



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, right-of-way services 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 across Texas.

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STATUTORY NOTICE OF WATER LEVEL FLUCTUATIONS CONTRACT LANGUAGE

House Bill 1665 enacted by the 84th Legislature adds Section 5.019 to the Property Code. This section requires a seller of residential or commercial property that adjoins a lake, reservoir, or other impoundment of water with a normal operating capacity of 5,000 acre-feet or more to give the buyer a statutorily prescribed form of notice on or before the effective date of the contract. If the notice is not given, the buyer may terminate the contract for any reason within seven days after receiving the notice from the seller or information described by the notice from any other person. After the date of conveyance, the buyer may bring an action against the seller for misrepresentation if the seller failed to give the notice before the conveyance and had actual knowledge that the water level fluctuates. This provision becomes effective September 1, 2015.

Until revised contract forms addressing this statutory requirement are adopted by the Commission, license holders may insert the following language in the Special Provisions paragraph of a contract if a property adjoins such a body of water.

"NOTICE OF WATER LEVEL FLUCTUATIONS

The water level of the impoundment of water adjoining the property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

Proposed Promulgated Contract Changes Update

The Commission has proposed changes to the following forms recommended by the Broker Lawyer Committee:

TREC Form No. 9-12 *Unimproved Property Contract*

TREC Form No. 20-13 *One to Four Family Residential Contract (Resale)*

TREC Form No. 23-14 *New Home Contract (Incomplete Construction)*

TREC Form No. 24-14 *New Home Contract (Complete Construction)*

TREC Form No. 25-11 *Farm and Ranch Contract*

TREC Form No. 26-7 *Seller Financing Addendum*

TREC Form No. 30-12 *Residential Condominium Contract (Resale)*

TREC Form No. 32-4 *Condominium Resale Certificate*

TREC Form No. 38-5 *Notice of Buyer's Termination of Contract*

TREC Form No. 39-8 *Amendment to Contract*

TREC Form No. 40-7 *Third Party Financing Addendum*

OP-H, *Seller's Disclosure of Property Condition*

Redline versions of the proposed forms can be found [under recently proposed rules](#).

Comments on the proposals should be sent to general.counsel@trec.texas.gov before October 4th so that they can be considered by the Broker Lawyer Committee at their October 7th meeting.

Contract Changes Highlights

The noted changes apply to all contract forms unless specified otherwise. Paragraph numbers referenced are from the *One to Four Family Residential Contract (Resale)*. The *One to Four Family Residential Contract (Resale)* and the new *Third Party Financing Addendum* will be reviewed in detail later in this chapter.

Paragraph 3, Sales Price, now references all of the financing addenda previously contained in paragraph 4 of the old versions.

The *Third Party Financing Addendum* is completely rewritten and addresses both credit approval and property approval by the lender. Reverse mortgage loans are also addressed in this addendum so form OP-N, *Reverse Mortgage Financing Addendum* is repealed.

A new paragraph 4 is added regarding license holder disclosure. This paragraph is where a license holder will disclose that he or she is a party to the transaction or related to a party that

requires disclosure under the law.

A new paragraph 6E(10), Title Notices, Notice of Water Fluctuations, is added to add new statutory notice requirement regarding the fluctuation of the level of certain impoundments of water that adjoin a property.

Paragraph 7A, Property Condition, Access, Inspections and Utilities, is amended to add a provision that hydrostatic testing must be authorized by the seller in writing.

Paragraph 9, Closing, is amended to add a provision allowing a ten-day extension of closing if the buyer's lender is required to provide additional disclosures mandated by the TILA-RESPA Integrated Disclosure Rule. Paragraph 9B(5) is amended to conform the language with a statutory change to the property code, noting that the buyer has to acknowledge to a tenant the buyer has *acquired* the property and is responsible for the return of the security deposit.

Paragraph 14, Casualty Loss, is amended to make it clear that an insurance company must permit insurance proceeds to be assigned to the buyer before the buyer can use this option after a casualty.

Paragraph 18D, Escrow Damages, is amended to take out the treble damages provision based on recent case law.

Paragraph 23, Termination Option is amended to require a 5 p.m. local time deadline for delivery of all notices under the paragraph.

License numbers are added to the Broker Information Section to facilitate compliance with the TILA-RESPA Integrated Disclosure Rule

Paragraph 13, Prorations and Rollback Taxes, in the *Farm and Ranch* and *Unimproved Property Contract* forms, is amended to provide that assessments imposed due to the seller's use or change in use of the property are the seller's responsibility.

A new Paragraph 2D to the *Condominium Contract Form* is added to address situations where condominium documents reveal the existence of a right of first refusal after the parties entered into a contract.

The *Condominium Resale Certificate* is amended to conform to new statutory disclosure requirements. (This was also adopted by emergency since the new statutory requirements are effective September 1, 2015.)

The Commission held its regular quarterly meeting on August 17th. As usual, the meeting was simulcast over the internet via the agency's website. The agenda was extensive, and filled with examples of the important work TREC is charged to accomplish.

As you likely know, since our last meeting in May, SB 699 was signed by the Governor and it accomplishes many of the policy objectives sought by the Commission as developed through the strategic planning process we undertook last year. The bill will become law effective January 1, 2016. This is a great advance for Texans and all of the professionals who make their living providing professional brokerage services on their behalf. Our gratitude goes out to those who worked hard to ensure the bill's passage, but especially the dedicated team at the Texas Association of Realtors.

Our agenda reflected the work since May of every committee and working group of the Commission. We adopted rules that were proposed at our meeting in May and some emergency rules necessary to implement other legislative initiatives that will become law on September 1, 2015. Many other rules were proposed for amendment as necessary to implement SB 699. We encourage all of you to review the published proposals and offer your comments by sending them to general.counsel@trec.texas.gov by September 30th. That will give us the time to review all of your comments and suggest revisions.

One of the most important tasks we are charged to accomplish is to coordinate the work of the Broker Lawyer Committee. They propose amendments to our standard form contracts to ensure they accurately reflect current law and the best practices that have developed in our industry. The goal is to ensure predictability and efficiency in our residential real estate transactions. Balancing these is no small task and we thank all of those who are dedicated to ensuring we do this effectively. The Committee recommended several updates to some major

contracts and the Commission proposed these for your consideration. Feedback from all sectors of the industry is a primary key to the success of this process. We welcome your input as to whether these amendments meet the objectives outlined. Let us know.



Avis Wukasch, Chair

At the meeting, the Commission also adopted a budget for FY 2016, updated the agency's current Memorandum of Understanding with the Appraisal Board to better reflect long-range projects, and considered a potential expansion of the scope of the agency's agreement for collaboration with the Real Estate Center at Texas A&M. Overall, the work we do reflects an ongoing commitment to keep the Commission relevant, effective and responsive to the needs of Texans - who rely on us to ensure that the real estate service providers who serve them are both competent and ethical.

In September, the Association of Real Estate License Law Officials (ARELLO) will meet in DC and we will be in attendance to ensure that Texas' voice is heard when national and interstate policies are being shaped and interpreted. We continue to learn from the valuable experiences of other states and share our experience in Texas as a potential model for others.

Thank you all for helping to make the work of the Commission a true reflection of the professionalism of our license holders. Together, we bring out the best in each other to better serve Texas.

IMPORTANT DATES TO REMEMBER

Broker Lawyer Committee Meeting— Oct 7

ESAC Committee Meeting— Oct 12

Broker Working Group Meeting— Oct 13

TREC Commission Meeting—Nov 2

Check the TREC website regularly for postings of all of our upcoming meetings.

TREC Education Update

The Commission keeps education providers updated by sending email notifications of upcoming policy and rule changes and deadlines. Education providers must maintain a current email address on file with the Commission and should contact our office at education@trec.texas.gov if there are any changes to contact information.

Qualifying Providers

August 21 is the deadline for revisions to qualifying Real Estate Finance courses offered via alternative delivery or correspondence. Students who complete a Real Estate Finance course after this date must complete the revised Real Estate Finance course to be awarded qualifying credit. The deadline for revisions of this course offered via classroom delivery was May 21, 2015.

Remember, all Real Estate and Inspector qualifying (formerly known as "core") courses approved prior to January 1, 2011 will expire on December 31, 2015. Students enrolled in any of these courses must complete them prior to this date for credit to be awarded. New course applications and fees will be required for staff to review and approve these courses in accordance with current standards. Approved courses will receive a four year term, subject to updates and revisions as set out in Commission rules. Education providers are reminded to allow ample time for review and approval of these courses prior to the December 31st deadline.

CE Providers

New Legal Update I and Legal Update II courses will replace the TREC Legal & Ethics non-elective CE courses effective January 1, 2016. Each Legal Update course will cover 4 hours of material. Approved instructors must complete the instructor training and obtain certification from TREC to teach these new courses. Training is available through the Real Estate Center. Register at Texas A&M website at www.recenter.tamu.edu. Six training sessions are currently scheduled from September 22 through November 3. Additional information regarding these courses will soon be available on the TREC website.

TREC Enforcement Actions

The Texas Real Estate Commission has published enforcement actions. To read the full report and get access to all of the enforcement actions taken by the Commission, please go to the TREC website and click on, "Complaints, and Consumer Info" and then [click "Disciplinary Actions"](#).

Adopted Rules

The following is a summary of amendments to TREC Rules adopted at the August 17, 2015 meeting of the Commission. Unless otherwise noted, they will be effective September 7, 2015. You can see the full text of the rules at the Recently Adopted Rules section of our [website](#).

§539.81, Funded Reserve. These amendments are a re-proposal following receipt of input from a stakeholder and discussions with the Texas Department of Insurance. The amendments specify that if a residential service company chooses to use a captive insurance company under Tex. Occ. Code §1303.152 to reinsure the liability remaining under the outstanding residential service contracts written in Texas in lieu of maintaining a funded reserve, that company can only do so for 75% of the required funded reserve.

§535.217, Mailing Address and Other Contact Information. The amendment corrects the timeframe in the rule from 10 days to 30 days to match Section 1102.118(b) in the Texas Occupations Code, which has a 30-day requirement.

§§535.400, Registration of Easement or Right-of-Way Agents and 535.402, Complaints, Disciplinary Action and Appeals. The amendments correct terminology, renumber for consistency, and provide a timeframe for responding to complaints for easement or right of way agents consistent with other license types.

§539.150, Complaints. The amendment to §539.150, Complaints clarifies terminology for consistency throughout the rules.

Adopted by Emergency, effective September 1, 2015

§537.39, Standard Contract Form FREC No. 32-3 (Condominium Resale Certificate). The Commission adopted revisions to the Condominium Resale Certificate recommended by the Broker Lawyer Committee to conform to new statutory disclosure requirements enacted by the 84th Legislature in SB 1168, including providing a balance sheet and greater detail on Association transfer fees.

Chapter 533, Subchapter B, Practice and Procedures. References to timeframes for filing in this subchapter were tied to the APA to ensure alignment with statutory changes made to the APA by the 84th Legislature.

§535.51, General Requirements for a Real Estate License and §535.208, Application for a License (Inspector). The amendments align the rules with statutory changes in SB 1307 adopted by the 84th Legislature to be effective September 1, 2015, which provides for expedited license processing to active military service members and veterans and waives certain license and application fees for applicants who meet designated criteria.

§535.91, Renewal of a Real Estate License and §535.216 Renewal of License (Inspector). The amendments align the rule with statutory changes in SB 1307, adopted by the 84th Legislature, to be effective September 1, 2105, which allow an active duty military service member two additional years to renew a license.

Proposed Rules

The following amendments or new rules were proposed at the August 17, 2015, meeting of the Commission and are up for adoption at the November 2, 2015 meeting. You can see the full text of these rules on the "Proposed Rules" section on our [website](#). Written comments on the proposed rules can be sent to general.counsel@trec.texas.gov and must be received prior to 5 p.m. October 4, 2015 to be considered by the appropriate advisory committee and included in the materials for the November meeting. After that date, comments will need to be made in person at the meeting.

All rules adopted by emergency are also proposed for publication and comment.

§531.18, Consumer Information (Brokers and Agents), §535.220, Professional Conduct and Ethics (Inspectors), and §535.401, Required Notices (ERW) The 84th Legislature authorized the Commission to adopt the form and delivery method for a consumer notice regarding complaints and recovery fund availability. The proposed revised form will be for mandatory use by license holders and will have to be linked to the homepage of a license holder's website.

§531.20, Information About Brokerage Services. The 84th Legislature authorized the Commission to adopt the form and delivery method for the Information about Brokerage Services notice. The proposed new form will be for mandatory use by license holders and will have to be linked to the homepage of a license holder's website.

§534.2, Processing Fees for Dishonored Payments. Proposed to update statutory numbering changes.

Chapter 535, General Provisions. Many amendments were proposed to align the rules with statutory changes in SB 699 enacted by the 84th Legislature including increasing non-elective CE course hours from 6-8, overall CE hours from 15 to 18 hours per renewal cycle, allowing CE credit for attendance at a February Commission meeting, and to require additional education after the third time an applicant fails the license examination; to clarify and improve performance and delivery standards for real estate and inspector education providers, courses and instructors; and to provide greater clarity in several rules providing for disciplinary action, including requirements for trust money and when a license holder is a party to a transaction. Redline copies of these proposals, along with a more detailed description of the changes can be found on our website.

Chapter 537, Professional Agreements and Standard Contracts. See article in this edition.

New/Revised Forms

The following new or revised forms were adopted and are effective September 1, 2015 unless otherwise noted:

SFMS-2, Supplemental Form for Military Spouse

Revised to comply with statutory changes, which extends expedited license processing to active military service members and veterans and waives certain license and application fees for applicants who meet designated criteria

OP-H, Seller's Disclosure

Revised to comply with statutory changes in HB 1221, adopted by the 84th Legislature, relating to seller's disclosures in connection with residential real property subject to groundwater regulation. Effective for use January 1, 2016.

BBE-5, Application for Broker License By a Business Entity

Revised to include \$100.00 increase in fees collected for the Real Estate Center at Texas A&M to comply with statutory changes in SB 699, adopted by the 84th Legislature. Also to remove the request for a fax number as this information is no longer required.

BL-7, Application for Real Estate Broker License by an Individual

Revised to reflect a net reduction of \$300.00 for "professional fee" or "occupation tax" collected from individual broker applicants pursuant to statutory changes adopted by the 84th Legislature. Reduces fee from \$634.75 to \$334.75.

SBLR-6, Sales Agent and Broker License Reinstatement

Revised to reflect a net reduction of \$300.00 for "professional fee" or "occupation tax" collected from individual brokers who file a reinstatement application to regain their license, pursuant to statutory changes adopted by the 84th Legislature. Reduces fee from \$619.75 to \$319.75. Form also updates reference from salesperson to sales agent.

RF-7, Renewal of Real Estate License – Timely or Expired Less than Six Months

Revised to reflect a net reduction of \$300.00 for "professional fee" or "occupation tax" collected from individual brokers who timely renew or whose license has been expired 90 days or less or whose license has been expired more than 90 days but less than 6 months. This form is also revised to include the \$100.00 increase

in fees collected for the Real Estate Center at Texas A&M for broker business entities who are renewing timely, expired 90 days or less, or whose license is expired more than 90 days but less than 6 months. Both changes are made pursuant to statutory changes adopted by the 84th Legislature.

CE CAS-3, CE Course Application Supplement

Current form is revised to update language referencing TREC's legal update, ethics and broker responsibility courses to non-elective CE courses as well as update references from MCE to CE.

ED PAF-0, Education Provider Annual Fee Application

New form to be used for qualifying providers when submitting their annual fee to TREC. Currently this fee is submitted with a letter to TREC.

ISL-5, Application for Inactive Real Estate Sales Agent License

Certification statement is revised to include legal residents of a municipality whose boundary is contiguous with the boundary of a Texas municipality because they are also considered legal residents of Texas for the purpose of licensure.

ALTNM-0, Notice of Alternate Name for Sales Agent or Broker License

New form to be used by a sales agent or broker to register an alternate name such as a nickname or maiden name for use in advertising for their individual license.

BSCN-2, Change of Name for License Holder

Revised to clarify that the form should be used to change the legal name that appears on the license and not to be used to register an alternative name such as a nickname for use in advertising. Also updates references from salesperson to sales agent.

Residential Service Contracts: What Do You Need to Know?

What is a residential service company contract?

A residential service contract, also called a home warranty contract, is an agreement that covers certain repairs and replacements on systems in a residential property, usually for one year. Depending on the service contract, it may cover the structural components, appliances, or the electrical, plumbing, heating, cooling or air conditioning systems in a home.

A service contract is not insurance nor is it a replacement for insurance. A homeowner's insurance policy covers things such as damage to the structure of the property or to a homeowner's personal property. A service contract covers specific components of the home when they fail due to normal wear and tear.

What do you need to know about these contracts?

All companies selling service contracts in Texas must be licensed by the Commission. A current list of all licensed residential service companies is on our website.

A real estate sales agent or broker should be familiar with how a service contract works and what it covers. Typically, a contract only covers items that are in good working order when the contract is purchased. Many covered items have limitations of coverage and the contract may not cover the entire cost of all necessary repairs. A

sales agent or broker should never represent that the contract covers everything or that it is a substitute for negotiating necessary repairs with a seller. Making this type of representation violates the Texas Real Estate License Act.

Coverage and cost vary by company, so you should recommend that your client compare companies before making a decision on whether to purchase a contract. If a buyer does get a service contract, it is a good business practice to recommend that the buyer carefully review the contract before they need it so that they understand what is and is not covered by the contract.

Do I need to disclose that I'm getting paid by a residential service company?

Yes. A real estate sales agent or broker must present TREC Form RSC-1, Disclosure of Relationship with Residential Company, to each party the agent or broker represents. This form is on our website.

DID YOU KNOW?

Did you know that TREC keeps a list of all of the Residential Service Companies or "Home Warranty" Companies on our website? We do! Be sure to check out the [full list here](#) and refer your clients to it if they are in the market.

Agency TOP Performer



Tessa Sowell

TREC Standards and Enforcement Services

Tessa is a valuable asset to the SES division and the whole agency. Tessa employs patience and good listening skills to tactfully respond to inquiries. She is always willing and available to assist others on the team. Tessa has been an integral part of SES' paperless system implementation and fingerprint program integration. Tessa has lived in Texas all her life with the exception of 1 ½ years when she lived in Massachusetts. She has two kids Montana and Ryland who consume most of her spare time with sports and extracurricular activities, but that's what she loves. She also loves going to the beach and never misses a summer vacation in Port Aransas. Congratulations Tessa!

TREC Employee Update



Kimberly Hern

Education and Licensing Services

Kimberly began pursuing her bachelor degree at Texas State University when her twin girls were 6 months old. As a single mom, she wanted to be able to provide the best possible life for them. She graduated from Texas State University with a Bachelor of Arts and Sciences in December 2014 and shortly after began her new career at TREC. She is now planning to pursue her MBA with a minor in Management of Technology. She is grateful that the Texas Hazelwood Act and Texas A&M University Commerce's online Graduate Degree program makes it possible for single working mothers like her to pursue the education and skills needed to provide for her family. Now 3 years old, her beautiful twin girls provide the motivation and perseverance to see it through.

The Agency is always looking for highly qualified candidates to join our team. Right now, we have several key team member positions open that could be perfect for you! Please be sure to check out our [employment page](#) on our website to read all of the job postings.



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: **New Course Required for Supervisors and Trainees** (page 1) **From the Chair** (page 2) **TALCB Appointing a Working Group** (page 3) **Want To Be a Mentor?** (page 3) **Can I Do This Assignment?** (page 4-5) **Rule Proposals and Adoptions** (page 6-7) **TALCB Enforcement Actions** (page 7)

Course Required for ALL Appraiser Trainees and Supervisory Appraisers

As of September 1, 2015, **all** appraiser trainees and their supervising appraisers must complete a Board approved Appraiser Trainee/Supervisory Appraiser course before renewing their license. Going forward, appraiser trainees and sponsoring appraisers will need to retake and complete an Appraiser Trainee/Supervisory Appraiser course at least once every four years.

Q: What does this mean to an appraiser trainee or a supervisory appraiser whose renewal date is after September 1, 2015?

A: If you are an appraiser trainee, you must complete an Appraiser Trainee/Supervisory Appraiser course before your license renewal date to renew your appraiser trainee license on active status. If you have not taken the course at the time of your renewal, you may only renew your appraiser trainee license on inactive status. After you have completed the course, you may reactivate your license.

If you are a supervisory appraiser, and you have not completed an Appraiser Trainee/

Supervisory Appraiser course at the time of your renewal, you may renew your license and continue to work as an appraiser without having completed the course; however you will no longer be eligible to supervise appraiser trainees. Additionally, when a supervisory appraiser renews his or her license without having completed this course at the time of renewal, relationships between the appraiser and any trainees supervised by that appraiser will be terminated. If a trainee is supervised solely by that appraiser, the trainee's license will be placed on inactive status. Any terminated relationships may be reestablished once the supervisory appraiser has submitted evidence to the Board that the appraiser has completed the course.

To prevent any disruption to your business, we encourage all appraiser trainees and supervisory appraisers whose license will come up for renewal after September 1, 2015, to take the required course well in advance of your renewal date.

From the Chair...

The Board met for its regular quarterly meeting on Friday August 14. The meeting agenda was filled with examples of the important work this Board is charged to accomplish.

As you may know, SB 1007 was signed by the Governor and it accomplishes many of the policy objectives sought by the Board through the strategic planning process last year. The bill will become law effective January 1, 2016. Congratulations are due to the appraisal consumers of Texas and the professionals who make their living providing appraisal services. Our gratitude goes out to those who worked hard to ensure the bill's passage, especially the Foundation Appraiser Coalition of Texas (FACT).

Every committee of the Board was active in the past quarter to address rules needed to implement legislative initiatives that will become law on September 1, 2015 and more that arise from SB 1007. One major issue authorized by SB 1007 involves the authorization to conduct fingerprint based national agency criminal history reviews. The Board is convening a working group to ensure that all stakeholders have an opportunity to voice specific input for the shaping of a recommendation before this rule is proposed. If you are interested in serving on this advisory working group, please send a letter of interest and resume to general.counsel@talcb.texas.gov by September 18th. This effort is a reflection of the Board's continued commitment to transparency and accountability as this important issue is thoroughly vetted before implementation. Look forward to the group's meeting schedule to be announced so that you can participate even if not chosen to serve as a member.

Overall, the agenda reflected our ongoing commitment to ensure the Board remains effective, relevant, viable and responsive to the needs of Texans while acknowledging the realities of federal policies that guide our decisions. The Board also adopted a budget for FY 2016, and an update to the Memorandum of Understanding with the Commission that reflects budget realities and long-range projects, and proposed expanded criteria for naming qualified mentors to assist struggling appraisers to become more effective service providers. Please review all of the proposed

rules on our website and send your comments to our General Counsel. We truly appreciate the feedback to ensure our regulatory efforts remain balanced and effective.

In October, the Association of Appraiser Regulatory Officials (AARO) will meet in DC and we will be in attendance to ensure that Texas' voice is heard when federal policies are being shaped and interpreted. Note that the Appraisal Subcommittee will be at our February 2016 meeting to report the results of their biennial audit. Board staff is working hard to repeat our excellent results of 2014.

Let me offer a reminder that the required Supervisor/Trainee course requirement will be required for all Supervisory Appraisers and Trainees prior to each license renewal after September 1, 2015. Your education record must show that you have taken the course in the four years prior to renewal or you will not be able to continue as an active sponsor or trainee. This relationship is a vital key to the future of our profession and needs to be strengthened by a clear understanding of the responsibilities of both parties. So, please take this required training as soon as you can; you'll be glad you did.

Wishing you all the best, as we continue to chart a steady and responsible course through the many challenges of developments in the market and in public policy.



Chair, Jamie Wickliffe

TALCB Accepting Volunteer Applications for Working Group

The Texas Appraiser Licensing and Certification Board (TALCB) will appoint a working group of appraisers and other industry participants to make recommendations to the Board for implementation of the Appraiser Qualifications Board (AQB) criteria for appraiser criminal history background reviews. Beginning in October 2015, meetings will be held in Austin and also via tele-conference.

Invited working group members will not receive any compensation for their participation. TALCB invites license holders, industry participants and members of the public to apply. Anyone interested in being considered should submit a letter of interest and resume to the Board's General Counsel at general.counsel@talcb.texas.gov by September 18, 2015.

Would You Like to Serve as a Mentor? You may now be eligible.

The Board is trying to expand the pool of available mentors. At the August 14th meeting, the Board adopted additional criteria for appointment as a mentor. The Board is now soliciting applications from appraisers who are interested in serving as mentors and who are now eligible to do so under these new criteria. To be eligible to be a mentor, you must:

- have 10+ years as a certified residential or certified general appraiser;
- be a Certified USPAP Instructor; or hold a recognized appraiser designation, such as MAI, SRA, IFA, ARA, etc., and be approved to teach courses to obtain that designation; and
- be in good standing, with no formal discipline.

Volunteering to become a Mentor for the Board is a way for experienced appraisers to serve the public interest and contribute to the appraisal profession by working one-on-one with appraisers required to complete remedial training and education. If you meet the criteria listed above and are interested in serving as a mentor, please visit the [Board website](#) for more information and to download the [application](#).

IMPORTANT DATES TO REMEMBER

TALCB Education Committee—October 8

TALCB Board Meeting— November 20

Check the TALCB website regularly for postings of all of our upcoming meetings.

Unlicensed Appraisal Activity: Can I Do this Assignment?

Did you know appraising real estate without a license in Texas is illegal? Appraising real estate without the required license can result in regulatory, civil and even criminal penalties. The Texas Appraiser Licensing and Certification Board (Board) can impose a \$1,500 administrative penalty for each act of unlicensed activity. On top of all that, the attorney general or district/county attorney may bring an action in district court to enjoin unlicensed activity and recover a civil penalty, which can be up to three times the amount of money received for the unlicensed activity. Finally, the Texas Appraiser Licensing and Certification Act (Act) makes unlicensed appraisal activity a Class A misdemeanor, which is punishable by up to one year in jail and a \$4,000 fine. Unlicensed appraisal activity could have consequences with the federal government, a client or a private entity harmed by the unlicensed activity. So, what exactly are the boundaries appraisers should be aware of?

Providing a Value for Real Estate

Generally, appraising Texas real estate requires a license or certification. The Act requires a credentialed appraiser for any service for which an opinion of *value* for real estate is developed. Therefore, if you develop an opinion of value of Texas real estate, you must hold some type of Board issued license. And, as detailed in the Uniform Standards of Professional Appraisal Practice (USPAP), a value can be a specific amount, a range of numbers, or a relationship to a previous value or numerical benchmark. Even something as simple as agreeing or disagreeing with a value constitutes an appraisal. Consequently, the vast majority of real estate valuations must be performed by a certified or licensed appraiser.

The Act does have some narrow exceptions to this requirement. Specifically, the Act does not prohibit a person authorized by law from performing an evaluation of real property; however, evaluations are a very specific type of assignment. Anyone performing an evaluation should consult the *Interagency Appraisal and Evaluation Guidelines* and USPAP Advisory Opinion 13 for the specific requirements. Also, the Act does not prohibit broker price opinions under certain restrictions.

Anyone performing a broker price opinion should consult the Act, the Texas Real Estate License Act, and the Texas Real Estate Commission Rules for the specific requirements. An exception also exists for county appraisal district appraisers and property tax consultants who may perform valuations in a property tax case with a county appraisal district. Those individuals are separately licensed and regulated. Appraisers should think about what credential they are working under, especially in the property tax arena. If you are solely relying on a non-Board issued credential then there should not be issues. However, the appraiser must comply with USPAP and state laws governing appraisers when they sign with their Board issued credential or otherwise hold themselves out as a licensed or certified appraiser. Appraisers involved in property tax work should be familiar with Board Rule § 155.2, which addresses this situation in detail. Bear in mind that evaluations, broker price opinions and property tax work are very specific valuations performed in specific contexts. Before embarking on a valuation of real estate one should consult USPAP Advisory Opinion 21, which provides excellent illustrations concerning the numerous roles individuals can perform within realm of valuation services.

I Already Hold a License, so What's the Problem?

Even if you hold a license, you still may confront unlicensed activity if you're not careful about what *type* of appraisal work you perform. Every Texas appraiser should be familiar with Board Rule § 153.8, which details the scope of practice permitted under different license types and places limits on the types of properties one may appraise.

Under Board Rule § 153.8, certified general appraisers may appraise all types of property. Residential appraisers have more to watch out for when considering whether to take on an assignment. Certified residential real estate appraisers may appraise "one-to-four residential units without regard to transaction value or complexity . . . may appraise vacant or unimproved land for which the highest and best use is for one-to-four family purposes . . . and . . . may associate

with a state certified general real estate appraiser, who shall sign the appraisal report, to appraise non-residential properties.” Licensed real estate appraisers may appraise “non-complex one-to-four residential units having a transaction value less than \$1 million and complex one-to-four residential units having a transaction value less than \$250,000 . . . may appraise vacant or unimproved land for which the highest and best use is for one-to-four unit residential purposes . . . and . . . may associate with a state certified general real estate appraiser, who shall sign the appraisal report, to appraise non-residential properties.”

A common area where issues arise is residential appraisers performing commercial work, which is not permitted. We see this issue arise in the context of subdivision work and rural/agricultural properties. It's important for residential appraisers to think very carefully about the type of assignment before accepting work. Attention should be given to the characteristics of the property, highest and best use and the scope of work. If the highest and best use of that property is commercial or the scope of work involves non-residential property, a residential appraiser cannot perform the work. However, residential appraisers who want to do commercial work should find a certified general appraiser to associate with and make sure that appraiser is actively involved in the appraisal process and signs the report. In those situations, make sure the residential appraiser providing significant professional assistance is disclosed in the report as required by USPAP.

Appraiser Trainees may only appraise properties under the active, personal and diligent supervision of their certified supervisory appraiser. Many times we see unlicensed individuals performing work that involves exercising professional skill, judgment and analysis. Appraisers who employ clerical staff in their office should take care to ensure that employees who do not hold a license from the Board are only providing clerical support and not crossing into appraisal activity. Completing an approach to value, searching MLS for comparable sales to use in an assignment, conducting inspections, making adjustments and reconciling data are examples of some of the tasks clerical staff should not be performing. Remember to keep in mind your client's assignment conditions. Many will specifically spell out in writing who is permitted to work on the assignment. When the client is an AMC, Board rules require the appraiser doing the appraisal to be on the AMC's panel. Of course, anytime someone provides significant professional

assistance, the person and the tasks performed must be disclosed in the report as required by USPAP.

Lastly, the Act allows an out-of-state appraiser to temporarily perform real estate appraisals only if that person is registered with the Board as a temporary out-of-state appraiser. Make sure that if you are coming from out-of-state to do work in Texas that you obtain the necessary temporary practice registration. Likewise, be aware that if you do work in other states, many may require you to register in that state. Laws vary depending on the state, so you may want to consult an attorney or that state's appraiser regulatory body.

What if I Perform a Review?

Anytime an appraiser develops an opinion about the quality of another appraiser's work, they are conducting a review appraisal and must comply with USPAP. However, appraisers doing review work do not necessarily need to be licensed in Texas, so long as they hold a credential from another state. There are two key distinctions appraisers must be aware of when deciding if they need a Texas credential to do review work. First, are you developing an opinion of value as part of the review? If so, you must hold a Texas credential. Remember, USPAP defines value very broadly, so appraisers should take care to avoid even agreeing or disagreeing with a value in an appraisal where their client only wants a review. Otherwise, they'll need a credential and must comply with additional USPAP obligations triggered when developing a value opinion (USPAP Standards 1 and 2). Second, are you performing the review for an AMC where the assignment is a periodic review the AMC is required by law to conduct as part of their obligations under state law? If your review assignment is one of these unique jobs, you must be credentialed in Texas to do this type of work.

Conclusion

Ultimately, avoiding unlicensed appraisal activity should not be a difficult task. If you receive compensation for providing valuation of Texas real property, you are likely required to hold a license issued by the Board. Then, depending on the assignment, you should determine if your license type allows you to appraise the particular property. Just keep in mind: the consequences of not taking the time to evaluate these important considerations far outweigh the time or inconvenience of conducting a little bit more due diligence.

Rules and Forms Actions at the August 14th Board Meeting

The Board took the following actions regarding rules and forms at its meeting on August 14, 2015. You may review the full text of all rules actions on the [Rules and Laws section](#) of the TALCB website. The revised forms are available on the [Forms section](#) of the TALCB website.

EMERGENCY RULES

The Board adopted emergency amendments to the following rules at its meeting on August 14, 2015. The emergency amendments to these rules are effective September 1, 2015. The Board has also proposed these same amendments as described below under "Proposed Rules."

22 TAC §153.9. Applications

Emergency amendments to this rule implement changes to Chapter 55, Texas Occupations Code, adopted by the 84th Legislature. The amendments align the Board's rule with the statutory changes, which are effective September 1, 2015.

22 TAC §153.17. Renewal or Extension of License

Emergency amendments to this rule implement changes to Chapter 55, Texas Occupations Code, adopted by the 84th Legislature. The amendments align the Board's rule with the statutory changes, which are effective September 1, 2015.

22 TAC §157.18. Motions for Rehearing; Finality of Decisions

Emergency amendments to this rule implement changes to Chapter 2001, Texas Government Code, adopted by the 84th Legislature. The amendments align the Board's rule with the statutory changes, which are effective September 1, 2015.

ADOPTED RULES

The Board adopted amendments to the following rules at its meeting on August 14, 2015. These amendments will be effective

September 7, 2015.

22 TAC §153.1. Definitions

The amendments to this rule add a definition of "real estate appraisal experience."

22 TAC §155.2. Work Relating to Property Tax Protests

The amendments to this rule correct a typographical error to reflect the proper statutory reference.

22 TAC §159.204. Appraisal Management Company Complaint Processing

The amendments to this rule implement a penalty matrix for complaints filed against an appraisal management company.

PROPOSED RULES

The Board proposed amendments to the following rules at the Board meeting on August 14, 2015. These proposed amendments will be on the agenda for adoption by the Board at the November 20, 2015. You may review the full text of the proposed amendments on the [Rules and Laws section](#) of the TALCB website. Written comments on the proposed amendments may be sent to general.counsel@talcb.texas.gov and must be received before 5:00pm on Friday, October 30, 2015 to be included in the materials for the November meeting. After that date, comments must be made in person at the meeting.

22 TAC §153.1, Definitions

The proposed amendments clarify the definition of "Appraiser Trainee" and add definitions of "Certified General Appraiser," "Certified Residential Appraiser," "Licensed Residential Appraiser," "Supervisory Appraiser," and "Trade Association" to align the rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §153.5, Fees

The proposed amendments align this rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature and add a provision for the Board to collect fees for providing certified copies.

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22 TAC §153.9, Applications

The proposed amendments align this rule with statutory changes to Chapters 55 and 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §153.16, License Reinstatement

This proposed new rule allows persons who previously held a license issued by the Board to reinstate an expired license as authorized by the Appraiser Qualifications Board (AQB).

22 TAC §153.17, Renewal or Extension of License

The proposed amendments align this rule with statutory changes to Chapters 55 and 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §153.20, Guidelines for Revocation, Suspension, Denial of License; Probationary License

The proposed amendments implement changes regarding compliance with an agreed order of the Board and the statute of limitations for investigating a complaint to align the rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §153.21, Appraiser Trainees and Sponsors

The proposed amendments align the rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §157.7, Denial of a License

22 TAC §157.8, Adverse Action Against a License Holder or Registrant

The proposed amendments to these rules reorganize the rules for better understanding and clarity.

22 TAC §157.9, Notice of Hearing

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

The proposed amendments align these rules with the statutory changes to Chapter 2001, Texas Government Code, adopted by the 84th Legislature.

22 TAC §157.17, Final Decisions and Orders

22 TAC §157.18, Motions for Rehearing; Finality of Decisions

22 TAC §157.20, Judicial Review

The proposed amendments to these rules align the rules with statutory changes to Chapter 2001, Texas Government Code, and Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature. The proposed amendments also clarify the action to be taken by the Board when a motion for rehearing does not include specific grounds for rehearing.

22 TAC §157.25, Temporary Suspension

22 TAC §157.26, Unlicensed Activity

The proposed amendments to these rules align the rules with statutory changes to Chapter 2001, Texas Government Code, and Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

22 TAC §157.31, Investigative Conference

The proposed amendments align this rule with statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

PROPOSED REPEAL

22 TAC §157.19, Prerequisite to Judicial Review

The Board proposes the repeal of this rule as a result of statutory changes to Chapter 2001, Texas Government Code, and Chapter 1103, Texas Occupations Code. The language from this rule will be moved to 22 TAC §157.18, Motions for Rehearing.

FORMS

The Board adopted revisions to the following forms, effective August 14, 2015:

- 1) Application for Registration as an AMC (AMC-3);
- 2) Renewal of Registration as an AMC (AMCR-2); and
- 3) AMC Owner/Primary Contact Background History (AMCOPB-2).

The revised forms are available on the [Forms section](#) of the TALCB website.

TALCB Enforcement Actions

The Texas Appraiser Licensing and Certification Board publishes their enforcement actions regularly on the new TALCB website. To read the reports please go to the [TALCB website and click](#) on, public and disciplinary actions.

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.

Inside this Issue: From The Chair (Page 1) Reminder To All Inspectors (Page 2)

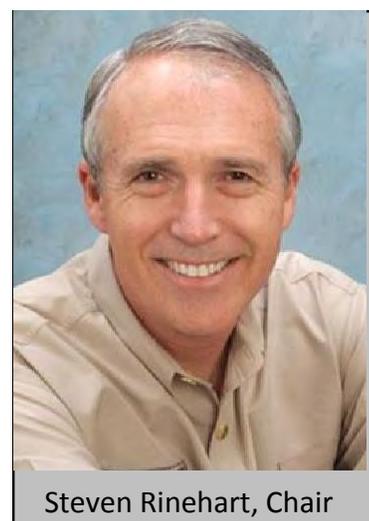
From the Chair...

Since the last Commission meeting, the Inspector SOP Subcommittee has met several times via teleconference to review the SOPs. The Subcommittee discussed several non-substantive changes to make the SOPs easier to follow and understand. The Subcommittee will continue to review the SOPs and work with stakeholders and staff with that goal in mind and encourages continued input from inspectors during this process. The Education Subcommittee met via teleconference on July 29 to discuss the changes to the education rules as proposed by ESAC and to consider and address any inspector-specific issues. Several items were discussed, including the proposal that providers no longer be required to offer correspondence courses through colleges and universities. The Subcommittee believes this change will benefit inspector applicants and license holders by increasing the pool of courses offered by that delivery method.

The full Inspector Committee met on August 9 to discuss several matters, including the proposed amendments to the education rules, as well as amendments to the rules governing inspectors resulting from recent statutory changes. These included amendments to the rules governing licenses for military personnel, their spouses, and veterans; rules regarding the

required consumer notice, and a conforming change to the definition of trade association to match the definition that is used throughout the Commission rules. After consideration, the Inspector Committee unanimously recommended that the Commission submit the rules to the *Texas Register* for publication and public comment at their August meeting, which the Commission did. Additional details regarding the proposed rules can be found in the Advisor and on the TREC website.

The next meeting of the Inspector Committee is scheduled for October 5th. We continue to seek to improve our profession and welcome your participation in the process is vital to these efforts. Help us to shape the public policy that directly affects your chosen profession. Enjoy the Labor Day holiday.



Steven Rinehart, Chair

Reminder To All Inspectors

The Commission adopted a new Property Inspection Report Form (REI 7-5) at its May meeting. Language was added to the “Consumer Notice Concerning Hazards or Deficiencies” section of the form to notify consumers about potential hazards regarding lack of bonding on gas piping, including corrugated stainless steel tubing (CSST). Inspectors have been able to use this new form on

a voluntary basis since its adoption; however inspectors are required to use the form for all inspections conducted on or after September 1, 2015. The form can be downloaded from the Inspector Information Page of the TREC website.

Have you registered your business name (DBA) with the Commission?

Each inspector is required to notify TREC in writing of any assumed name used by the inspector for business purposes (DBA) within 30 days of starting or stopping use of the DBA. (See TREC Rule 535.221(c)). Apprentice inspectors are not allowed to use an assumed name or DBA.

If you are not registered, notification can be made to TREC by using the appropriate [notice form \(IDBA-0\)](#) available on the [Inspector License & Change Forms page](#) of the TREC Website. There is no charge to notify the Commission.

Not sure you registered your business name? It's easy to find out. Search your license number or name on our website (be sure to check the box for “Inspector”) and see if your business name is registered.

IMPORTANT DATES TO REMEMBER

TREIC Committee Meeting— October 5

Check the TREC website regularly for postings of all of our upcoming meetings.