces institute;

(D) a unit of federal, state or local government;

(E) a nationally recognized building, electrical, plumbing, mechanical or fire code organization;

(F) a professional trade association in the inspection field or in a related technical field; or

(G) an entity whose courses are approved and regulated by an agency of this state.

(c) Standards for approval. To be approved as a provider by the Commission, the applicant must meet the following standards:

(1) 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 to manage the operation of the applicant, that person must meet this standard as if that person were the applicant;

(2) the applicant must demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students taking courses from the approved provider; and

(3) that any proposed facilities will be adequate and safe for conducting courses

(d) Financial review. An applicant shall provide the following information to enable the Commission to determine if an applicant has sufficient financial resources to conduct its proposed operations:

(1) business financial statements prepared in accordance with generally accepted accounting principles, which shall include a current income statement and balance sheet [~~of financial condition and a current statement of net worth~~];

(2) a proposed budget for the first year of operation; and

(3) a market survey indicating the anticipated enrollment for the first year of operation.

(e) Insufficient financial condition. The existence of any of the following conditions shall constitute prima facie evidence that an applicant's financial condition is insufficient:

(1) nonpayment of a liability when due, if the balance due is greater than 5% of the approved provider's current assets in the current or prior accounting period;

(2) nonpayment of three or more liabilities when due, in the current or prior accounting period, regardless of the balance due for each liability;

(3) a pattern of nonpayment of liabilities when due, in two or more accounting periods, even if the liabilities ultimately are repaid;

(4) a current ratio of less than 1.75 for the current or prior accounting period, this ratio being total current assets divided by total current liabilities;

(5) a quick ratio of less than 1.60 for the current or prior accounting period, this ratio being the sum of all cash equivalents, marketable securities, and net receivables divided by total current liabilities;

(6) a cash ratio of less than 1.40 for the current or prior accounting period, this ratio being the sum of cash equivalents and marketable securities divided by total current liabilities;

(7) a debt ratio of more than .40 for the current or prior accounting period, this ratio being total liabilities divided by total assets;

(8) a debt-to-equity ratio of greater than .60 for the current or prior accounting period, this ratio being total liabilities divided by owners' or shareholders' equity;

(9) a final judgment obtained against the approved provider for nonpayment of a liability which remains unpaid more than 30 days after becoming final; or

(10) the execution of a writ of garnishment on any of the assets of the approved provider.

(f) Approval notice. An applicant shall not act as or represent itself to be an approved provider until the applicant has received written notice of approval from the Commission.

(g) Period of initial approval. The initial approval of a provider of qualifying courses is valid for four years.

(h) Payment of an annual operation fee.

(1) An approved provider shall submit the Commission approved form and pay an annual operation fee prescribed by §535.101 of this title no later than each anniversary of the date of the provider's approval.

(2) An approved provider who fails to pay the annual operation fee as prescribed shall be placed on inactive status and notified in writing by the Commission.

(3) The approved provider will remain on inactive status until the annual fee is paid.

(4) The Commission will not give credit for courses given by a provider on inactive status.

(i) Disapproval of application.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission will provide written notice of disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.

(j) Subsequent Approval [~~Renewal~~].

(1) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for subsequent approval [~~renewal~~] for another four year period.

(2) Approval or disapproval of a subsequent [~~renewal~~] application shall be subject to:

(A) the standards for initial applications for approval set out in this section; and

(B) whether the approved provider has met or exceeded the exam passage rate benchmark established by the Commission under subsection (k).

(3) The Commission will not require a financial review for subsequent approval [~~renewal~~] if the applicant has provided a statutory bond or other security acceptable to the Commission under §1101.302 of the Act, and there are no unsatisfied final money judgments against the applicant.

(k) Exam passage rates and benchmark.

(1) The exam passage rate for an approved provider shall be: [~~For purposes of this subsection, a student is affiliated with the approved provider where the student took his or her last qualifying course. The Commission will not count the student in calculating the approved provider's exam pass rate if the student's last qualifying course was taken more than two years before the date the approved provider or student submitted the course to the Commission.~~]

(A)calculated for each license category for which the provider offers courses; and

(B) displayed on the Commission website by license category.

(2) The Commission will calculate the exam passage rate of an approved provider [providers for each category of license will be calculated] on a monthly [quarterly] basis by:

(A)determining [dividing] the number of students affiliated with that approved provider[,] who passed the examination on their first attempt in the two [four]-year period ending on the last day of the previous month; and [quarter,]

(B) dividing that number by the total number of students affiliated with that provider [the approved provider's graduates] who took the exam for the first time during that same period.

(3) A student is affiliated with a provider under this subsection if the student took the majority of his or her hours of qualifying education with the provider in the two year period prior to taking the exam for the first time.

(4)[(3) If an approved provider offers courses to multiple license categories, the exam results for that approved provider will be calculated by license category. The passage rate for each license category that will be used to determine whether the approved provider has met or exceeded] For purposes of approving a subsequent application under subsection (j), the established exam passage rate benchmark for each [the] license category is 80% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month.[most current rate published by the Commission as of the date the Commission receives the timely application for renewal or, if the approval expired before being renewed, the most recent rate published by the Commission as of the expiration date of that provider's approval.]

(5)[(4) Providers who do not] If at the time the Commission receives a subsequent application for a provider, the provider's exam passage rate does not meet the established benchmark for a license category the provider will be: [may be denied renewal]

(A) disapproved for that license category if the provider's exam passage rate is less than 50% of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month; or

(B) placed on probation by the Commission if the provider's exam passage rate is 50% or greater of the average percentage of the total examinees for that license category who passed the examination on the first attempt in the two year period ending on the last day of the previous month [under terms acceptable to the Commission].

(6) The exam passage rate of a provider on probation will be reviewed annually at the time the annual operating fee is due to determine if the provider can be removed from probation, remain on probation or have its license revoked, based on the criteria set out in (k)(5) of this section.

[(5) In determining whether an approved provider qualifies for renewal for a particular license category based on its examination passage rate, the Commission may consider a variety of factors, including:

(A) the overall passage rate for sales, broker, and inspector applicants; and

(B) any trends within the approved provider's passage rate over the four-year approval period.]

[(6) The Commission will publish the exam passage rate of providers by category of license on the Commission's website on a quarterly basis.]

535.62 Approval of Qualifying Courses

(a) Application for approval of a qualifying course.

(1) For each qualifying course a provider intends to offer, the provider must:

(A) submit the [applicable] course application and course approval forms, [form(s)] including all materials required; and

[(B) submit all materials listed on the applicable course approval form(s); and]

(B)[(C)] pay the fee required by §535.101 or §535.210 of this title.

(2) A provider may file a single application for a qualifying course offered through multiple delivery methods. A fee is required for content and examination review of each qualifying course

and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved qualifying course must submit a new application and pay all required fees, including a fee for content and examination review.

(4)[~~(2)~~] The Commission may:

(A) request additional information be provided to the Commission relating to an application; [~~and~~]

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request; and

(C) prior to approval of a proposed qualifying real estate inspector course, submit the course to the Texas Real Estate Inspector Committee for review and recommendation.

(b) Standards for course approval.

(1) To be approved as a qualifying course by the Commission, a provider must satisfy the Commission that the course [~~must~~]:

(A) covers [~~cover~~] all topic and unit areas for the specific course subject required by the Act, Chapter 1102 and this chapter;

(B) devotes [~~devote~~] the time prescribed for each topic required by a course approval form adopted by the Commission;

(C) will be scheduled for the full clock hours of time for which credit is awarded and presented in full hourly units;

(D) does not have daily course segments that exceed 12 hours [~~meet the requirements of §535.65 of this subchapter~~];

(E) will be delivered by one of the following delivery methods:

(i) classroom delivery [~~method~~];

(ii) distance education [~~alternative~~] delivery [~~method~~]; and

(iii) a combination of (i) and (ii), if[~~:~~]

[~~(I)~~] at least 50% of the combined course is offered by classroom delivery [~~method~~]; and

(F) include at a minimum, the following methods to assess a student's comprehension of the course material:

(i) topic quizzes, with at least three questions related to the subject matter of each course topic;

(ii) at least ~~three~~ one scenario based learning exercise~~s~~ per ~~course~~every increment of 10 credit hours or less; and

(iii) if the course is delivered by distance education delivery:

(I)Prevent the student from moving to the next topic until the student answers all topic quiz questions correctly and receives a passing grade on the scenario based learning exercises; and

(II) for quiz questions answered incorrectly, employ a method to present the rationale behind the correct answer and ask a subsequent related quiz questions that will count toward passing the topic if answered correctly; and

(G) will have multiple versions of a final exam that:

(i) covers each topic required by the Act or Rules for the specific course;

(ii) does not contain any true/false questions;

(iii) for all qualifying courses other than a real estate math course~~,~~:

(I) consists of at least ~~60~~ two questions ~~that are drawn from~~ per credit course hour; and

(II) draws from a question bank consisting of at least ~~180~~ six questions per credit course hour; and

(iv) for all qualifying real estate math courses, consists of at least 20 questions that are drawn from a question bank consisting of at least 60 questions.

[~~(II) the portion of the combined course offered through alternative delivery is taken from a full course that has already been certified for alternative delivery by a distance learning certification center acceptable to the Commission;~~]

[~~(iv) a correspondence course that is offered by a provider in association with an accredited college or university if the course is offered in accordance with the college or university's accreditation association's curriculum accreditation standards; or~~]

[~~(v) a combination of (i) and (iv), if:~~

~~(I) at least 50% of the combined course is offered by classroom method; and~~

~~(II) the combined course is offered by a provider in association with an accredited college or university in accordance with the college or university's accreditation association's curriculum accreditation standards;]~~

~~[(2) Using the name of the provider "in association with" the name of the college or university on the course completion certificate constitutes certification to the Commission that the course was offered in compliance with the college or university's accreditation association's curriculum accreditation standards.]~~

~~[(3) The Commission may submit a proposed qualifying real estate inspector course to the Texas Real Estate Inspector Committee for review and recommendation prior to approval of the course.]~~

(c) Approval of currently approved courses by a subsequent provider.

(1) If a subsequent provider wants to offer a course currently approved for another provider, the subsequent provider must:

(A) submit the [~~applicable~~] course application and approval forms [~~form(s)~~] including all materials required;

(B) submit written authorization to the Commission from the author or provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the previously approved course, the subsequent provider is required to:

(A) offer the course as originally approved, including expiration date, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.65 of this subchapter.

(d) Required revision of a currently approved qualifying course.

(1) Providers are responsible for keeping current on changes to the Act and Commission Rules and must supplement materials for approved courses to present the current version of all applicable statutes and rules on or before the effective date of those statutes or rules.

(2) If the Commission adopts new requirements for a course, including but not limited to a course approval form that divides selected qualifying course subjects into topics and units, any provider currently offering a course on that subject must:

(A) revise and supplement any currently approved classroom qualifying course covering that subject no later than 12 months after the effective date of the new requirements;

(B) revise and supplement any currently approved qualifying course offered by distance education [~~alternative~~] delivery [~~covering that subject and obtain recertification of the course by a distance learning certification center acceptable to the Commission~~] no later than 15 months after the effective date of the new requirements;

(3) For each revised qualifying course, a provider must:

(A) submit the ~~applicable~~ course application and approval forms [~~form(s)~~] including all materials required; and

[~~(B) submit all revised materials, and if applicable, recertification; and~~]

(B)[~~(C)~~] pay the fee required by §535.101 or §535.210 of this title.

(4) A provider may not offer a currently approved course for qualifying credit after the deadlines established by this subsection following a required revision of a qualifying course.

(5) If a provider paid a fee for the initial course approval, the provider will receive a prorated credit on the fee paid under this subsection for the unexpired time remaining on that initial approval. The Commission will calculate the prorated credit by dividing the fee paid for the initial approval by 48 months and multiplying that amount by the number of full months remaining between the approval date of the revised course and the expiration date of the currently approved version of the course.

(6) A revised course approved under this subsection expires four years from the date of approval of the revision.

(7) No later than 90 days before the effective date of a revised course, a provider shall send written notice to all students who have purchased the currently approved course and not completed it, that credit will no longer be given for the current course as of the effective date of the revised course.

(8) If an approved provider fails to give the notice set out in paragraph (6) of this subsection, the provider shall allow the student to take the revised course at no additional charge.

(e) Voluntary revision of a currently approved qualifying course.

(1) A provider who voluntarily revises a currently approved course, shall, prior to implementation of any course materials:

(A) file any updated course materials and revisions of the course outline with the Commission; and

(B) pay the fee required by §535.101 and §535.210 of this title.

(2) If after review the Commission is not satisfied with the updated course materials and revised course outline, the Commission may direct a provider to:

(A) further revise the materials;

(B) cease use of materials; or

(C) withdraw a course text.

(3) If a provider paid a fee for the initial course approval, the provider will receive a prorated credit on the fee paid under this subsection for the unexpired time remaining on that initial approval. The Commission will calculate the prorated credit by dividing the fee paid for the initial approval by 48 months and multiplying that amount by the number of full months remaining between the approval date of the revised course and the expiration date of the currently approved version of the course.

(4) A revised course approved under this subsection expires four years from the date of approval of the revision.

(5) No later than 90 days before the effective date of a revised course, a provider shall send written notice to all students who have purchased the currently approved course and not completed it, that credit will no longer be given for the current course as of the effective date of the revised course.

(6) If an approved provider fails to give the notice set out in paragraph (5) of this subsection, the provider shall allow the student to take the revised course at no additional charge.

(f) Expiration of approval.

(1) Courses approved after January 1, 2011 are valid for four years from the date of approval.

(2) Courses approved before January 1, 2011 expire on December 31, 2015.

(3) Courses approved for use by a subsequent provider under subsection (c) expire on the same date that the originally approved course expires.

(4) Currently approved versions of a course expire 90 days after approval of a revised version of that course.

(g) Renewal of course approval. Not earlier than 90 days before the expiration of a course approval, a provider may obtain a renewal of course approval for another four year period by following the process and meeting the current standards for an initial course approval.

[~~(h) Timeframe for course approval. The Commission will approve a course as soon as reasonably practicable after a provider meets all the requirements set out in this section. For the purposes of this section, "reasonably practicable" means no sooner than the 30th day after the Commission receives all required documentation for approval as set out in this section.~~]

(h)[~~(i)~~] Course preapproval for exempt providers.

(1) Providers exempt from approval by the Commission may submit courses to the Commission for preapproval by meeting the standards for course approval under this section, including submitting all applicable forms and fees.

(2) Any course offered by an exempt provider without preapproval by the Commission will be evaluated by the Commission to determine whether it qualifies for credit at such time as a

student submits a course completion certificate to the Commission for credit.

(3) The Commission will determine whether or not a course offered by an exempt provider without preapproval by the Commission qualifies for credit using the standards set out under this section.

(4) An exempt provider may not represent that a course qualifies for credit by the Commission unless the exempt provider receives written confirmation from the Commission that the course has been preapproved for credit.

535.63 Approval of Instructors of Qualifying [~~and Non-Elective CE~~] Courses

(a) Application for approval.

(1) A person desiring to be approved by the Commission to teach real estate or real estate inspection qualifying courses shall:

(A) file an application on the appropriate form approved by the Commission; and

(B) submit the required fee required by §535.101 or §535.210 of this title.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(b) Standards for instructor approval. To be approved as an instructor by the Commission to teach real estate or real estate inspection qualifying courses, the applicant must meet the following standards:

(1) The applicant must satisfy the Commission as to:

(A) the applicant's honesty, trustworthiness, and integrity; and

(B) the person's competency in the subject matter to be taught and ability to teach effectively.

(2) Except as provided by paragraph (3) of this subsection, the applicant must possess the following qualifications:

(A) a college degree in the subject area or five years of active [~~professional~~] experience as a license holder [~~in the subject area~~] and three years of experience in teaching or training; or [~~and~~]

[~~(B) beginning January 1, 2016, a completion certificate from an adult education instructor training course of at least 8 hours that is acceptable to the Commission and dated within 5 years of the date of the application; or~~]

(B)[~~(C)~~] the equivalent of paragraph [~~paragraphs~~] (2)(A) [~~and (B)~~] of this subsection as determined by the Commission after consideration of the applicant's professional experience, research, authorship, or other significant endeavors in real estate or real estate inspection; and [~~the subject area.~~]

(C)beginning January 1, 2016, provide a completion certificate from an adult education instructor training course of at least eight hours that is acceptable to the Commission and dated within four years of the date of application.

(3) To be approved as an instructor of Texas Standards of Practice, Texas Standards of Practice/Legal/Ethics Update, or as an instructor of a ride along inspection course as defined in §535.218 of this title, an applicant must have five years of active licensure as a Texas professional inspector, and have:

(A) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(B) three years of experience in teaching and/or sponsoring trainees or inspectors.

(c) Approval notice. An applicant shall not act as or represent that the applicant is [~~itself to be~~] an approved instructor until the applicant has received written notice of the approval from the Commission to teach specified courses.

[~~(d) Certification required to teach real estate non-elective CE courses~~.

~~(1) An applicant may not teach a real estate non-elective CE course until the applicant has:~~

~~(A) been approved as an instructor of qualifying courses; and~~

~~(B) received written certification from the Commission to teach a specific non-elective continuing education course.~~

~~(2) To obtain certification to teach a real estate non-elective continuing education course, the applicant must:~~

~~(A) be currently approved by the Commission as an instructor for qualifying courses in the subject areas of Principles of Real Estate, Law of Agency and Law of Contracts to teach Legal or Ethics Update; or~~

~~(B) be currently approved by the Commission as an instructor of qualifying courses in the subject areas of Principles of Real Estate, Law of Agency, Law of Contracts and Real Estate Brokerage to teach Broker Responsibility; and~~

~~(C) successfully complete an instructor training program approved by the Commission for the non-elective continuing education course for which certification is sought.~~

~~(3) A previously certified instructor must be recertified to teach a non-elective course whenever the previous course has expired and a new course has been approved.~~

~~(4) An instructor's certification to teach a legal or ethics update course expires on December 31 of every odd-numbered year.~~

~~(5) An instructor's certification to teach the broker responsibility course expires on December 31 of every even-numbered year.]~~

(d)[~~(e)~~] Period of [~~initial~~] approval. The [~~initial~~] approval of an [~~a~~] instructor is valid for two years.

(e)[~~(f)~~] Disapproval of an application.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission shall disapprove the application and provide written notice of the disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.

(f)[~~(g)~~] Subsequent approval [~~Renewal~~].

(1) Not earlier than 90 days before the expiration of its current approval, an approved instructor may apply for subsequent approval [~~renewal~~] for another two year period.

(2) Approval or disapproval of a subsequent approval [~~renewal~~] shall be subject to the standards for initial applications set out in this [~~the~~] section.

535.64 Content Requirements for Qualifying Real Estate Courses

(a) Mandatory qualifying courses. To be approved by the Commission, the following mandatory qualifying courses must contain the content outlined below:

(1) Principles of Real Estate I, which shall contain the following topics, the units of which are outlined in the PRINS 1-0, Qualifying Real Estate Course Approval Form, Principles of Real Estate I, hereby adopted by reference:

(A) Introduction to Modern Real Estate Practice - 200 minutes;

(B) Real Property - 60 minutes;

(C) Concepts and Responsibilities of Home Ownership - 95 minutes;

(D) Real Estate Brokerage and the Law of Agency - 180 minutes;

(E) Fair Housing Laws - 150 minutes;

(F) Ethics of Practice as a License Holder - 30 minutes;

(G) Texas Real Estate License Act - 180 minutes;

(H) Legal Descriptions - 100 minutes;

(I) Real Estate Contracts - 135 minutes;

(J) Interests in Real Estate - 180 minutes;

(K) How Home Ownership is Held - 70 minutes; and

(L) Listing Agreements - 120 minutes.

(2) Principles of Real Estate II, which shall contain the following topics, the units of which are outlined in the PRINS 2-0, Qualifying Real Estate Course Approval Form, Principles of Real Estate II, hereby adopted by reference:

(A) Real Estate Math - 200 minutes;

(B) Real Estate Appraisal - 200 minutes;

(C) Real Estate Financing Principles - 210 minutes;

(D) Control of Land Use - 115 minutes;

(E) Specializations - 50 minutes;

(F) Real Estate Investments - 110 minutes;

(G) Leases - 95 minutes;

(H) Property Management - 120 minutes;

(I) Estates, Transfers, and Titles - 200 minutes; and

(J) Closing Procedures/Closing the Real Estate Transaction - 200 minutes.

[~~(3) A combined 60 hour course approved by the Commission, consisting of both Principles of Real Estate I and II, which includes the topics for each course as outlined by this section.~~]

(3)[~~(4)~~] Law of Agency, which shall contain the following topics, the units of which are outlined in the LOA-0, Qualifying Real Estate Course Approval Form, Law of, hereby adopted by reference:

(A) Agency Concepts - 130 minutes;

(B) Basic Agency Relationships, Disclosure & Duties to Client - 125 minutes;

(C) Duties and Disclosures to Third Parties - 125 minutes;

(D) Seller Agency - 120 minutes;

(E) Buyer Agency - 150 minutes;

(F) Representing More than one Party in a Transaction: Intermediary Brokerage - 165 minutes;

(G) Creation and Termination of Agency - 85 minutes;

(H) Clarifying Agency Relationships - 45 minutes;

(I) Employment Issues - 120 minutes;

(J) Agency, Ethics and the Law - 155 minutes;

(K) Deceptive Trade Practices & Consumer Protection Act - 140 minutes; and

(L) Implementation and Presentation - 140 minutes.

(4)[~~(5)~~] Law of Contracts, which shall contain the following topics, the units of which are outlined in the LOC-0, Qualifying Real Estate Course Approval Form, Law of Contracts, hereby adopted by reference:

(A) Texas Contract Law - 155 minutes;

(B) Basics of Real Estate Law - 115 minutes;

(C) Introduction to Contracts - 75 minutes;

(D) Ownership Rights and Limitations - 120 minutes;

(E) Contracts Used in Real Estate - 275 minutes;

(F) The Sales Contract - 135 minutes;

(G) Contingencies, Addenda and Amendments - 105 minutes;

(H) Financing Real Estate - 235 minutes;

(I) Conveyance of Title - 90 minutes;

(J) Transaction Process and Closing - 135 minutes; and

(K) Common Contract Mistakes - 60 minutes.

(5)[~~(6)~~] Promulgated Contract Forms, which shall contain the following topics, the units of which are outlined in the PCF-0, Qualifying Real Estate Course Approval Form, Promulgated Contract Forms, hereby adopted by reference:

(A) Contract Law Overview - 155 minutes;

(B) Laws, Rules and Regulations - 150 minutes;

(C) Parties, Properties and Financing - 155 minutes;

(D) Covenants, Commitments and Notices - 160 minutes;

(E) Closing, Possession and More - 220 minutes;

(F) The Remaining Promulgated Forms - 205 minutes;

(G) Promulgated Addenda, Notices and Other Forms - 205 minutes;

(H) Other Real Estate Matters - 115 minutes; and

(I) Practice Makes Perfect - 135 minutes.

[~~(7) A combined 60 hour course approved by the Commission, consisting of both Law of Contracts and Promulgated Contract Forms, which includes the topics for each course as outlined by this section.~~]

(6)[~~(8)~~] Real Estate Finance, which shall contain the following topics, the units of which are outlined in the REF-0, Qualifying Real Estate Course Approval Form, Real Estate Finance, hereby adopted by reference:

(A) The Nature & Cycle of Real Estate Finance - 105 minutes;

(B) Money & the Monetary System - 100 minutes;

(C) Additional Government Influence - 200 minutes;

(D) The Secondary Mortgage Market - 95 minutes;

(E) Sources of Funds - 110 minutes;

(F) Instruments of Real Estate Finance - 170 minutes;

(G) Loan Types, Terms & Issues - 200 minutes;
(H) Government Loans - 215 minutes;
(I) Lender Loan Processes - 220 minutes;
(J) Defaults & Foreclosures - 85 minutes.

(7) Real Estate Brokerage (mandatory for a broker's license) which shall contain the following topics, the units of which are outlined in the REB-0, Qualifying Real Estate Course Approval Form, Real Estate Brokerage, hereby adopted by reference:

(A) The Real Estate Industry - 30 minutes;
(B) Starting a Brokerage Business - 110 minutes;
(C) Ethical & Legal Business Practices – 300 minutes
(D) Analyzing the Market & the Competition – 110 minutes
(E) Managing Risk – 110 minutes;
(F) Financing Your Business – 110 minutes;
(G) Negotiating a Commercial Lease – 100 minutes;
(H) The Marketing Plan – 150 minutes;
(I) Management Style & Structure – 100 minutes;
(J) Recruiting & Hiring – 100 minutes;
(K) Professional Brokerage Competency & Associate License Holder Productivity – 180 minutes;
(L) Evaluating the Business – 50 minutes;
(M) Growth Opportunities – 50 minutes.

(b) Other qualifying courses. Other acceptable qualifying courses are those courses approved by the Commission that meet:
(1) the requirements of §1101.003 of the Act; or
(2) Residential Inspection for Real Estate Agents (or equivalent), which shall include but is not limited to:
(A) repair-related contract forms and addenda;
(B) inspector and client agreements;
(C) inspection standards of practice and standard inspection report form;
(D) tools and procedures;
(E) electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations); and
(F) structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).

(c) Related qualifying course. Acceptable related qualifying courses are those courses taken for credit from an accredited college or university, or course approved by the Commission for continuing education credit, that a broker is required to take to fulfill licensing requirements, in any one of the following areas:
(1) accounting;
(2) advertising;
(3) architecture;
(4) business or management;
(5) construction;
(6) finance;
(7) investments;
(8) law;
(9) marketing; and
(10) real estate.

(d) Course Approval forms. All forms adopted by this section are available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

535.65 Responsibilities and Operations of Providers of Qualifying Courses

(a) Responsibility of Providers.
(1) A provider is responsible for:
(A) the administration of each course, including, but not limited to, compliance with any prescribed period of time for any required course topics required by the Act, Chapter 1102, and Commission rules;
(B) **maintaining** student attendance records;
(C) **verifying** instructor **qualification,** performance and attendance;
(D) **proper** examination administration;
(E) validation of student identity **acceptable to the Commission**;
(F) maintaining student course completion records;
(G) ensuring all advertising complies with subsection (c);
(H) ensuring that instructors or other persons do not recruit or solicit prospective salespersons,

brokers or inspectors during course presentation; and

(I) ensuring staff is reasonably available for public inquiry and assistance.[;]

[(J) ensuring that its classroom facilities are adequate for class size and pose no threat to the health or safety of students;]

[(K) ensuring that each student is present for the course for the hours of time for which credit is awarded.]

(2) A provider may not promote the sale of goods or services during the presentation of a course.

(3) A provider may remove a student and not award credit if a student does not participate in class, or disrupts the orderly conduct of a class, after being warned by the provider or the instructor.

(4) If a provider approved by the Commission does not maintain a fixed office in Texas 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 that the provider is required to maintain by this section. A power-of-attorney designating the resident must be filed with the Commission in a form acceptable to the Commission.

(b) Use of approved Instructor.

(1) Except as provided by this subsection, a provider must use an instructor that is currently approved by the Commission to teach the specified course;

(2) Each instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor;

(3) A provider shall require specialized training or work experience for instructors teaching specialized subjects such as law, appraisal, investments, taxation or home inspection;

(4) An instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval form; and

(5) A provider may use the services of a guest instructor who is not approved as an instructor by the Commission for qualifying real estate or inspector courses provided that person instructs for no more than 10% of the total course time.

(c) Advertising.

(1) The following practices are prohibited:

(A) using any advertising which does not clearly and conspicuously contain the provider's name on the first page or screen of the advertising;

(B) representing that the provider's program is the only vehicle by which a person may satisfy educational requirements;

(C) conveying a false impression of the provider's size, superiority, importance, location, equipment or facilities, except that a provider may use objective information published by the Commission regarding pass rates;

(D) promoting the provider directly or indirectly as a job placement agency, unless the provider is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program; [or]

(E) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression; or[.]

(F) advertising a course under a course name other than the course name approved by the Commission.

(G) advertising using a name that implies the course or course provider is the Texas Real Estate Commission, including use of the acronym "TREC", in all or part of the course or course provider's name.

(2) Any written advertisement by a provider that includes a fee that the provider charges for a course must display all fees that the provider charges for the course in the same place in the advertisement and with the same degree of prominence.

(3) The provider shall advertise a course for the full clock hours of time for which credit is awarded.

(4) The provider is responsible for and subject to sanctions for any violation of this subsection by any affiliate or other third party marketer or web

hosting site associated with or used by the provider.

(d) Pre-enrollment agreements for approved providers.

(1) Prior to a student enrolling in a course, a provider approved by the Commission shall provide the student with a pre-enrollment agreement that includes all of the following information:

(A) the tuition for the course;

(B) an itemized list of any fees charged by the provider for supplies, materials, or books needed in course work;

(C) the provider's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;

(D) the attendance requirements;

(E) the acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions; and

(F) the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits.

(2) A pre-enrollment agreement must be signed by a representative of the provider.

(e) Refund of fees by approved provider.

(1) A provider shall establish written policies governing refunds and contingency plans in the event of course cancellation.

(2) If a provider approved by the Commission cancels a course, the provider shall:

(A) fully refund all fees collected from students within a reasonable time; or

(B) at the student's option, credit the student for another course.

(3) The provider shall inform the Commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(f) Course materials.

(1) Before the course starts, a provider shall give each student copies of or provide online access to any materials to be used for the course.

(2) A provider shall update course materials to ensure that current and accurate information is provided to students as provided for under §535.62 of this subchapter.

(g) Presentation of courses.

(1) Classroom Delivery:

(A) The location for the course must be:

(i) [~~offered in a location~~] conducive to instruction, such as a classroom, training room, conference room, or assembly hall that is separate and apart from work areas;

(ii) adequate for the class size;

(iii) pose no threat to the health or safety of students; and

(iv) allow the instructor to see and hear each student and the students to see and hear the instructor, including when offered through the use of technology.

(B) The provider must:

(i) check the photo identification of each student at class sign up and when signing in for each subsequent meeting of the class;

(ii) ensure the student is present for the course for the hours of time for which credit is awarded;

(iii) provide a 10 minute break per hour at least every two hours; and

(iv) not have daily course segments that exceed 12 hours.

[~~(B) The course must be scheduled for the full clock hours of time for which credit is awarded;~~]

(C) Makeup Session for Classroom Courses.

(i) A provider may permit a student who attends at least two-thirds of an originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.

(ii) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:

(I) attendance in corresponding class sessions in a subsequent offering of the same course; or

(II) the supervised presentation by audio or video recording of the class sessions actually missed.

(iii) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.

(iv) Dropped status may not be changed by makeup sessions, and any hours accumulated by a student may not be transferred to any other course, prior to being dropped from a course.

(v) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall automatically be dropped from the course with no credit and the provider shall report the student's status to the Commission.

[~~(C) Course presentation per day cannot exceed 10 hours;~~]

[~~(D) A 10 minute break per hour must be given at least every two hours.~~]

(2) Distance Education [~~Alternative~~] Delivery [~~and Correspondence~~]:

(A) the provider must ensure that:

(i) the student taking all topics of the course and completing all quizzes and exercises is the student receiving credit for the course through a validation process that meets guidelines approved by the Commission;

(ii)[~~(i)~~] an approved instructor [~~that a qualified person~~] is available to answer students' questions or provide assistance as necessary in a timely manner; [~~and~~]

(iii)[~~(ii) that~~] a student has completed all instructional modules and attended any hours of live instruction required for a given course; [~~and~~]

(iv)[~~(B)~~] an approved instructor is [~~or the provider's coordinator or director must be~~] responsible for providing answers and rationale for the grading of the written course work; and

(v) a course completion certificate is not issued to the student until at least twice the number of hours for which course credit is given has elapsed since the student registered for the course.

(3) A provider is not required to present topics and units in the order outlined for a course on the corresponding course approval form.

(4) The periods of time prescribed to each unit of a topic for a qualifying course as outlined on the corresponding course approval form are recommendations and may be altered to allow instructors flexibility to meet the particular needs of their students.

[~~(h) Makeup Session.~~

~~(1) A provider may permit a student who attends at least two-thirds of a originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.~~

~~(2) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:~~

~~(A) attendance in corresponding class sessions in a subsequent offering of the same course; or~~

~~(B) the supervised presentation by audio or video recording of the class sessions actually missed.~~

~~(3) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.~~

~~(4) Dropped status may not be changed by makeup sessions, and any hours accumulated by a student may not be transferred to any other course, prior to being dropped from a course.~~

~~(5) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall be automatically dropped from the course with no credit and the provider shall report the student's status to the Commission.~~]

(h)[~~(i)~~] Course examinations.

(1) The final examination given at the end of each course must be given in a form and with questions [~~the examination~~] that were [~~was~~] submitted to the Commission with the course approval form.

[~~(2) Each topic required by the Act or Rules for a qualifying course must be covered in the final examination for that course.~~]

[~~(3) Unless otherwise provided for in this section, a provider shall use final course examinations consisting of at least 60 questions with an unweighted passing score of 70%.~~]

[~~(4) Real estate math qualifying course examinations may consist of a minimum of 20 questions with an unweighted passing score of 70%.~~]

(2)[~~(5)~~] Final examination questions must be kept confidential and be significantly different from any

quizzes and exercises [questions] used [for diagnostic assessment of units] in the course.

(3)[(6)] A provider shall not permit a student to view or take a final examination before the completion of regular course work and any makeup sessions required by this section.

(4)[(7)] Examinations must [be:]

(A) comply with the requirements of 535.62(G)for all qualifying courses other than a qualifying real estate math course, consist of at least 60 questions with an unweighted passing score of 70%.; and

(B) for qualifying real estate math courses, consist of at least 20 questions with an require unweighted passing score of 70%.

(C)[(A)] be proctored by a member of the provider faculty or staff, or third party proctor acceptable to the Commission, who is present at the test site or able to observe the student through the use of technology, and has positively identified that the student [students] taking the examination is [are] the student [students] registered for and who took the course.[; or]

[(B) administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student who took the course.]

[(8) A provider shall revise final course examinations for all active qualifying courses at least annually.]

(5) The following are acceptable proctors:

(A) employees at official testing or learning/tutoring centers;

(B) certified librarians at a school, university, or public library;

(C) college or university administrators, instructors, or academic advisors;

(D) clergy who can be identified with a specific temple, synagogue, mosque, or church; and

(E) educational officers of a corporation, military installation, or correctional facility.

(6)[(9)] A provider may not give credit to a student who fails a final examination and makeup final examination.

(j) Makeup final course examination.

(1) If a student fails a final course examination, a provider may permit the student to retake the final examination only once and only after the student has:

(A) waited at least three [seven] calendar days; and

(B) completed any additional course work prescribed by the provider.

(2) A student shall complete a makeup final examination no later than the 90th day after the date the original class concludes and the second examination must be significantly different from the first examination.

(3) If a student fails to timely complete the makeup final examination as required by this subsection, the student shall be automatically dropped from the course with no credit.

(4) A student who fails the final course examination a second time is required to retake the course prior to retaking the final course examination.

(k) Course completion certificate.

(1) Upon successful completion of a core course, a provider shall issue a course completion certificate that a student can submit to the Commission. The course completion certificate shall show:

(A) the provider's name and approval number;

(B) the instructor's name and instructor license [approval] number assigned by the Commission;

(C) the course title;

(D) course numbers[, including any Commission pre-approval number received];

(E) the number of classroom credit hours;

(F) the dates the student registered for, began and completed the course; and

(G) printed name and signature of an official of the provider on record with the Commission.

(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(l) Instructor and course evaluations.

(1) A provider shall provide each student enrolled in a course with an instructor and course evaluation form and provide a link to an online version of the form that a student can complete and submit any time after course completion.

(2) An instructor may not be present when a student is completing the evaluation form and may not be involved in any manner with the evaluation process.

(3) When [~~At a minimum, when~~] evaluating an instructor or course, a provider shall use the [~~an~~] evaluation form approved by the Commission. A provider may also add additional questions to the end of the Commission evaluation form or request the students to also complete the provider's evaluation form.

(4) A provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(5) At the Commission's request, a provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(m) Maintenance of records for a provider of qualifying courses.

(1) A provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) A provider shall maintain financial records sufficient to reflect at any time the financial condition of the school.

(3) A school's financial statement and balance sheets must be available for audit by Commission staff, and the Commission may require presentation of financial statements or other financial records.

(4) All records may be maintained electronically but must be in a common format that is legibly and easily printed or viewed without additional manipulation or special software.

(n) Changes in Ownership or Operation of an approved provider of qualifying courses.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

(A) ownership;

(B) management; and

(C) the location of main office and any other locations where courses are offered.

(2) An approved provider, upon transfer to the new owner, must meet the financial review standards imposed by §535.61 of this subchapter.

(3) An approved provider requesting approval of a change in ownership shall provide all of the following information or documents to the Commission:

(A) a new bond of $20,000 for the proposed new owner, a statement from the bonding company indicating that the former bond will transfer to the proposed new owner, or other security acceptable to the Commission under §1101.302 of the Act;

(B) an Education Provider Application reflecting all required information for each proposed new owner; [~~and~~]

(C) a Principal Information Form for each proposed new owner who would hold at least a 10% interest in the school; and[~~.~~]

(D) pay the fee required by §535.101 or §535.210 of this title.

535.66 Credit for Course Offered by Accredited Colleges or Universities

(a) For the purposes of this section, an "accredited college or university" is defined as 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 by a recognized national or international accrediting body.

(b) Exemption. Pursuant to §1101.301 of Tex. Occ. Code, the Commission does not approve qualifying educational programs or courses of study in real estate and real estate inspection offered by an accredited college or university; however, the Commission has the authority to determine whether a real estate or real estate inspection course satisfies the requirements of the Act and Chapter 1102.

(c) Credit for real estate courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university must meet the following requirements:

(1) cover the subject and topics set out in §1101.003 of Tex. Occ. Code as clarified by the Commission in §535.64; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association **for verification of clock/course hours, design and delivery method**.

(d) Credit for real estate inspector courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university meet the following requirements:

(1) meet the subject and topic definitions set out in §1102.001(5) of Tex. Occ. Code as clarified by the Commission in §535.213; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association **for verification of clock/course hours, design and delivery method**.

(3) any courses offered to fulfill the substitute experience requirements allowed under §1102.111 must meet the requirements set out in §535.212 of this title, including instructor qualifications.

(e) Preapproval of a course offered under subsections (c) or (d).

(1) An accredited college and university may submit qualifying courses to the Commission for preapproval by filing a form approved by the Commission.

(2) Any course offered by an accredited college and university without preapproval by the Commission will be evaluated by the Commission, using the standards set out in this section, to determine whether it qualifies for credit at such time as a student submits a transcript with the course to the Commission for credit.

(3) An accredited college or university may not represent that a course qualifies for credit by the Commission unless the accredited college or university receives written confirmation from the Commission that the course has been preapproved for credit.

(f) Required approval of qualifying courses not offered under subsections (c) or (d) **or that are not subject to academic accreditation standards**.

(1) To be eligible for credit from the Commission, a qualifying course offered by an accredited college and university **[~~on its own or in association with a third party provider approved by the Commission~~]** that is not offered under subsections (c) or (d) **or that is ~~are~~ not subject to academic accreditation standards** is required to be submitted for approval by the Commission in accordance with §535.62 of this subchapter, including payment of any fee required.

(2) An accredited college or university may not represent that a course qualifies for credit by the Commission unless the accredited college or university receives written confirmation from the Commission that the course has been approved.

(g) Complaints and audits.

(1) If the Commission receives a complaint, or is presented with other evidence acceptable to the Commission, alleging that an accredited college or university is not in compliance with their accreditation association's curriculum accreditation standards for a real estate or real estate inspection course offered under subsections (c) or (d), or is not complying with the requirements of this Subchapter for a real estate or real estate inspection course not offered under subsections (c) or (d), the Commission may investigate the allegation and/or anonymously audit the course in question.

(2) If after an investigation and/or audit, the Commission determines that an accredited college or university is not in compliance with their accreditation association's curriculum accreditation standards for a real estate or real estate inspection course offered under subsections (c) or (d), or is not complying with the requirements of this Subchapter for a real estate or real estate inspection course not offered under subsections (c) or (d), the Commission will no longer issue credit to applicants for that course.

(3) If after investigation and/or audit, the Commission determines that multiple real estate or real estate inspection courses of an accredited college or university do not comply with their accreditation association's curriculum accreditation standards for a course offered under subsections (c) or (d), or do not comply with the requirements of this Subchapter for a course not offered under subsections (c) or (d), the Commission will no longer issue credit to applicants for any course from that college or university.

(h) Required approval of CE program and courses. An accredited college or university is not exempt from approval for real estate and real estate inspection CE programs and courses and must comply with all requirements for approval for providers, courses and instructors required by Subchapter G of this chapter.

535.67 Qualifying Education: Compliance and Enforcement (No change.)

NEW LANGAUGE RESULTING FROM SB 699

Sec. 1101.301. APPROVAL OF PROGRAMS AND COURSES OF STUDY. (a) The commission, as necessary for the administration of this chapter and Chapter 1102, may by rule establish standards for the approval of qualifying educational programs or courses of study in real estate and real estate inspection conducted in this state, excluding programs and courses offered by accredited colleges and universities.

(b) The commission shall determine whether a real estate or real estate inspection course satisfies the requirements of this chapter or [~~and~~] Chapter 1102.

(b-1) The commission may not prohibit correspondence or alternative delivery courses and programs in real estate inspection offered as continuing education by accredited colleges and universities. This subsection expires August 31, 2017.

(c) In establishing approval standards for an educational program under Subsection (a), the commission shall adopt rules setting an examination passage rate benchmark for each category of license issued by the commission under this chapter or Chapter 1102. The benchmark must be based on the average percentage of examinees that pass the licensing exam on the first attempt. A program must meet or exceed the benchmark for each license category before the commission may renew the program's approval to offer a program or course of study for the license category.

(d) The commission may deny approval of an application to offer a program or course of study if the applicant owns or controls, or has previously owned or controlled, an educational program or course of study for which approval to offer a program or course of study was revoked.

(e) Notwithstanding Subsection (c), the commission may renew a program's approval to offer a program or course of study on a probationary basis if the commission determines that the program is capable of meeting the benchmark under Subsection (c) within a reasonable time established by the commission.

Tony Slagle

From: Brittney Madden <Brittney.Madden@house.state.tx.us>
Sent: Friday, June 12, 2015 1:52 PM
To: Anthony Slagle
Subject: RE: Clarification on SB 699

Tony,
I appreciate your request for clarification on the amendment to SB 699. The Texas Real Estate Commission is correct in its interpretation of the language. It was not Rep. Kuempel's intent to restrict TREC's authority to determine whether a course offered by accredited universities meets the agency's license requirements for issuance or renewal.

If you have any other questions or would like additional clarification, please do not hesitate to contact me.

Brittney

Brittney Madden
Chief of Staff
Representative John Kuempel
District 44
(512) 463-0602
brittney.madden@house.state.tx.us

From: Anthony Slagle [mailto:anthony.slagle@trec.state.tx.us]
Sent: Thursday, June 11, 2015 1:58 PM
To: Brittney Madden
Subject: Clarification on SB 699

Brittney,

SB 699, as finally adopted, contains a provision that bars the Texas Real Estate Commission (TREC) from prohibiting correspondence or alternative delivery courses and programs in real estate inspection offered as continuing education by accredited colleges and universities (1101.301 (b-1), Occupations Code). This language was added as floor amendment in the House by Representative Kuempel.

It is our understanding that this provision merely reinforces an already established limit that the Commission does not have authority to dictate the subject matter and delivery method for courses offered by accredited colleges and universities. With that in mind, the Commission seeks clarification it was not Representative Kuempel's intent to restrict the Commission's long standing authority to determine whether a course offered by accredited colleges and universities meets the agency's requirements toward issuance or renewal of a license.

Thank you and please let me know if you have any questions.

Tony Slagle
Government Affairs
Texas Real Estate Commission

We are writing in opposition to certain proposed amendments to 22 TAC 535 relating to alternative delivery and correspondence courses as they relate to prospective real estate inspectors. The proposed changes would lessen the quality while simultaneously decreasing the quality of education for prospective inspectors. Moreover, the proposed changes would conflict with recently enacted SB 699 (84R) and be rendered invalid upon the effective date of that Act.

In particular, we have issue with the following proposed amendments as they relate to alternative delivery and correspondence courses:

1. Effective elimination of supervision and certification of courses offered by an accredited university or college.
2. Authorization of correspondence courses by entities other than accredited universities and colleges and their certified third party providers.
3. Elimination of the 30 day period for course review and approval.
4. Eliminating third-party validation of credit hours.
5. Allowing credit to be granted for a course after only twice the number of credit hours has passed.
6. Requiring independent TREC approval of courses offered by an accredited college or university that provides the course through their continuing education division.

The 84th Texas Legislature enacted, and the governor signed, SB 699 amending numerous provisions of the Occupations Code as it relates to real estate agents, brokers, and inspectors. The majority of the statutory changes related specifically to real estate agents and brokers. But, because certain educational requirements apply to agents, brokers, and inspectors alike, several of the statutory changes also apply to the educational requirements of inspectors. Recognizing this situation, the legislature approved newly enacted Section 1101.301(b-1), Occupations Code, which provides:

> (b-1) The commission may not prohibit correspondence or alternative delivery courses and programs in real estate inspection offered as continuing education by accredited colleges and universities. This subsection expires August 31, 2017.

The legislature clearly contemplated that the existing framework for the regulation of alternative delivery and correspondence courses offered by accredited colleges and universities should remain intact through August 31, 2017. This is a particularly relevant date because September 1, 2017 is the date in which most Acts of the legislature will become law following the 85th legislative session thereby allowing the legislature to research the role and quality of such courses and enact or refuse to enact legislation continuing the availability of these courses. Certain proposed amendments to 22 T.A.C. 535 would be a *de facto* and/or a *de jure* violation of this statutory provision and would almost certainly be invalidated by SOAH or in court.

To be clear, we take no issue with the proposed regulations as they relate to real estate agents or brokers. The Texas Occupations Code does not include any language relating to agents and brokers similar to that contained in Section 1101.301(b-1) nor does the legislative or regulatory history suggest one.

The points of contention above, however, clearly violate Section 1101.301(b-1), Occupations Code, as applied to providers of correspondence and alternative delivery education for prospective inspectors. Under current rules, an accredited college or university may offer a correspondence course in real estate inspection. The Texas Real Estate Commission (TREC) may accredit other providers, including alternative delivery and classroom courses. Recently enacted rules purport to allow TREC to determine whether an accredited college or university is in compliance with their accreditation standards. This has been interpreted by TREC as requiring a course offered by an accredited college or university to offer these courses for university or college credit. However, the accrediting bodies of colleges and universities do not require continuing and professional education to be offered for credit. The legislature clearly dismissed this interpretation by enacting Section 1101.301(b-1) to ensure courses offered as continuing education could not be prohibited.

En lieu of prohibiting courses offered by accredited colleges and universities, TREC is discussing potential rule changes that would have the same effect. It is well established law that a *de facto* or *de jure* violation of superseding statutory or constitutional authority will not stand scrutiny. TREC should not continue moving forward proposed regulations that will ultimately have no legal effect.

Because the general regulatory scheme proposed violates the legislative distinction between inspection courses offered by alternative delivery and correspondence providers and such providers of real estate agent and broker courses, we will not analyze each individually in this comment, but are happy to provide a point-by-point analysis if requested.

The overarching issue that exists is to what degree may TREC control the provision of inspector education courses offered by accredited colleges and universities. The simple answer is they may regulate general topics and content, nothing else. Accredited colleges and universities are statutorily authorized to offer these courses because continuing education falls under the university accreditation standards and the institution's reputation is put on the line when they choose to do so. These institutions have considerable experience offering correspondence and alternative delivery educational options including validating that students have properly satisfied course requirements. They are well suited, and the legislature expressly agreed, to provide this coursework. TREC, on the other hand, does not posses the experience or institutional know-how to do so. As such, the clear legislative intent and statutory language should be followed and alternative delivery and correspondence courses in real estate inspection should be separated from the proposed amendments to 22 T.A.C. 535.

As a related issue, it should be noted that the addition of Section 1101.301(b-1), Occupations Code is set to expire on August 31, 2017. S.B. 699 (84R) included numerous provisions directed

at improving the reporting of data relating to the educational background of students. Current data maintained by TREC shows that 95% of all newly licensed professional inspectors took at least one course through an accredited college or university, which was most likely offered via correspondence or alternative delivery. The TREC data, however, has been impugned by TREC itself, leaving the legislature little reliable information to work with. This was the impetus for certain changes in data collection included in SB 699. The more refined data collected by TREC post S.B. 699 will inform future legislative action. It would be highly inappropriate to adopt new rules that contravene the clear legislative intent and statutory language enacted by the legislature during what is clearly a legislative study period.

We respectfully request that you clarify the accredited college and university authority to offer courses in real estate inspection.
We appreciate you consideration of my comments,

Stan and Donna Harbuck

Tony Slagle

From: School of Building Inspection <info@hometraining.com>
Sent: Wednesday, July 29, 2015 9:09 AM
To: Kerri Lewis; Tony Slagle
Cc: stevenrinehart@hot.rr.com
Subject: Additional Comments for 7-29-2015 Inspector Education Subcommittee

During the last most recent legislative session, legislators discovered that TREC staff had been proposing rules during the last two years to double regulate public universities that offer home inspector pre-licensure courses. In fact, since the staff has been drafting, preparing, and getting the commission to pass these rules, two of the five major providers of home inspector pre-licensure coursework have fallen or will be falling by the wayside. This troubled many legislators and, in some cases, came as a shock to them.

As a result, the legislature passed and the governor signed SB 699. This law essentially requires a hands-off approach to regulating home inspector pre-licensure courses taught through public universities and colleges until further study could be made of the situation. In a way, the specific provision in the law that prohibits TREC from shutting down these courses could be called the "Public University Home Inspector Course Preservation Act." It protects these courses through the end of August, 2017 so that a study of some kind can be conducted to determine what, if any, TREC regulation is necessary for these courses--since they are already heavily regulated by accrediting bodies like the Southern Association of Colleges and Schools. In the meantime, the legislative directive is to keep any more of these courses from falling by the wayside until further study can be completed.

Stan and Donna Harbuck

TEXAS REAL ESTATE COMMISSION

DOUGLAS E. OLDMIXON, ADMINISTRATOR

PROPOSED RULE ACTION FROM THE AUGUST 17, 2015, MEETING OF THE COMMISSION
CHAPTER 535 GENERAL PROVISIONS
Subchapter G. Requirements for Continuing Education Providers, Courses and Instructors

535.70 Definitions

The following words and terms, when used in Subchapter G of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

~~(1) Alternative delivery--A method of course delivery other than classroom delivery where the course has been certified by a distance learning certification center acceptable to the Commission.~~

(1)[~~(2)~~] Applicant--A person seeking accreditation or approval to be a continuing education provider or instructor.

(2)[~~(3)~~] CE Instructor--A person approved by the Commission to teach continuing education courses.

(3)[~~(4)~~] CE Provider--Any person approved by the Commission; or specifically exempt by the Act, Chapter 1102, Texas Occupation Code, or Commission rule; that offers a course for which continuing education credit may be granted by the Commission to a license holder or applicant.

(4)[~~(5)~~] Classroom delivery--A method of course delivery where the instructor and students interact face to face and in real time, in either the same physical location, or through the use of technology.

(5)[~~(6)~~] Distance Education [~~Correspondence~~] delivery--A method of course delivery other than classroom delivery, including alternative delivery and correspondence delivery. [~~where the course has not been certified by a distance learning certification center acceptable to the Commission.~~]

(6)[~~(7)~~] Elective CE course--A continuing education course, other than a Non-elective CE course, approved by the Commission as acceptable to fulfil the continuing education hours needed to renew a license.

(7)[~~(8)~~] Non-elective CE course--A continuing education course, for which the subject matter of the course is specifically mandated by the Act, Chapter 1102, or Commission rule, that a license holder is required to take prior to renewal of a license.

(8)[~~(9)~~] Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

535.71 Approval of CE Providers

(a) Application for approval.

(1) Unless otherwise exempt under this subsection (b), a person desiring to be approved by the Commission to offer real estate or real estate inspection continuing education courses shall:

(A) file an application on the appropriate form approved by the Commission, with all required documentation;

(B) submit the required fee under §535.101 or §535.210 of this title; and

(C) maintain a fixed office in the state of Texas or 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 continuing education provider is required to maintain by this subchapter.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the mails the request.

(3) A CE provider is permitted to offer continuing education courses in both real estate and real estate inspector that have been approved by the Commission.

(b) Exempt Providers. The following entities may offer real estate inspector continuing educational courses without being approved by the Commission:

(1) a unit of federal, state or local government; or

(2) a nationally recognized building, electrical, plumbing, mechanical or fire code organization.

(c) Standards for approval. To be approved by the Commission to offer real estate or real estate inspector continuing education courses, 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 to manage the operation of the applicant, that person must meet this standard as if that person were the applicant.

(d) Approval notice. An applicant shall not act as or represent itself to be an approved CE provider until the applicant has received written notice of the approval from the Commission.

(e) Period of initial approval. The initial approval of a CE provider is valid for two years.

(f) Disapproval.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission will provide written notice of disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.

(g) Subsequent approval [~~Renewal~~].

(1) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for subsequent approval [~~renewal~~] for another two year period.

(2) Approval or disapproval of a subsequent [~~renewal~~] application shall be subject to the standards for initial applications for approval set out in this section.

535.72 Approval of Non-elective Continuing Education Courses

(a) General requirements.

(1) The non-elective continuing education courses must be conducted as prescribed by the rules in this Subchapter.

(2) Elective continuing education course are approved and regulated under §535.73 of this subchapter.

(b) Application for approval to offer non-elective real estate CE courses.

(1) A CE provider seeking to offer a specific non-elective real estate CE course as outlined in this section shall:

(A) submit a [~~Non-Elective~~] CE Course Application Supplement to the Commission; and

(B) pay the fee required by §535.101 of this title.

(2) A provider may file a single [~~separate~~] application for a CE course offered through multiple [~~is required for each course~~] delivery methods. [~~method~~] A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application, and pay all required fees, including a fee for content review.

(4)[~~(3)~~] The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Real estate non-elective CE courses. Every two years, the Commission shall approve subject matter and course materials to be used for the following non-elective real estate continuing education courses as required by the Act:

(1) a four [~~three~~] hour Legal [~~legal~~] Update [~~update~~] I: Laws, Rules and Forms course;

(2) a four [~~three~~] hour Legal Update II: Agency, Ethics and Hot Topics [~~ethics~~] course; and

(3) a six hour broker responsibility course.

(d) Course expiration.

(1) Each legal update [~~and ethics~~] course expires on December 31 of each odd-numbered year.

(2) Each broker responsibility course expires on December 31 of each even-numbered year.

(3) A CE provider must use a CE instructor who has received certification to teach the version of the real estate non-elective CE course being offered.

(e) Application for approval to offer non-elective inspector CE courses.

(1) A CE provider seeking to offer a specific non-elective inspector CE course as outlined in this section shall:

(A) submit:

(i) ICE Course Application form and the Texas Standards of Practice/Legal/Ethics Update Course approval form (PIEAC-SP_LEU-1); or

(ii) Qualifying Real Estate (or Inspector) Qualifying Course Application form and the Texas Standards of Practice/Legal/Ethics Update course approval form (PIEAC-SP_LEU-1); and

(B) pay the fee required by §535.210 of this title.

(2) A separate application is required for each course delivery method.

(f) Requirements for inspector non-elective CE courses.

(1) A Texas Standards of Practice/Legal/Ethics Update course shall contain the following topics, the units of which are outlined the Texas Standards of Practice/Legal/Ethics Update Course Approval form (PIEAC-SP_LEU-1), adopted herein by reference:

(A) 4 hours of Standards of Practice;

(B) 2 hours of Legal; and

(C) 2 hours of Ethics.

(2) A Texas Standards of Practice/Legal/Ethics Update course expires two years from the date of approval and providers must reapply and meet all current requirements of this section to offer the course for another two years.

(g) Delivery method.

(1) Non-elective CE courses must [~~meet the requirements of §535.75 of this subchapter and~~] be delivered by one of the following delivery methods:

(A) classroom delivery [~~method~~];

(B) distance education [~~alternative~~] delivery [~~method~~]; or

(C) a combination of (A) and (B), if~~:~~

~~(i)~~ at least 50% of the combined course is offered by classroom delivery. [~~method; and~~]

[~~(ii) the portion of the combined course offered through alternative delivery is taken from a full course that has already been certified for alternative delivery by a distance learning certification center acceptable to the Commission;~~]

[~~(D) a correspondence course that is offered by a provider in association with an accredited college or university if the course is offered in accordance with the college or university's accreditation association's curriculum accreditation standards; or~~]

[~~(E) a combination of (A) and (D), if:~~

~~(i) at least 50% of the combined course is offered by classroom method; and~~

~~(ii) the combined course is offered by a provider in association with an accredited college or university in accordance with the college or university's accreditation association's curriculum accreditation standards.~~]

[~~(2) Using the name of the provider "in association with" the name of the college or university on the course completion certificate constitutes certification to the Commission that the course was offered in compliance with the college or university's accreditation association's curriculum accreditation standards.~~]

(h)[~~(3)~~] Except as provided in this section, non-elective [~~Non-elective~~] CE courses must meet the presentation requirements of §535.65(g) [~~§535.65~~] of this title.[~~; and~~]

(1) Classroom Delivery. The provider must submit a course completion roster in accordance with §535.75(c).

(2) Distance Education Delivery:

(A) Non-elective real estate courses are designed by the Commission for interactive classroom delivery. Acceptable demonstration of a method to engage distance education delivery students in interactive discussions and group activities, as well as additional material to meet

the course objectives and time requirements are required for approval.

(B) The provider must submit a course completion roster in accordance with §535.75(c).

[~~(4) Non-elective CE courses meet the examination requirements of §535.75 of this subchapter.~~]

(i)Course examinations.

(1) A provider must administer a final examination promulgated by the Commission for non-elective CE courses beginning January 1, 2017 as follows:

(A) For classroom delivery, the examination will be given as a part of class instruction with the correct answers being reviewed by the instructor and students will not be graded;

(B) For distance education delivery, the examination will be given after completion of regular course work and must be:

(i) proctored by a member of the provider faculty or staff, or third party proctor set out in §535.65(i)(5) of this title, who is present at the test site and has positively identified that the student taking the examination is the student registered for and who took the course; or

(ii) administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student registered for and who took the course;

(iii) graded with a pass rate of 70% in order for a student to receive credit for the course; and

(iv) kept confidential.

(2) A provider may not give credit to a student who fails a final examination and makeup final examination.

(j) Makeup final course examination.

(1)If a student fails a final course examination, a provider may permit the student to retake the final examination only once.

(2) A student shall complete a makeup final examination no later than the 30th day after the date the original class concludes and the second examination must be different from the first examination.

(3) A student who fails the final course examination a second time is required to retake the course prior to retaking the final course examination.

(k)[~~(h)~~] Approval of currently approved courses by a subsequent provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that subsequent provider must:

(A) submit the CE [~~applicable~~] course application supplement [~~approval~~] form(s);

(B) submit written authorization to the Commission from the author or provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the currently approved course, the subsequent provider is required to:

(A) offer the course as originally approved, including expiration date, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

(l)[~~(i)~~] Approval notice. A CE Provider shall not offer non-elective continuing education courses until the provider has received written notice of the approval from the Commission.

(m)[~~(j)~~] Required revision of a currently approved non-elective CE course. Providers are responsible for keeping current on changes to the Act and Commission Rules and must supplement materials for approved non-elective CE courses to present the current version of all applicable statutes and rules on or before the effective date of those statutes or rules.

535.73 Approval of Elective Continuing Education Courses

(a) General requirements.

(1) This subsection applies to continuing education providers seeking to offer an elective CE course approved by the Commission.

(2) Non-elective CE courses are approved and regulated under §535.72 of this subchapter.

(b) Application for approval of an elective CE course.

(1) For each continuing education course an applicant intends to offer, the applicant must:

(A) submit the appropriate CE Course Application form; and

(B) pay the fee required by §535.101 and §535.210 of this title.

(2) A provider may file a single application for a CE course offered through multiple delivery methods. A fee is required for content review of each CE course and for each distinct delivery method utilized by a provider for that course.

(3) A provider who seeks approval of a new delivery method for a currently approved CE course must submit a new application and pay all required fees, including a fee for content review.

(4)[~~(2)~~] The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Standards for course approval of elective CE course.

(1) To be approved as a elective CE course by the Commission, the course must:

(A) cover subject matter appropriate for a continuing education course for real estate or real estate inspection license holders; [~~and~~]

(B) be current and accurate; and [~~.~~]

(C) be at least one and no more than 10 hours long.

(2) A provider must [~~can~~] demonstrate that a course meets the requirements under paragraph (1) of this subsection by submitting a statement describing the objective of the course and the relevance of [~~how~~] the subject matter [~~is related~~] to activities for which a real estate or inspector [~~a~~] license [~~holder~~] is required [~~to meet~~], including but not limited to relevant issues in the real estate market or topics which increase or support the license holder's development of skill and competence.

(3) The course must be presented in full hourly units.

(4) The course must be delivered by one of the following delivery methods:

(A) classroom delivery [~~method~~];

(B) distance education [~~alternative~~] delivery [~~method~~]; or

(C) a combination of (A) and (B), if:

[~~(i)~~] at least 50% of the combined course is offered by classroom delivery. [~~method; and~~]

[~~(ii) the portion of the combined course offered through alternative delivery is taken from a full course that has already been certified for alternative delivery by a distance learning certification center acceptable to the Commission; or~~]

[~~(D) a correspondence course that is offered by a provider in association with an accredited college or university if the course is offered in accordance with the college or university's curriculum accreditation standards. Using the name of the provider "in association with" the name of the college or university on the course completion certificate constitutes certification to the Commission that the course was offered in compliance with the college or university's curriculum accreditation standards under this subsection.~~]

[~~(5) Elective CE courses meet the presentation requirements of §535.65 of this title; and~~]

[~~(6) Elective CE courses meet the examination requirements of §535.75 of this subchapter.~~]

(d) Approval notice.

(1) A CE Provider shall not offer elective continuing education courses until the provider has received written notice of the approval from the Commission.

(2) An elective CE course expires two years from the date of approval and providers must reapply and meet all current requirements of this Section to offer the course for another two years.

(e) Approval of currently approved courses by a subsequent provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that subsequent provider must:

(A) submit the applicable course approval form(s);

(B) submit written authorization to the Commission from the provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the currently approved course, the subsequent provider is required to:

(A) offer the course as originally approved, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

535.74 Approval of Continuing Education Instructors [~~for Elective Courses~~]

[~~(a) General requirements.~~

~~(1) This subsection applies to a person seeking approval from the Commission to be an elective CE course instructor.~~

~~(2) Non-elective CE course instructors are approved and regulated under §535.63 of this title.~~]

(a)[~~(b)~~] Application for approval.

(1) A person desiring to be approved by the Commission to be an instructor for elective real estate or real estate inspection CE courses shall:

(A) file an application on the appropriate form approved by the Commission; and

(B) pay the fee the required by §535.101 or §535.210 of this title.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(b) Certification required to teach real estate non-elective CE courses.

(1) An applicant may not teach a real estate non-elective CE course until the application has received written certification from the Commission to teach a specific non-elective continuing education course.

(2) To obtain certification to teach a real estate non-elective CE course, the applicant must:

(A) be currently approved by the Commission as an instructor for qualifying courses under §535.63 in the subject areas of:

(i) Principles of Real Estate, Law of Agency and Law of Contracts to teach Legal Update I and II; or

(ii) Principles of Real Estate, Law of Agency, Law of Contracts and Real Estate Brokerage to teach Broker Responsibility;

(B) successfully complete an instructor training program approved by the Commission for the non-elective CE course for which certification is sought; and

(C) receive a passing grade of at least 80% on the course final examination promulgated by the Commission.

(3) A previously certified instructor must be recertified to teach a non-elective CE course whenever the previous course has expired and a new course has been approved.

(4) An instructor's certification to teach a legal update course expires on December 31 of every odd-numbered year.

(5) An instructor's certification to teach the broker responsibility course expires on December 31 of every even-numbered year.

(c) to be approved as an instructor of Texas Standards of Practice/Legal/Ethics Update, or as an instructor of a ride along inspection course as defined in §535.218 of this title, an applicant must have five years of active licensure as a Texas professional inspector, and have:

(A) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(B) three years of experience in teaching and/or sponsoring trainees or inspectors.

(c) Approval notice. An applicant shall not act as or represent itself to be an approved real estate inspection instructor until the applicant has received written notice of the approval from the Commission.

(d)[~~(c)~~] Standards for instructor approval for continuing elective education courses. To be

approved as an instructor by the Commission to teach real estate or real estate inspection elective CE [~~continuing education~~] courses, the applicant must satisfy the Commission [~~commission~~] as to:

(1) the applicant's honesty, trustworthiness, and integrity; and

(2) the person's competency in the subject matter to be taught and ability to teach effectively.

(e)[~~(d)~~] Approval notice. An applicant shall not act as or represent itself to be an approved elective CE instructor until the applicant has received written notice of the approval from the Commission.

(f)[~~(e)~~] Period of [~~initial~~] approval. The [~~initial~~] approval of an elective CE instructor is valid for two years.

(g)[~~(f)~~] Disapproval of an application.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission shall disapprove the application and provide written notice of the disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section shall be in Travis County.

(h)[~~(g)~~] Subsequent approval [~~Renewal~~].

(1) Not earlier than 90 days before the expiration of its current approval, a CE instructor may apply for approval [~~renewal~~] for another two year period.

(2) Approval or disapproval of a subsequent [~~renewal~~] application shall be subject to the standards for initial applications for approval set out in the section.

535.75 Responsibilities and Operations of Continuing Education Providers

(a) Except as provided by this Section, CE providers must comply with the responsibilities and operations requirements of §535.65 of this title.

(b) Use of approved Instructor. The use of approved CE instructor is governed by this subsection.

(1) Except as provided by this subsection, a CE provider must use an instructor that is currently approved by the Commission.

(2) Each CE instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor;

(3) An CE instructor shall teach a course in substantially the same manner represented to the Commission in the instructor's manual or other documents filed with the application for course approval form;

(4) A CE provider may use the services of a guest instructor who is not approved as a CE instructor by the Commission for real estate or inspector elective CE courses provided that:

(A) that guest instructor instructs for no more than a total of 50% of the course; and

(B) a commission approved CE instructor remains in the classroom during the guest instructor's presentation.

(5) A CE provider may use the services of a guest instructor who is not approved as a CE instructor by the Commission for 100% of a real estate or inspector elective CE courses provided that

(A) the CE provider is:

(i) an accredited college or university;

(ii) a professional trade association that is approved by the Commission as a CE provider under §535.71 of this subchapter; or

(iii) an entity exempt under §535.71 of this subchapter; and

(B) the course is supervised and coordinated by a Commission approved CE instructor who is responsible for verifying the attendance of all who request CE credit.

(c) CE course examinations. Examinations are only required for CE courses offered through distance education [~~alternative delivery or correspondence~~] delivery and must comply with the requirements in §535.72(i)(1)(B) [~~§535.66~~] of this section and have a minimum of four questions per course credit hour [~~title~~].

(d) Course completion roster. Instead of providing a course completion certificate, upon completion of a course, a CE provider shall submit a class roster to the Commission as outlined by this subsection.

(1) Classroom:

(A) A provider shall submit to the Commission a class roster in a format approved by the Commission not later than the 10th day after the date a course is completed.

(B) A course completion roster shall include:

(i) the provider's name and license;

(ii) a list of all instructors whose services were used in the course;

(iii) the course title;

(iv) course numbers[~~, including any Commission pre-approval number received~~];

(v) the number of classroom credit hours[~~, or other recognized educational unit involved in the course~~];

(vi) the date of issuance;

(vii) the dates the student registered for, began and completed the course; and

(viii) the signature of an authorized representative of the provider who was in attendance and for whom an authorized signature is on file with the Commission.

(C) The Commission shall not accept signature stamps or unsigned course completion rosters.

(2) Distance Education [~~Alternative or correspondence~~] delivery method [~~methods~~]. A provider shall submit a Distance Education [~~an Alternative/Correspondence~~] Instructional Methods Reporting form[~~, or information contained in that form~~] by electronic means acceptable to the Commission, for each student completing the course not earlier than the number of hours for course credit [~~24 hours~~] after the student starts the course and not later than the 10th day after the student completed the course.

(3) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(4) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(e) Maintenance of records. Maintenance of CE provider's records is governed by this subsection.

(1) A CE provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) All records may be maintained electronically but must be in a common format that is legibly and easily printed or viewed without additional manipulation or special software.

(3) A CE provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(4) Upon request, a CE provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(f) Changes in Ownership or Operation of an approved CE Provider. Changes in Ownership or Operation of an approved CE Provider are governed by this subsection.

(1) An approved provider shall obtain the approval of the Commission at least 30 days in advance of any material change in the operation of the provider, including but not limited to changes in:

(A) ownership;

(B) management; and

(C) the location of main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide a Principal Information Form for each proposed new owner who would hold at least a 10% interest in the provider to the Commission.

535.77 CE Providers: Compliance and Enforcement

(No change.)