

## Proposed Amendments – TREC Rule 535.141

### Initiation of Investigation; Order Requirements

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(a) A complaint which names a licensed real estate sales agent as the subject of the complaint but does not specifically name the sales agent's sponsoring broker, is a complaint against the broker sponsoring the sales agent at the time of any alleged violation for the limited purposes of determining the broker's involvement in any alleged violation and whether the broker fulfilled his or her professional responsibilities provided the complaint concerns the conduct of the sales agent as an agent for the broker.

(b) The designated broker is responsible for all real estate brokerage activities performed by, on behalf of, or through a business entity. A complaint which names a business entity licensed as a broker as the subject of the complaint but which does not specifically name the designated broker is a complaint against the designated broker at the time of any alleged violation for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities. A complaint which names a sales agent sponsored by a licensed business entity but which does not specifically name the designated broker of the business entity is a complaint against the designated broker at the time of any alleged violation by the sales agent for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities provided the complaint concerns the conduct of the sales agent as an agent of the business entity.

(c) Using the criteria specified by Section 1101.204 of the Act, the Commission prioritizes and investigates complaints as follows:

(1) Level 1.

(a) Fraud or misrepresentation that involves loss of >\$10K.

(b) Personal safety issues.

(c) Unlicensed activity.

(d) Mortgage Fraud.

(2) Level 2.

(a) Fraud or misrepresentation that involves loss of money or property <\$10,000.

(b) Negligence.

(c) Allegations involving education providers.

(d) Violations of Chapter 1102, Texas Occupations Code:

(A) 1102.301 negligence or incompetence by an inspector.

(B) 1102.302 employment contingent on inspection report.

(C) 1102.303 acting in conflicting capacities, i.e. inspector, broker, principal.

(D) 1102.305 agreeing to perform repairs in connection with inspection.

(e) Violations of Standards of Practice, §§535.227- 535.231 of this chapter.

(3) Level 3.

(a) Technical violations.

(b) Chapter 1102 complaints other than those listed in Level 2 above. [~~Once a written and signed complaint has been filed with the Commission, the Commission has jurisdiction to consider, investigate and take action based on the complaint. Complaints may be withdrawn only with the consent of the Commission.~~]

(d) If information obtained during the course of an investigation of a complaint reveals reasonable cause to believe the respondents to the complaint may have committed other violations of the Act or rules, no additional authorization shall be required to investigate and take action based upon the information.

(e) If the Commission suspends or revokes a license or probates an order of suspension or revocation against a license holder, the Commission may monitor compliance with its order and initiate action based on the authority of the original complaint or original authorization by the members of the Commission.

(f) A person whose license has been suspended may not during the period of any suspension perform, attempt to perform, or advertise to perform any act for which a license is required by the Act or Rules.

(g) A person whose license is subject to an order suspending the license must provide notice in writing not later than the third day before the date of the suspension as follows:

(1) if the person is a sales agent, notify his or her sponsoring broker in writing that his or her license will be suspended;

(2) if the person is a broker, notify any sales agent he or she sponsors, or any business entity for which the person is designated broker that:

(A) his or her broker license will be suspended; and

(B) once the suspension is effective, any sales agent he or she sponsors, or who is sponsored by the business entity, will no longer be authorized to engage in real estate brokerage unless:

(i) the sales agent is sponsored by another broker and files a change of sponsorship with the Commission; or

(ii) the business entity designates a new broker and files a change of designated broker with the Commission;

(3) If the person is an apprentice inspector or real estate inspector, notify his or her sponsoring professional inspector that his or her license will be suspended;

(4) if the person is a professional inspector notify any apprentice or real estate inspectors he or she sponsors that:

(A) his or her professional inspector license will be suspended; and

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(B) once the suspension is effective any apprentice or real estate inspectors he or she sponsors will no longer be authorized to inspect any real property unless the apprentice or real estate inspectors associate with another professional inspector and file a change of sponsorship with the Commission.

(5) if the person has a contractual obligation to perform services for which a license is required by law or Commission rule, notify all other parties to the contract that the services cannot be performed during the suspension;

(6) if the person is a sales agent and is directly involved in any real estate transaction in which the sales agent acts as an agent, notify all other parties, including principals and other brokers, that the person cannot continue performing real estate brokerage services during the suspension; and

(7) if the person holds money in trust in any transaction in which the person is acting as a broker, remit such money in accordance with the instructions of the principals.

(h) If, in conjunction with an application or disciplinary matter, an applicant or license holder agrees to automatic suspension or revocation of his or her license for failing to comply with an administrative term or requirement of an agreed order such as payment of a penalty or completion of coursework, the license may be automatically suspended or revoked with no further action by the Commission.

(i) A broker may not assign to another broker a listing agreement, buyer's representation agreement or other personal service agreement to which the broker is a party and which obligates the broker to perform acts for which a license is required without first obtaining the written consent of the other parties to the contract.

**Proposed TREC Rule 535.142 (NEW)**

**Consumer Complaint Processing**

§535.142. Consumer Complaint Processing.

(a) Not later than the 7<sup>th</sup> day after receipt of a signed, written complaint, the Commission staff shall:

(1) assign the complaint a case number in the complaint tracking system; and

(2) send written acknowledgement of receipt to the complainant.

(b) Once a signed, written ~~and signed~~ complaint has been filed with the Commission, the Commission has jurisdiction to consider, investigate, and take action based on the complaint. Complaints may be withdrawn only with the consent of the Commission.

Commented [KW2]: Language from §535.141(c)

(c) Not later than the 30th day after receiving a complaint, the Commission staff will send written notice to the complainant of staff's evaluation regarding the complaint. This evaluation may be that the case will be investigated or that the Commission lacks jurisdiction over the complaint.

(d) If the Commission staff determines at any time that the complaint is not within the Commission's jurisdiction, the complaint will be dismissed with no further processing. The Commission staff will send written notice to the complainant regarding this determination within 14 days. If the respondent has been notified of the complaint, Commission staff will also send written notice to the respondent.

(e) If the Commission staff determines at any time that no violation exists, the complaint will be dismissed with no further processing. The Commission staff will send written notice to the complainant and each respondent regarding this determination within 14 days.

(f) Staff may request additional information from any person, if necessary, to determine how to proceed with the complaint.

(1) When information is requested from a complainant, the complainant must respond within a reasonable time, or the complaint may be closed and

no further action will be taken. If the complaint is closed under this subsection, Commission staff will send written notice to the complainant and the respondent, if appropriate.

(2) When information, documents, books, or records are requested from a respondent, the respondent must respond within a reasonable time, or the failure to respond may violate §1101.652(a) or (a-1) of the Act.

(3) For purposes of this section and §1101.652(a) and (a-1) of the Act, “a reasonable time” means 14 days from receipt of a request made by the Commission staff.

(4) The Commission staff may agree to extend the time to respond for good cause upon receipt of a written request for more time from a complainant or respondent.

(g) If Commission staff determines that a complaint is within the Commission’s jurisdiction, a copy of the complaint, including attachments, will be sent to the respondent.

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(h) The Commission staff may assign a complaint to an investigator to conduct a field investigation or conduct an investigation by requesting a written response and documents. A field investigation is generally completed within six months after a complaint is opened.

(i) The Commission staff will periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, “periodically” means at least once every 120 days.

(j) The Commission staff may dismiss a complaint when it determines there is insufficient evidence to prove a case at a hearing. Staff will send written notice to the complainant and each respondent within 14 days after a complaint is dismissed under this subsection.

(k) Commission staff may issue an advisory letter to a respondent when it determines that a warning is sufficient to deter certain conduct or when it seeks to educate a respondent about proper conduct to avoid a future violation.

(l) When Commission staff determines a violation exists, staff may seek to resolve the case through an agreed order with the respondent.

(m) A case that is not dismissed or resolved by an advisory letter or agreed order is usually set for a hearing at the State Office of Administrative Hearings not later than one year after the complaint is filed with the Commission.

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**Proposed Repeal of TREC Rule 535.161**

**[Failing to Provide Information]**

For the purposes of §1101.652(a)(4) of the Act, "reasonable time" means 10 working days from receipt of a request made by the Commission.]

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## Proposed Amendments to TREC Rule 533.8

### Motions for Rehearing

(a) The timely filing of a motion for rehearing is a prerequisite to appeal. The motion must be filed with the Commission by ~~(Commission's Executive Director through)~~:

- (1) delivering the motion in-person to ~~(delivery at)~~ the Commission's headquarters;
- (2) sending the motion via email to ~~(the email address)~~ general.counsel@trec.texas.gov ~~(listed for Administration and Management Services on the Commission's website)~~; or
- (3) mailing the motion via U.S. Mail to:

Texas Real Estate Commission  
ATTN: General Counsel  
P.O. Box 12188  
Austin, TX 78711-2188 ~~(the fax number listed for Administration and Management Services on the Commission's website).~~

(b) Motions for rehearing are controlled by the APA, §§2001.145 - 2001.147 and this section.

(c) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error, such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the Commission will take no action and the motion will be overruled by operation of law.

(d) The Commission delegates authority to hear and rule on motions for rehearing to the Commission's Enforcement Committee, consisting of three Commission members appointed by the Commission chair.

(e) Any party may request oral arguments before the Enforcement Committee prior to the final disposition of the motion for rehearing. If the Enforcement Committee grants a request for oral argument, oral arguments will be conducted in accordance with paragraphs (1) - (5) of this subsection.

(1) The chair of the Enforcement Committee or the member designated by the chair to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence, such as excerpts of the record before the presiding officer, may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence

**Commented [KW4]:** Clarify that a copy of the motion for rehearing must be provided to all parties?

**Commented [KW5]:** Clarify this process, or substitute language and voting process similar to PUC Rule?

**Commented [KW6]:** Clarify what happens if no request for oral argument is made or if a request is denied?

may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the original hearing, or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting oral arguments, the party filing the motion will have the burden of proof and persuasion and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal, subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Enforcement Committee may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Enforcement Committee, and any discussion by the members of the Enforcement Committee, the presiding member shall call for a vote on the motion. A member of the Enforcement Committee need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the Enforcement Committee members are present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(f) A petition for judicial review must be filed in a District Court of Travis County Texas as provided by the APA. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.

(g) A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

(h) If, after judicial review, the administrative penalty is reduced or not assessed, the Executive Director shall remit to the person charged the appropriate amount, plus accrued interest if the administrative penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the Executive Director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed administrative penalty is paid to the Commission and ending on the date the administrative penalty is remitted.