



TREC Advisor

The agency exists to safeguard the public interest and protect consumers of real estate services. In accord with state and federal laws the agency oversees real estate brokerage, appraisal, inspection, home warranty and timeshare interest providers. Through education, licensing and regulation, the agency ensures the availability of qualified and ethical service providers, thereby facilitating economic growth and opportunity in Texas.

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Online Relationship Management Tool Launches

The Texas Real Estate Commission is pleased to announce the launch of its new Relationship Management Tool (RMT) as part of its ongoing effort to enhance the capabilities of the agency's "My License Online Services". This new tool allows license holders to change their sponsorship relationships through a simple, online process.

Brokers and salespeople can now log into their "My License Online Services" account and send invitations to prospective sponsors or sponsorees with just a few clicks of a mouse. The tool allows a licensee to search all available license holders by name, region, and license number. Best of all, both brokers and sales people can initiate a request for sponsorship. Once accepted or refused, the tool notifies all affected parties by email.

As an added benefit, the same tool allows sponsoring brokers to delegate supervisory status online to any of their sponsored sales persons, which in turn will notify the Texas Real Estate Commission as to which of the broker's sponsorees are required to take the new Broker Responsibility course prior to their next license renewal. If a salesperson has been delegated supervisory status by their broker, it will be reflected on the salespersons "My License Online Services" account on the "Manage My Sponsorship" page.

One important exception concerns associated

brokers. If a broker has associated with another broker, and the primary broker has delegated supervisory responsibility to that associate broker, this delegation must be reported to the agency on a form, since no "sponsorship" relationship exists. The broker with supervisory responsibility is clearly required to take the "Broker Responsibility Course" as mandatory continuing education. The form is on the "Miscellaneous Forms" page under the "Forms" tab on the website.

TREC has long been working on new ways to improve its services to license holders. Sponsorship requests make up a large volume of the paper work received and processed by the agency. By alleviating the need for licensees to wait on agency staff to process their change of sponsorship paper work, the RMT allows licensees to get back to the business of real estate quicker. "This is a huge benefit for our license holders and the consumer. Now no real estate transaction will be delayed because of sponsorship issues, and our license holders can take their sponsorship status into their own hands with ease" Administrator Douglas Oldmixon said about the new relationship management tool.

To utilize this tool as well as all of TREC's online services, please go to www.trec.texas.gov and click on the "My License Online Services" button at the top of the home page.

From the Administrator...

Where did the time go? Seems just yesterday we were closing out the fiscal year in good shape and looking forward to the new one with anticipation. If our second year of transition to semi-independence goes at least as well as our first, we should be in great shape to manage our future. Rest assured we will take the steps needed to ensure the outcome is as we hope and expect. Agency staff keeps working at finding ways to streamline and simplify our processes and our path remains bright as we press toward the close of the first quarter fiscal year 2013.

We had a very successful launch of the new online Relationship Management Tool which allows users to self-manage all sponsorship relationships and to designate sponsored agents as supervisors. This project has been enormously challenging but well worth the wait. This tool has the potential to eliminate at least a third of all applications being processed manually by our Education and Licensing Division! Now agency staff will be freed up to work on more projects, and process other applications even faster. We are working with the local REALTOR boards to help get the message out about this new easy to use tool.

A new public member has been appointed to the Commission by Governor Perry. Austin attorney Thomas John (TJ) Turner will be joining us for his first meeting in November and we are very excited to welcome him. Congratulations to Mr. Turner; we look forward to your participation in our mission.

After months of searching we have finally filled the position of TREC Standards and Enforcement Director. Mark Moore has been hired as the new SES Director and Sharon Harris has been promoted to Deputy Director. Mark comes to us from his current position as the Senior Counsel at the Texas Legislative Council, and also has significant enforcement experience from his time as Assistant

General Counsel at the Comptroller's office, as well as additional litigation experience, including in real estate, from private legal practice in CA & TX. Sharon has performed extremely well under challenging conditions in her role as Acting Director of the SES Division since April 1 and has earned this step up. She will also maintain her

responsibilities for our key ADR and Standards programs. We are grateful for her many and continued contributions to the SES team's success. Congratulations to these leaders as they assume their new responsibilities.

I recently attended the Association of Real Estate License Law Officials (ARELLO) annual conference with Loretta Dehay, TREC's General Counsel, where the agency received an education award for its new Broker Responsibility course during the conference. Congratulations to all the team, both inside and outside the agency, and the Commissioners who worked so hard to put this great course together.

Our annual participation in the State Employee Charitable Campaign (SECC) has gotten off to a strong start and as I write this we are already past the halfway mark of our fundraising goal. Lots of fun events are planned to make the SECC effort a great success, starting with TRECfast Tacos and Queso Quest, then culminating in a costume contest and silent auction on Halloween. The SECC is a great opportunity for our TREC team to give back to our community in a big way. I am so fortunate to work with such a great group who always finds ways to exceed expectations.

I hope you all have a safe and happy Halloween. I look forward to seeing you at our next Commission meeting on November 5th here at the Stephen F Austin building.



Douglas E. Oldmixon

Important Dates to Remember

TREC Commission Meeting— Nov 5

TREC Offices Closed—Nov 22 and 23

Alert For all Licenses Holders: Imposter Investigator Reported

The Texas Real Estate Commission has been recently made aware of a possible imposter acting as a Standard & Enforcement Services' investigator.

It appears someone has created a fictitious email account slightly different from the "@trec.state.tx.us" email handle and is using "@trec-state.tx.us". This person(s) is calling and/or emailing Licensees posing as a TREC investigator and attempting to obtain personal identification information. Licensees and the public should be aware that this person is not an employee of the Texas Real Estate Commission. Below is an example of the email and image being sent to license holders. DO NOT give out

your private information to anyone until confirming with the agency that they are, in fact, TREC investigators.

No investigator or TREC staff would EVER email or call license holders asking for private information. In some rare cases TREC staff may ask for identifying information when the license holder has called the agency to ask for information. For more information or to report additional instances of these "Imposter" investigator requests please email information@trec.texas.gov.

The image below shows an example email that was sent to a license holder by the "imposter" investigator.

From: <stephanie.villores@trec-state-tx.us>

Date: October 9, 2012 3:46:39 PM CDT

To:

Subject: CRIMINAL HIT

Hi Mr. R ,

Here is a screen shot of the Criminal Hit , I will be requesting prints from the North Carolina State Trooper , Once that is received I will update you further .

Regards

Stephanie received

Senior Investigator

Texas Real Estate Commission

Stephen F. Austin Building

1700 N. Congress Ave., Suite 400

Austin, TX 78701

Tel - 512 222 3167 opt 1

<http://www.trec.state.tx.us>

email : investigations@trec-state-tx.us

The screenshot shows a criminal hit report for a license holder. The name is partially redacted with a black box, followed by "s (61)" and a red box containing the text "NOT LIKELY". Below this, the state is listed as "NC" and the date of birth is also redacted. The address is listed as "Address:". Below the address, there are four columns: "Sex" (Male), "Race" (WHITE), "Height" (N/A), and "Weight" (N/A). At the bottom, the offense is listed as "Offense: Arraigned: driving while impaired".

TREC Staffing Updates



Mark Moore

TREC is happy to announce that the TREC Standards & Enforcement Services (SES) Division will have new leadership beginning November 1. Mark Moore has been hired as the new SES Director and Sharon Harris has been promoted to Deputy Director.

Mark comes to us from his current position as the Senior Counsel at the Texas Legislative Council, and also has significant enforcement experience from his time as Assistant General Counsel at the Comptroller's office, as well additional litigation experience, including in real estate, from private legal practice in CA & TX.

Sharon Harris performed extremely well under challenging conditions in her role as Acting Director of the SES Division since April 1 and has earned this step up. She will also maintain her responsibilities as the key ADR and Standards programs. We are grateful for her many and continued contributions to the SES team's success.



Sharon Harris



Denise Sample

Denise Sample joined TREC as the Licensing Manager on August 13, 2012. Prior to joining TREC, Denise worked at the Texas State Board of Plumbing Examiners as Licensing Manager and Executive Assistant. She is originally from Alvin, TX, but moved to Austin in 1999 to attend the University of Texas and never left. Denise and her husband Kevin live in central Austin with their 18-month old son Arlo and their two dogs Mako and Botch.

Congratulations to Edward Elizondo, who was recently announced as the agency's outstanding performer! Edward is the smiling face at the front desk at the agency. He may have answered on of your emails that was sent to the agency information email. He is a hard worker who is never afraid to go above and beyond the call of duty to make sure license holders are taken care of. Edward enjoys cold pizza, the "Walking Dead", and spending time with his three furry children Brodie, Petie and Rhowdy.

Thanks so much for all your hard work Edward!



Edward Elizondo



Thomas (TJ) Turner

Governor Rick Perry has appointed Thomas John (TJ) Turner as a new public member of the Texas Real Estate Commission (TREC) with a term to expire January 31, 2015. Mr. Turner replaces Dona Scurry of El Paso who recently passed away.

Mr. Turner is a partner at Cain & Skarnulis, LLP in Austin. His practice focuses on litigation and appellate work in a variety of matters including business disputes and torts, employment, professional negligence, fiduciary liability, construction, and insurance.

He previously served as a briefing attorney for the Eleventh Court of Appeals, as Assistant General Counsel to the Governor of Texas, and as an Assistant Attorney General for the State of Texas. At the Governor's Office, he provided counsel in the areas of local government, natural resources, and open government.

Mr. Turner graduated from Baylor University School of Law. Prior to law school, he attended Texas Tech University where he earned a B.S. in Public Relations. He is also active in the community and involved with the Austin Young Lawyers Association, the Baylor Business Network, the Texas Tech Ex-Students Association and First United Methodist Church of Austin where he serves on the Administrative Board and Board of Trustees.

The Commission has a challenging agenda and welcomes the addition of Mr. Turner's perspective and expertise.

When an Associate Broker is a Supervisor

With the launch of the new Relationship Management Tool also comes the ability to designate supervisory status. One issue TREC has been made aware of is the "associate broker relationship". Although TREC does not officially recognize this as a relationship with the agency, these "associate brokers" will need to be designated as a supervisor under the same requirements as sales people who supervise.

Because there is no way for a broker to sponsor another broker using the Relationship Management Tool TREC has created this new form. The "Notice of Delegation of Supervising Licensee" will need to be sent to TREC by the designated broker in order to notify the agency that these "associate brokers" must also take the new Broker Responsibility course.

To download this form and all of our other updated forms please go to the TREC website www.trec.texas.gov.

PROPOSED RULES

Chapter 533 Practice and Procedure

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

The amendments §533.4 address situations in which a respondent fails to answer after receiving a notice of alleged violation or fails to attend a hearing. Failure to answer or attend a hearing will result in a default order against the respondent where findings of fact and conclusions of law set out in the notice of violation will be considered as admissions. If a case is dismissed from SOAH, the commission will be required to enter a default order against the respondent. If SOAH enters a default proposal for decision, the allegations contained in the petition filed with SOAH will be considered admissions.

The amendments to §533.7 clarify that while the commission welcomes SOAH judge recommendations regarding sanctions, the commission is responsible for imposing disciplinary action or assessing administrative penalties.

The amendments to §533.8 require the commission to explain why the commission did not follow the SOAH judge recommendations regarding disciplinary action or administrative penalties; amendments to subsection (f) describe the requirements for filing a motion for rehearing; and amendments to subsection (g) address situations in which new evidence may be presented in a case.

Chapter 535, General Provisions

Subchapter B General Provisions Relating to the Requirements of Licensure

22 TAC §535.2 Broker Responsibility

The amendment changes the terms “designate” and “designation” to “delegate” and “delegation” to more closely track other rule provisions in the same chapter. .

Subchapter C Exemptions to Requirement of Licensure .

22 TAC §535.32. Attorneys in Fact

The amendment deletes the phrase “to be sold” to make it clear that an attorney in fact may buy, sell, or lease real property under the exemption in the Act.

Subchapter G. Mandatory Continuing Education

22 TAC §535.75. Education Curriculum Standards Committee.

The amendment changes the makeup of the committee to be composed of 7 brokers, 4 education related members, and one public member.

Subchapter N. Suspension and Revocation of Licensure

22 TAC §535.145. False Promise.

The amendment corrects a typographical error in the reference to the Act.

22 TAC §535.161. Failing to Provide Information.

The amendment corrects a typographical error in the reference to the Act.

Subchapter R. Real Estate Inspectors

22 TAC §§535.215. Inactive Inspector Status; §535.216. Renewal of License; and §535.218. Continuing Education

The proposed amendments clarify the requirements and procedures necessary to renew an inspector license timely on active or inactive status and reinstate after expiration or being inactive.

22 TAC §535.224. Practice and Procedure.

The amendment replaces the term “business” with “mailing” in subsection (a) to be consistent with the phrase “mailing address” as used in Chapters 533 and 535.

<p>Case#: 101345 RAMIREZ, STEPHANIE ELIZABETH (license # 585894) Real Estate Broker / Salesperson-I SAN ANTONIO(BEXAR)</p> <p>Effective Date: 8/2/2012</p> <table border="1" data-bbox="110 474 475 569"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.652(b)(01)</td> </tr> </table>	Violation(s)	1101.652(b)(01)	<p>Agreed reprimand of salesperson license; Agreed administrative penalty of \$500.00</p>	<p>Consumer Complaint Respondent, as listing agent, acted negligently or incompetently by failing to follow through on obtaining the condominium transaction documents on behalf of the seller, for the buyer's review, and inserting her own hold harmless document into the transaction and requiring the buyer to sign or the transaction would not proceed.</p>		
Violation(s)						
1101.652(b)(01)						
<p>Case#: 101345 AMERICAN REO CORP (license # 551246) Real Estate Company-O SAN ANTONIO(BEXAR)</p> <p>Effective Date: 8/2/2012</p> <table border="1" data-bbox="110 869 470 963"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.652(b)(01)</td> </tr> </table>	Violation(s)	1101.652(b)(01)	<p>Agreed reprimand of broker license; Agreed administrative penalty of \$500.00</p>	<p>Consumer Complaint Respondent acted negligently or incompetently by failing to supervise the actions of a sponsored salesperson handling a condominium transaction and permitting the salesperson to utilize her own hold harmless document as a part of the transaction.</p>		
Violation(s)						
1101.652(b)(01)						
<p>Case#: 110201 RODRIGUEZ, ERICK ROGELIO (license # 543349) Real Estate Broker / Salesperson-I EL PASO(EL PASO)</p> <p>Effective Date: 8/15/2012</p> <table border="1" data-bbox="110 1289 467 1436"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.652(a)(06)</td> </tr> <tr> <td>22 TAC 535.154(e)</td> </tr> </table>	Violation(s)	1101.652(a)(06)	22 TAC 535.154(e)	<p>Reprimand of broker license and suspension of broker license until receipt of the requested information and payment of the administrative penalty; Assessment of an administrative penalty of \$2,500.00</p>	<p>Consumer Complaint Respondent failed to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission. Respondent failed to notify the Commission within 30 days of his use of an assumed name.</p>	
Violation(s)						
1101.652(a)(06)						
22 TAC 535.154(e)						
<p>Case#: 121522 JACKSON, SHARETHA V (license # 575355) Real Estate Broker / Salesperson-I DE SOTO(DALLAS)</p> <p>Effective Date: 8/29/2012</p> <table border="1" data-bbox="110 1772 474 1961"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.652(a)(01)</td> </tr> <tr> <td>1101.652(a)(02)</td> </tr> <tr> <td>1101.652(a)(09)</td> </tr> </table>	Violation(s)	1101.652(a)(01)	1101.652(a)(02)	1101.652(a)(09)	<p>Agreed twenty-four (24) months suspension of salesperson license effective August 29, 2012. Beginning September 29, 2012 the remaining twenty-three (23) months of suspension fully probated for twenty-three (23) months; Agreed administrative penalty of \$1,500.00</p>	<p>Consumer Complaint Respondent pled guilty to and the court adjudged her guilty to a felony offense. Respondent failed to notify the Commission within 30-days after entry of the plea and failed to disclose the same in her renewal application.</p>
Violation(s)						
1101.652(a)(01)						
1101.652(a)(02)						
1101.652(a)(09)						

<p>Case#: 120995 MENDIOLA, MONA LISA (license # 423847) Real Estate Broker / Salesperson-I SAN MARCOS(HAYS)</p> <p>Effective Date: 8/28/2012</p> <table border="1" data-bbox="110 380 370 474"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.652(a)(06)</td> </tr> </table>	Violation(s)	1101.652(a)(06)	<p>Agreed reprimand of salesperson license; Agreed administrative penalty of \$750.00</p>	<p>Administrative Complaint Respondent failed to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission.</p>
Violation(s)				
1101.652(a)(06)				
<p>Case#: 120997 LEVITAN, BRONWYN MILLER (license # 553118) Real Estate Broker / Salesperson-I DALLAS(DALLAS)</p> <p>Effective Date: 8/20/2012</p> <table border="1" data-bbox="110 772 394 867"> <tr> <th>Violation(s)</th> </tr> <tr> <td>1101.652(a)(06)</td> </tr> </table>	Violation(s)	1101.652(a)(06)	<p>Agreed reprimand of salesperson license; Agreed administrative penalty of \$750.00</p>	<p>Administrative Complaint Respondent failed to provide, within a reasonable time, information requested by the Commission that relates to a formal or informal complaint to the Commission.</p>
Violation(s)				
1101.652(a)(06)				
<p>Case#: 121335 AMES, CHARLES AUSTIN</p> <p>(license # 622396) Real Estate Broker / Salesperson-I DALLAS(DALLAS)</p> <p>Effective Date: 8/28/2012</p>	<p>Agreed three (3) year probationary salesperson license issued</p>	<p>Applications Commission of an offense that directly relates to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1. Applicant provided documentation addressing the factors outlined in Tex. Occ. Code §53.023 and, subject to reasonable terms and conditions of a probationary license, demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).</p>		
<p>Case#: 111825 SMITH, CAREY DENNIS</p> <p>(license # 622083) Real Estate Broker / Salesperson-I BRYAN(BRAZOS)</p> <p>Effective Date: 8/13/2012</p>	<p>Seven (7) year probationary salesperson license issued</p>	<p>Applications Commission of an offense that directly relates to the duties and responsibilities of the occupation of a licensed real estate salesperson under 22 Tex. Admin. Code §541.1. Applicant provided documentation addressing the factors outlined in Tex. Occ. Code §53.023 and, subject to reasonable terms and conditions of a probationary license, demonstrated that Applicant possesses the requisite honesty, trustworthiness, and integrity to qualify to be licensed as a real estate salesperson under Tex. Occ. Code §1101.354(2).</p>		

TALCB Bulletin



TALCB was created by an act of the Texas Legislature in 1991 to license, certify and regulate real estate appraisers in Texas under state and federal laws. In 2011, TALCB's jurisdiction was expanded to register and regulate appraisal management companies.

Inside this issue: TALCB is Hiring (page 1) From the Commissioner (page 2) Acting as an Appraiser (page 3) Proposed Rules (page 4)

TALCB Hiring Investigator

The Board currently has an opening in its Standards and Enforcement Services Division for a state certified appraiser. The job involves investigating complaints filed against appraisers and evaluating their work product. A high percentage of the cases involve residential work, but the opportunity to handle commercial matters also exists. The job is very similar to what a forensic, review appraiser does, and includes the

possibility of courtroom testimony as an expert witness. Appraisers with experience in review work or who have served as an expert witness are encouraged to apply.

For the full job description please go to the www.talcb.texas.gov. If you are interested please complete an application and submit your materials to the Board.

TALCB Seeks AMC Representative for Advisory Committee

HB 1146 established an AMC Advisory Committee to make recommendations to TALCB regarding AMC regulatory matters. The Vice Chair of TALCB acts as the presiding member of this advisory committee and the Governor will appoint one public member with demonstrated business ability and one member who is a "controlling person" of an AMC registered with TALCB to do business in Texas. Any AMC principal or manager who meets the statutory definition of "controlling person" and who is interested in being appointed to serve on this advisory committee for a two-year term should make application to the Governor's Appointments Office. Details on the appointment process can be found at this website: <http://governor.state.tx.us/appointments/>

The statutory definition "controlling person" is contained at Texas Occupation Code Sec. 1104.003 (b)(6):

"Controlling person" means:

- (A) an owner, officer, or director of an appraisal management company;
- (B) an individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and the authority to enter into agreements with appraisers for the performance of appraisals; or
- (C) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

Seems just yesterday we were closing out the fiscal year in good shape and looking forward to the new one with anticipation. If our second year of transition goes at least as well as our first, we should be in great shape to manage our future.

AMC's continue to register with the Agency. We have completed 173 applications with almost 17,000 panelists active! This is on target with our budgeted projections. We continue to see license holders using our Panel Management Tool to keep their panels up to date and accurate. A complete list of all registered AMC's is available on the TALCB website under the AMC page.

I was honored to participate in a panel for an AMC webinar earlier this month. I answered many questions from AMCs across the country on a variety of topics and I believe it was very successful. Chair De La Garza and I attended the Association of Appraiser Regulatory Officials (AARO) conference in DC just last weekend. This conference featured updates from ASC, AQB, ASB and APB (all regulatory or standards writing bodies) and other states on appraisal and AMC matters. Dodd-Frank related issues continue to dominate concerns of most states. In the early stages of this major industry transition, staying fully informed is critical.

We are currently preparing for the final Board meeting of the year. Since the last meeting, the enforcement committee met to continue their work on revising the Board's enforcement procedures. I want to thank the members of the enforcement committee, Chair Jamie Wickliffe, Laurie Fontana and Shannon McClendon. They have worked tirelessly with staff to ensure that the Board's enforcement process is efficient, thorough, and fair to all parties involved, and more hard work lies ahead of them. The U & E working

group met on Sept 14th and reached a consensus on how to process U&E related complaints received by the agency. The working group will present their recommendations to the Board at the next meeting.

I would like to note that Chair De La Garza has rearranged the agenda

of the Board meeting so that enforcement matters will be heard near the beginning of the meeting instead of the end. This change was made to accommodate respondents and their attorneys who come to the meetings so they won't have to wait so long before the Board addresses their agenda item. Please be prepared for this change if you plan on attending or listening to the meeting.

Speaking of the Board meeting, we had to make a location change for the November meeting. We will be holding the meeting at the Texas State Capitol Extension in room E2.010 beginning at 10 a.m. If you plan to attend the meeting in person please arrive at least 15 minutes in advance as all attendees will be required to pass through Capitol security. If you are unable to attend in person you can always watch the meeting broadcast live from our website.

We are gearing up for a very busy time of year. We look forward to the challenges that lie ahead and are grateful for all of the success we have experienced in the year behind. Looking forward to seeing you all November 9th at the Board meeting!



Douglas E. Oldmixon

Important Dates to Remember

TALCB Board Meeting— November 9

TALCB Offices Closed—Nov 22 and 23

The Duck Test: Acting as an Appraiser

The “Duck Test” can be summed up by the famous expression, “If it looks like a duck, swims like a duck, and quacks like a duck, then it probably is a duck.” However, sometimes appraisers receive requests where the “Duck Test” just doesn’t work and they are left wondering what type of valuation service is being requested. This is especially true in today’s market, where the variety and complexity of valuation services seems to be increasing every day. Appraisers facing these unclear requests may find themselves asking-- what are my obligations under the Uniform Standards of Professional Appraisal Practice (USPAP)? Luckily, the 2012-2013 edition of USPAP gives some excellent guidance for these types of questions.

Every appraiser should familiarize themselves with USPAP Advisory Opinion 21, which gives great advice regarding USPAP compliance. It begins by advising when an individual should comply with USPAP, “When required by law, regulation, or agreement, an individual must comply with USPAP . . . When choosing to represent oneself as an appraiser, an individual should comply with USPAP.” It also provides an instructive chart (page A-65) regarding the relationship between appraisal practice and valuation services.

USPAP defines “Valuation Services” as “services pertaining to aspects of property value.” The comment further states “Valuation services pertain to all aspects of property value and include services performed both by appraisers and by others.” Therefore, under this broad definition valuation services implicate appraisers and non-appraisers.

“Appraisal Practice” is defined in USPAP as “valuation services performed by an individual acting as an appraiser, including but not limited to appraisal, appraisal review or appraisal consulting.” The comment to this definition goes on to say, “*Appraisal practice* is provided only by appraisers, while *valuation services* are provided by a variety of professional and others . . . The use of other nomenclature for an appraisal, appraisal review, or an appraisal consulting assignment (e.g., analysis, counseling, evaluation, study, submission, or valuation) does not exempt an appraiser from adherence to the *Uniform Standards of Professional Appraisal Practice*.” Consequently, appraisal practice regardless of name is the rendering

of valuation services while acting as an appraiser

Advisory Opinion 21 further elaborates, “‘Acting as an appraiser’ means representing oneself as an appraiser. Many individuals have other professional roles in addition to their appraiser role. For example, some appraisers are also brokers, consultants, or leasing agents. Individuals who have appraiser roles as well as other professional roles must be careful to explain their role in performing a given valuation service.” Accordingly, an appraiser should explain to the client and other intended users their role when providing valuation services.

Not only should appraisers explain their role in providing valuation services they should look to the intended users expectations. Advisory Opinion 21 states, “Expectation is the crucial element in determining when one is acting as an appraiser . . . An individual who sometimes provides services as an appraiser, but who is currently acting in another role, must ensure that intended users are not misled as to the individual’s role in providing that valuation service. This can be accomplished through such means as disclosure, notification, or careful distinction when providing the valuation service as to the individual’s role. Additionally, clear representation of the valuation services to be rendered in the engagement communication, scope of work description, or contract, as well as in written and oral correspondence with the client should assist in ensuring intended users are not misled.”

When performing valuation services, an individual should confirm if compliance with USPAP is required by law, regulations or agreement. If so, the individual must comply with USPAP. Additionally, if an individual chooses to act as an appraiser he or she is obligated to comply with USPAP. When providing a valuation service, individuals must also inquire about, and recognize, the intended users’ expectations to identify if they are acting as an appraiser. Ultimately, an individual recognized as an appraiser must use great care to not violate the public trust and not mislead the intended users about his or her role. Even though valuation requests may be unclear, the intended users should have no problem using the “Duck Test” on an appraiser.

Proposed rules will be up for adoption at the November 16, 2012 meeting of the Board.

The proposed rules can be found on the TALCB website at <http://www.talcb.state.tx.us/ActAndRules/TALCB-Rules.asp>.

Comments on proposed rules should be sent to general.counsel@talcb.texas.gov on or before October 8, 2012.

PROPOSED RULES

Chapter 153, Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act

22 TAC §153.17. Renewal or Extension of Certification and License or Renewal of Trainee Approval

Amendments are proposed to bring the rule into compliance with statutory changes effective May 27, 2011 that changed the period for late renewal from one year to six months.

22 TAC §153.20. Guidelines for Revocation, Suspension, Denial of Licensure or Certification; Probationary Licensure

Amendments are proposed to make clear that the Board considers acceptance by an appraiser of an assignment from an AMC that is not registered with the Board and not exempt from registration to be an activity that can subject the appraiser to sanctions.

22 TAC §153.23. Inactive Status

Amendments are proposed to conform to and reconcile any discrepancies in Texas Occupations Code §§1103.2111 and 1103.213. Section 1103.2111 was amended effective May 27, 2011 to decrease the period of time an appraiser could renew late from one year to six months. Section 1103.213 allows for the election of inactive status following expiration for a one year period and was not amended (through oversight or otherwise) and is now in conflict with

§1103.2111. The amendments reasonably implement both provisions and eliminate the discrepancy when renewing late following expiration on an active or inactive basis. It also corrects a previous mistake in the rule.

Chapter 157, Rules Relating to Practice and Procedure

Subchapter A. General Provisions

22 TAC §157.8. Adverse Action Against a Licensee or Registrant

Amendments are proposed to clarify that the rule also applies to AMCs and to set out the Board's standards of practice and procedure when a licensee or registrant who has entered into an Agreed Order with the Board, wishes to request a modification of that order.

Subchapter B. Contested Case Hearings

22 TAC §157.12. Failure to Attend Hearing; Default Judgment.

Amendments are proposed to clarify the Board's standards of practice and procedure when a respondent who has received proper notice of a contested case hearing does not appear at the hearing in accordance with the State Office of Administrative Hearings Rules 1 TAC §155.501 and §155.503 (relating to Default Proceedings and Dismissal Proceedings).

Subchapter C. Post Hearing

22 TAC §157.17. Final Decisions and Orders.

Amendments are proposed to clarify that while the Board welcomes SOAH judges' recommendations regarding sanctions, the Board has the authority and responsibility to impose disciplinary sanctions against appraisers, appraiser trainees and AMCs. The amendments also delineate the standards required when the Board may change a finding of fact, conclusion of law or recommendation in a proposal for decision and sets out the requirements for final orders.

Inspector Insight



The Texas Real Estate Inspector Committee is as an advisory committee to the Texas Real Estate Commission on matters pertaining to the licensing and regulation of real estate inspectors. The Committee recommends rules and policies that ensure inspections meet high professional standards and enhance consumer protection.

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From the Administrator...

At the October 19th meeting of the Committee, concrete steps were taken to advance the agenda of the Committee's ongoing work.

The Committee has now completed its work on a major milestone in reviewing and updating the Standards of Practice to clarify the scope of work under the jurisdiction of Chapter 1102 of the Texas Occupations Code, as well making corresponding changes to the standard report form. The proposed text to be recommended to the Commission at its meeting on November 5th will be posted on the agency website so that interested parties can follow its progress. Additional feedback opportunities will be available through the general public comment period connected to formal rule-making.

Several members of the Committee and other volunteer subject matter experts met with PSI, LLC, the agency's exam administrator, on October 19th to advance the work toward a robust and distinct set of exam questions for the Texas law portion of the exam. Implementation is set for January 1, 2013.

The Committee relies on both qualified inspectors and willing public members to fulfill its mission. Public member volunteers are often hard to find, so we always encourage inspectors to recommend someone you know who might be willing to serve in this valuable role.



Douglas E. Oldmixon

The Commission and the Committee continue to work cooperatively to improve the ability of inspectors in this field to serve consumers in the manner that they expect. Several improvements are needed in the enabling statute and we expect to see some action to attempt to address these in the upcoming legislative session. I urge you all, especially the major professional associations, to remain engaged and assist the Committee in achieving its goals. Your input is expected and always welcomed.

***Public Member Vacancy
on Texas Real Estate Inspector Committee***

The Texas Real Estate Commission invites applications for appointment to an open public member seat on the Inspector Committee.

The committee's purpose is to make recommendations to the Commission regarding a variety of inspection-related matters toward the goal of ensuring a high degree of service to and protection of the public in dealing with inspectors. The committee consists of six professional inspectors and three public members. The open public member appointment expires on February 1, 2015. Following the Commission's model, public members may not hold occupational licenses in the real estate field (appraiser, real estate broker/salesperson, mortgage broker, etc.).

The committee is permitted to meet by teleconference, although it is anticipated that some travel to Austin will be necessary. Limited funds may be available for travel reimbursement, but members are not compensated for their time. All committee meetings must comply with the Open Meetings Act.

Individuals wishing to be considered for appointment should send a letter and resume to Chairman Avis Wukasch at the Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, by fax to 512-936-3788, or by e-mail to administrator@trec.texas.gov.

Important Dates to Remember

Texas Real Estate Inspector Committee Public Member
Interviews—October 24

Texas Real Estate Inspector Committee Meeting—November 27