



# 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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## TREC Education Statutory and Rule Changes Effective January 1, 2016

January 1, 2016 is fast approaching and rules that were adopted at the August 17<sup>th</sup> and November 2<sup>nd</sup> Commission meetings relative to statutory changes brought about by SB 699 will soon go into effect. In addition, many of the exciting changes to the real estate education program brought about by the hard work and recommendations of the Education Standards Advisory Committee (ESAC) and education stakeholders will also be implemented in January.

TREC's Qualifying and Non-elective CE providers have received several emails from the agency to keep them informed of upcoming changes that will affect them. In addition, a summary of the rules as proposed was posted under the "Hot Topics" section of the TREC Home Page. In addition, an email was recently sent to all Qualifying and Non-elective CE Providers which included a chart with a summary of many of the education changes that have been adopted regarding Qualifying and CE course requirements and the dates by which new course requirements must be implemented. If you are a provider and did not receive the December 4<sup>th</sup> email, please contact us at [education@trec.texas.gov](mailto:education@trec.texas.gov).

Here are highlights of some of the changes that will become effective January 1, 2016. Please read and reference TREC's rules for specific details.

- Brokers and sales agents will be required to take 18 hours of CE every license period.
- License holders that have completed their required non-elective CE by December 31, 2015 will not be required to take the new Legal Update I and II courses until their next renewal.
- Brokers and sales agents will be required to complete the new Legal Update I and II courses (4 hours each) to satisfy the non-elective requirement after December 31, 2015.
- The designated broker of a business entity who does not sponsor agents will no longer be required to complete the broker responsibility course.
- Broker license applicants must have taken the qualifying real estate brokerage course not more than two years before applying for a broker license.
- Broker and sales agent exam candidates will have 3 attempts to pass the exam prior to the application expiration date. After 3 failed attempts the candidate will be unable to retest until an additional 30 hours of a qualifying course is completed for failing either the national or state part; and 60 hours of qualifying courses completed for an applicant who fails both parts of the examination.
- License holders who are under Sales Apprentice Education (SAE) during the first two years of the license are required to have 270 total hours of qualifying courses and complete the non-elective courses prior to renewal.
- New sales agents may now go online and use the RMT (Relationship Management Tool) to secure their first sponsoring broker.
- Instructors who are approved to teach Qualifying and CE Non-Elective courses will be required to attend an 8-hour adult education instructor training course before filing an application or seeking re-approval. Instructors who show proof of current CREI, DREI, or CDEI designations or who have completed the ITI program within 4 years prior to approval or re-approval will satisfy the requirement.
- The exam passage rate for a Qualifying education provider will now be determined based on where the student took the majority of their course hours instead of the provider of the last course they completed.
- A license holder may earn up to 4 hours of CE for attending a February meeting of the Commission once during each renewal period.

## From the Chair...

The Commission held its regular quarterly meeting on November 2<sup>nd</sup> to consider and adopt rules, hear disciplinary matters and approve payments from the Recovery Fund . We also received reports from all of our advisory committees and from the Executive Director and agency staff. I continue to be very impressed with the professionalism of everyone involved in supporting the Commission and our work.

The last of the rules and forms needed to implement the changes required by SB 699 were considered and adopted. Starting on January 1, license holders will receive additional education in promulgated contracts and their proper use as 18 hours of continuing education will become the minimum required to renew an active license. Many education instructors will be better prepared as they are required to have at least 8 hours of adult education training before presenting certain key qualifying and continuing education courses. Education providers will also need to meet some higher standards for course goals and presentation, student assistance and learning evaluation. Many of these course related changes will be phased in over the next 12-15 months to assure the quality of implementation.

Updated contracts as proposed by the Broker Lawyer Committee were approved for use beginning next year. As always, these changes were fully vetted to determine whether they are needed, helpful and balanced. License holders may begin to use them at any time, but are required to use the new contracts starting January

1, 2016. A new Consumer Protection Notice was approved – combining two notices currently required to be communicated to clients - and also the updated *Information About Brokerage Services* form will be

required for mandatory use by February 1, 2016. We are especially proud that our Broker Responsibility working group has rewritten this required notice to make it easier for the average person to actually understand it, and to provide appropriate broker contact information for the client.

We executed an updated Memorandum of Understanding with the Real Estate Center at Texas A&M University, expanding our cooperative relationship into several new areas of education and research.

So 2016 promises to be a great year as we continue to advance our mission of making the Commission the premier Texas agency known for its consumer education and protection functions, collaboration with the professional association of its license holders, and the intense research and acceptance of diverse input to enhance the efficiency and effectiveness that result in good public policy operations.

Merry Christmas and Happy Holidays to all of our license holders and policy partners! We hope that this special season of joy is filled with family and fun!



### IMPORTANT DATES TO REMEMBER

ESAC Committee Meeting—January 11

TREC Commission Meeting—February 8

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

## When Talking about “Value”, Choose Your Words Carefully

“What do you think this property is worth?” All of us who are in the real estate profession have been asked this question hundreds of times. You try to answer it for a customer or client each time you do a Comparative Market Analysis (CMA) or a Broker Price Opinion (BPO). As a license holder, you are allowed to perform this task in the name of the broker as a distinct service and for a separate fee. This is a very particular skill you can learn to do competently. But when you do so, be careful to ensure you stay clearly within your area of expertise – and do not exaggerate the skill you’ve developed. Real estate brokers and sales agents do not offer “opinions of value” – that area of expertise requires an appraiser license in Texas. So there is no such thing as a “broker opinion of value” (BOV) in Texas!

Real estate professionals should avoid using the term “value” without an appropriate prior qualifier that makes it very clear to your audience that you are not offering “an opinion of value”; that is the legal definition of an appraisal.

Now before you get upset about this, realize that clearly establishing your area of expertise is one of the requirements of your professional license. Your license allows you to perform many skilled tasks associated with real property analysis, marketing, sale and transfer, but it also requires you to perform these tasks competently, that is, with a minimum level of expertise. And to refrain from engaging in activities – even those permitted by your license – if you have not developed that expertise. For example, you would never attempt to complete a 1031 Exchange without acquiring the knowledge and skill to do so competently. And your license also does not allow you to trespass into other real estate transaction-related tasks which require separate and distinct licenses. You already know and accept this.

### Competence and Licensing

You may be a great contract negotiator, but you know you cannot write substantive provisions into a client’s contract unless you have a law license. You may be a very skilled closing or escrow counselor, but you cannot perform certain escrow or closing tasks without an escrow agent or law license. You may be highly accomplished at estimating mortgage qualifications for customers or clients, but you cannot underwrite and originate a loan without a mortgage loan originator license. Similarly, you may have tremendous skills in estimating the likely sale price of a home, and even more so in the marketing strategy of recommending a listing price based on that analysis, but that is clearly not the same as

the detailed process used to establish a “market value” for purposes of collateralizing a mortgage loan. Establishing a “market value” requires adherence to the Uniform Standards of Professional Appraisal Practice (USPAP). And in Texas – like in most states – performing that task requires an appraiser license.

As you are likely aware, as a license holder you are allowed to create a CMA or a BPO relating to the estimated price of real property as part of the ordinary course of business if the analysis, opinion or conclusion is related to the actual or potential management, acquisition, disposition or encumbrance of an interest in real property. Most importantly, the CMA or BPO cannot be referred to as an appraisal, and you are required to use a disclaimer that specifically informs the user or reader that this is not an appraisal and was not developed following the guidelines in the Uniform Standards of Professional Appraisal Practice (USPAP). See Tx Occup Code Sec. 1101.102(1)(A)(xi) and Title 22 TAC Sec. 535.17.

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## Updated Contract Forms Available

TREC's adopted changes to the promulgated residential contracts are now available on the agency's website. These changes were proposed at the August meeting and adopted as proposed at the Commission's meeting on November 2<sup>nd</sup>. The approved forms are now available for voluntary use and may be downloaded from the TREC website in fillable PDF format. Use of these forms will be mandatory beginning on January 1, 2016.

Texas real estate license holders are required to use the forms promulgated by TREC when negotiating contracts for the sale of real property. Consumers and others may use the forms as well. The forms are drafted by the Texas Real Estate Broker-Lawyer Committee, a 13-member advisory body to the Commission, with six attorneys appointed by the President of the State Bar of

Texas, six brokers appointed by TREC, and one public member appointed by the Governor.

The Broker-Lawyer Committee revised the contract forms to align the contracts with federal rule changes promulgated by the Consumer Finance Protection Bureau (CFPB) in the TILA-RESPA Disclosure rules, which became effective October 3, 2015; and with state statutory changes enacted by the 84th Legislature in HB 1665, SB 1367, and SB 1168, which became effective September 1, 2015. Additional revisions to the contracts were made to address other important issues that have arisen since the last contract revisions or due to recent court cases.

See all the adopted, fillable forms on the [TREC Website](#).

## Monthly Accounting of Money Required New Rule effective January 1, 2016

Effective January 1, 2016, Commission Rule 535.146(c)(6) requires all brokers to provide accountings, at least monthly, to each beneficiary of trust money being held by the broker. Any time a broker is holding money in trust and there is any activity in the trust account, the broker is now required to provide an accounting for that money at least monthly.

For a broker managing property, it is not enough to just send the money to the owner. You are now required to provide a written accounting along with the money. If you have been doing this, great! If not, you need to start doing this to comply with the new rule. Remember to keep a documentary record as evidence of your compliance with this rule.

### This rule applies to:

- A broker who holds earnest money
- A broker who holds property management money (rent, security deposits, etc.)
- A broker who holds unearned fees
- Any other money a broker holds on behalf of another person in a trust account

## TREC HOLIDAY HOURS ANNOUNCED



The Agency's offices will be closed on:

December 24 and 25 for the Christmas Holiday

December 31 and 1 for New Year's Holiday

Our office hours are Monday through Friday from 8:00 am to 5:00 pm and the call center is available from 7:00 am to 6:00 pm.

Happy Holidays!

## Rule Actions from the November 2, 2015 Meeting of the Commission

### Adopted Rules

The following is a summary of amendments to TREC Rules adopted at the November 2, 2015 meeting of the Commission. Effective dates vary and are noted by chapter or rule. You can see the full text of the rules at the Recently Adopted Rules section of our [website](#).

#### **Significant New TREC rules effective January 1, 2016**

**Chapter 533, Practice and Procedure.** This chapter was updated to comply with changes made to the APA and delegates decisions on Motions for Rehearing to the Commission's Enforcement Committee.

**§535.1, Definitions.** The definition of business entity was clarified, and definitions were added for trade association, Commission and Executive Director (formerly known as the Administrator).

**§535.32, Attorneys in Fact.** Use of power of attorney to represent another in a real estate transaction without being licensed was limited to 3 transactions per calendar year.

#### **Chapter 535, Subchapter E, Requirements for Licensure.**

Revisions implemented new statutory education and examination requirements, including that an applicant for a broker's license must have completed the 30 hour qualifying Real Estate Brokerage course within two years of the application date and an applicant who fails the licensing examination three consecutive times must complete additional education before retaking the examination. Amendments also extended expedited license processing to active military service members and veterans and waived certain license and application fees, and decreased the waiting period after disciplinary action has been completed for good standing qualification.

#### **Chapter 535, Subchapters F & G, Requirements for Education Providers, Courses and Instructors for Qualifying and Continuing Education.**

The revisions aligned the rules with statutory changes and clarified and improved performance and delivery standards for real estate and inspector education providers, courses and instructors. Significant changes include: All non-classroom courses are now classified as distance education and correspondence courses no longer have to be associated with an accredited college or university; an approved instructor is required to be available to timely answer students' questions and for providing answers and rationale for the grading of the written course work; final course examinations for all delivery methods for qualifying and for distance education for CE must be proctored; a license holder

cannot turn a course completion certificate into the Commission until at least twice the number of hours for which course credit is given has elapsed since the student registered for the course for qualifying courses and until the number of hours for which course credit is given has elapsed for CE; the formula for satisfying exam passage rate benchmarks for providers was revised; and rules regarding provider and course advertising were strengthened for better consumer protection.

**§535.91, Renewal of a Real Estate License.** In order to renew following a sales agent's initial licensing period, the sales agent must complete an additional 90 classroom hours of qualifying courses and 8 hours of Legal Update I and II. An active duty military service member is permitted two additional years to renew a license.

**§535.92, Continuing Education Requirements.** License holders are required to take 18 hours of continuing education each license period, 8 of which must be the new Legal Update I and II courses promulgated by TREC. Designated brokers of entities that do not sponsor agents will no longer be required to take the Broker Responsibility course and up to 4 elective CE hours can be received each license period for attendance at a February Commission meeting.

**§535.146, Maintaining Trust Money.** A broker must provide an accounting to each beneficiary of trust money at least monthly, if there has been any activity in the account for that beneficiary.

**§535.148, Receiving an Undisclosed Commission or Rebate.** The Disclosure of Relationship with Residential Service Company form that is adopted by reference was revised.

#### **Significant New TREC rules effective February 1, 2016**

**§531.18, Consumer Information (Brokers and Agents).**

**§535.220, Professional Conduct and Ethics (Inspectors),**

**and §535.401, Required Notices (ERW).** A new

mandatory Consumer Protection Notice was adopted and must be displayed by each TREC license holder in their offices and through a link on the homepage of each license holder's website.

**§531.20, Information About Brokerage Services.** A new mandatory Information About Brokerage Services form was adopted. It updates and clarifies the information provided to the public and requires that brokerage and agent contact information be provided. The IABS must still be given to a customer at the first substantive dialogue. Additionally, the license holder's website must

## Rule Actions of the Commission Continued...

have a link to the IABS on the homepage.

**Chapter 537, Professional Agreements and Standard Contracts.** The following revised contracts are effective for mandatory use 1/1/16.

§537.20, Standard Contract Form TREC No. 9-11 (Unimproved Property Contract)

§537.28, Standard Contract Form TREC No. 20-12 (One to Four Family Residential Contract (Resale))

§537.30, Standard Contract Form TREC No. 23-13 (New Home Contract (Incomplete Construction))

§537.31, Standard Contract Form TREC No. 24-13 (New Home Contract (Complete Construction))

§537.32, Standard Contract Form TREC No. 25-10 (Farm and Ranch Contract)

§537.33, Standard Contract Form TREC No. 26-6 (Seller Financing Addendum)

§537.37, Standard Contract Form TREC No. 30-11 (Residential Condominium Contract (Resale))

§537.39, Standard Contract Form TREC No. 32-3 (Condominium Resale Certificate)

§537.45, Standard Contract Form TREC No. 38-4 (Notice of Buyer's Termination of Contract)

§537.46, Standard Contract Form TREC No. 39-7 (Amendment to Contract)

§537.47, Standard Contract Form TREC No. 40-6 (Third Party Financing Addendum for Credit Approval)

### 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)*.

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. *Credit Approval* was renamed *Buyer Approval*. The Authorization to Release Information was expanded to include title companies and escrow agents for closing disclosure.

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 in writing by the seller.

Paragraph 9B(5), Closing, is amended to conform the language with a statutory change to the property code, noting that the buyer has to acknowledge to a tenant that 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, and the order of the Associate and the Associate's Supervisor were reversed.

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 the condominium documents reveal the existence of a right of first refusal after the parties enter into a contract.

The *Condominium Resale Certificate* is amended to conform to new statutory disclosure requirements.

The *Seller's Disclosure of Property Condition* (OP-H) is amended to conform to a new statutory requirement.

The Amendment form and Seller Financing Addendum were revised to be consistent with changes to the contract forms and Thirty Party Financing Addendum.

### Proposed Rules

The following amendments or new rules were proposed at the November 2, 2015, meeting of the Commission and are up for adoption at the February 8, 2016 meeting. You can see the full text of these rules on the "Proposed Rules" section of the TREC Website. Written comments on the proposed rules can be sent to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov) and must be received prior to 5 p.m. December 23, 2015 to be considered by the appropriate advisory committee and included in the

## Rule Actions of the Commission Continued...

materials for the February meeting. After that date, comments will need to be made in person at the meeting.

**§535.210, Fees (regarding inspectors).** The proposed amendments align the rule with statutory changes to Chapter 1101, Texas Occupations Code, adopted by the 84<sup>th</sup> Legislature, and rule changes to the education course delivery standards. A charge for providing certified copies of documents was also added.

### **New/Revised Forms**

The following new or revised forms were adopted and are effective for immediate use, unless otherwise noted:

#### Confidentiality Agreement

This is a new form to enable TREC to maintain the confidentiality of investigation files made confidential by statute in SB 699 beginning January 1, 2106.

Real Estate Course Application (previously ED CA-3, now QE CA-0)

Inspector Course Application (previously INS ED CA-1, now QE ICA-0)

Real Estate Continuing Education (CE) Course Application (previously MCE CA-2, now CE CA-3)

Inspector Continuing Education (CE) Course Application (previously ICE CA-1, now ICE CA-2)

Course Application Supplement (previously CE CAS-3, now CE CAS-4)

Forms b. thru f. are revised to comply with statutory changes in SB 699, adopted by the 84<sup>th</sup> Legislature, and incorporates new terminology and a method of calculation for the reduction of course application fees allowing for the submission of multiple delivery methods on one application form.

Education Provider Application (previously ED PAPS-1, now QE PA-0)

Provider Application (CE PA-0)

Forms g. and h. are updated to incorporate new terminology and revised so that separate instruction forms are no longer needed.

Instructor Application for Real Estate Qualifying and Non-Elective CE Courses (previously ED INE-1, now QE REI-0)

Instructor Application for Inspector Qualifying and Non Elective CE Courses (previously INS ED INE-0, now QE II-0)

Forms i. and j. are revised to update terminology and include the requirement that instructors complete an adult education instructor training course within four years of the date of the application or hold a current Commission approved instructor designation.

#### Qualifying Instructor Guidelines

This form will be used internally and provides guidance for the review of the qualifications and experience of instructor applicants.

Principle Application Form (previously CE ICE PIF-0/ED

PA-0, now PAF-0)

Current forms for CE and qualifying providers were combined to create one form, eliminating the need for two forms.

Distance Education Reporting Form (previously MCE AIMRF-1, now DERF-0)

Current form is updated and renamed to incorporate new terminology adopted by the Commission and to require that course completion information be provided by electronic means acceptable to the Commission.

Course Acceptance Application (previously ED-CAA-1, now QE CAA-0)

Current form is updated and renamed and incorporates new terminology adopted by the Commission. This form allows colleges and universities to submit their qualifying courses for review and acceptance.

Qualifying Real Estate Course Approval Form for Real Estate Brokerage (REB-0)(New)

New form created for qualifying providers to request approval to offer the Real Estate Brokerage course which now requires specific topics and timelines.

Appliances (previously PIEAC-APP-1, now APPL-0)

Building Enclosures (previously PIEAC-BLD ENC-2, now BLDG-0)

Electrical Systems (previously PIEAC-ELS-2, now ELEC-0)

Foundations (previously PIEAC-FOUN-1, now FOUND-0)

Framing (previously PIEAC-FRM-1, now FRAM-0)

HVAC (previously PIEAC-HVAC-2, now HVAC-0)

Other Approved Courses (previously PIEAC-OAC-1, now OAC-0)

Plumbing (previously PIEAC-PLMB-2, now PLMB-0)

Roof Systems (previously PIEAC-RS-2, now ROOF-0)

Standard Report Form Report Writing (previously PIEAC-STANDARD REPORT FORM REPORT WRITING-1, now SRFRW-0)

Texas Standards of Practice/Legal/Ethics Update (previously PIEAC-SP LEU-2, now SOP LEU-0)

Forms p. thru z. were Professional Inspector Education Alternative Course Approval Forms. The forms are renamed Inspector Course Approval Forms, the form numbers are simplified and each form is revised to remove the specific number of credit hours that were previously assigned to each course. This will allow education providers more flexibility in using these forms to request course approval.

Texas Standards of Practice (TSOP-0) (New)

Texas Legal/Ethics (LGLETH-0) (New)

Forms aa. and bb. were created because there was no course approval form to request approval to offer these two courses and forms are needed for this purpose.



## Tips for Requesting Sponsorship

A broker, who is also the designated officer of a Business Entity, will have two license numbers; the individual broker's license and the business entity broker's license.

Sales Agent's requesting the sponsorship through the Relationship Management Tool (RMT) should verify the correct license

number for their sponsoring broker PRIOR to submitting the online request. Once the fee is paid, the fee is non-refundable or transferrable.

Once the request and payment are submitted, an email will be sent to the broker. The sponsorship will be in effect when the broker accepts the sponsorship request.

## 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, Consumer Info" and then [click "Disciplinary Actions"](#).

## Agency TOP Performer



**Ashley Fletcher**

*Education and Licensing Services*

Ashley routinely goes above and beyond her duties, training new team members, taking on new responsibilities, and looking for ways to make her division more effective and efficient. Her positive attitude and persistent smile bring joy to those around her. The Commission recently noted a large reduction in the week-to-week volume of pending license applications, and Ashley's efforts were cited as one key reason. Thanks Ashley for your contribution to your team and to our agency's success.

## TREC Employee Update



**Nakita Cummings** *TREC Standards and Enforcement Services*

Nikita Cummings joined TREC's Standards and Enforcement Services Division as a Program Specialist on October 19th, 2015. She has worked in the Case Management field for over five years and has been employed with The State of Texas for almost five years. Nikita earned a Bachelor's Degree in Social Work from Southern University at New Orleans. Nikita's very excited to be a part of TREC and has gained a great deal of knowledge in her position.



**Stephen Germenis** *Staff and Support Services*

Steve grew up in Annapolis, Maryland, New Orleans, Louisiana, and attended high school in Houston Texas. Steve joined the Marine Corps after high school where he worked as a water survival instructor. After the Corps, he attended and graduated from Southwest Texas State with a degree in Accounting. While going to school he met and married Leslie and had 3 children. He has worked for several agencies as an accountant and budget and operations analyst. Steve retired from State service in June of 2015, and returned 4 months later. Outside of work, Steve spends time with his 5 grandchildren and enjoys RVing, hunting, fishing, and spending time with family and friends.



**Matthew Powers** *Reception and Communication Services*

Mr. Powers began his employment with TREC on November 9th and is originally from San Antonio. He was previously employed by the State Preservation Board as the Group Sales Coordinator, and then with Development and Membership at the Bullock Texas State History Museum. He studied Aviation Science at Utah Valley State University, and served in the US Marine Corps 4th Recon at Ft. Sam Houston Naval Marine Corps Detachment. He is also licensed with the Texas Department of Insurance and is extremely excited to work for the agency.



**Alex Muthukatil** *Information and Technology Services*

Alex is originally from Houston and joined TREC as the Systems and Network Administrator on November 9th 2015. He has worked as an IT consultant in the private sector for over 5 years with a focus on virtualization, security, and remote management technologies. He originally studied Biology at the University of Houston and worked in the medical field as a Perfusionist, until deciding to pursue his passion for technology full time. In his free time he likes to read books, write short stories, play video games, piano, and mountain bike.

# 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.

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## From the Chair...

The Board met for its regular quarterly meeting on Friday November 20th to hear disciplinary matters, consider and adopt rules and conduct other routine business. We also received progress reports from our advisory committees and from the Commissioner and key agency staff. Most of what the agenda accomplished is the final implementation of items related to SB 1007 from the 2015 legislative session.

The Board also appointed a working group to be coordinated by Board member Jesse Barba to explore the appropriate implementation of the authority to conduct fingerprint-based background checks. The working group is tasked to ensure that all stakeholders have an opportunity to voice specific input for the shaping of a recommendation before this rule is proposed. Watch the agency website for meeting times and information about the important work of this group.

One proposed rule that had very high interest was a potential amendment to the scope of work section of the rule offering guidance to Appraisal Management Companies for appraisal reviews needed to meet the requirement for review of 5% of appraisal reports ordered in Texas each year. If you are interested, please make sure you provide comments to [general.counsel@talcb.texas.gov](mailto:general.counsel@talcb.texas.gov) by January 15<sup>th</sup>. Thanks.

We were reminded that the FFIEC's Appraisal Subcommittee (ASC), our federal oversight agency, will be visiting the agency for their biennial audit in February of 2016. Their results will be reported to the Board at our next meeting on February 19<sup>th</sup>.

We look forward to another exceptional report.

Two other accomplishments in areas other than agency policy are worthy of note. In this season of giving, the staff committed almost \$20,000 to charitable causes through 2016 payroll deductions as part of the State

Employee Charitable Campaign (SECC) program. And the Committee for People with Disabilities of the City of Austin Mayor's Office recognized the agency with their Distinguished Service Award as 2015 Employer of the Year for our outstanding level of participation in providing training opportunities for folks of all ages with special needs. Many thanks to Mariah Jackson, the agency's program manager, for her dedication to this effort - very well done!

As this Holiday season rapidly approaches, we hope the time is special for each of you - and filled with tremendous sense of fulfillment and the joy of family sharing.



Chair, Jamie Wickliffe

## When Talking about “Value”, Choose Your Words Carefully, Continued From TREC Advisor (Page 3)

### Precision Offers Protection

While there are certainly instances where the term “value” is used generically in the realty marketplace, as professionals, we are required to be more precise in our language. This is especially true in our advertising which tends to use simple and brief terminology. We know how to do this – we already do it all time. We differentiate between brokers and sales agents, and between REALTORS and other license holders, even when our clients may not fully comprehend the implications of the distinction. We explain the difference between a customer and a client, to ensure either party does not misunderstand the scope of professional assistance we can offer. We carefully distinguish between “tax value” and “market price” to ensure our clients are both realistic and fully informed. To serve our clients competently – and to avoid misleading them, it is required that we are also able to clearly explain the difference between “sale price” and “market value”.

### Price vs Value

To start, a sale “price” is the amount of money that the buyer agrees to pay for, and for which the seller agrees to transfer, the property – think of it as the “exchange” price. Based on a widely variable set of determinate and indeterminate factors, this amount may be very close to, or very far from, the “market value” of a property. “Price” is just one element to be taken into consideration when determining “market value”. Often it can be the most predictive element, but that does not make it equivalent.

What about the potential for a change in property use? Or the zoning classification? What about an easement or some other key entitlement or restriction? Would any of these variables affect market value? Of course they would! Without a

detailed analysis performed under recognized methods and techniques, and using current data to consider all three major approaches to value – income potential, comparable sales and replacement costs, and then reconciling those relevant results, a fair “market value” cannot be reliably determined. And these skills are precisely what an appraiser is trained to do.

And this is why the lending community relies almost exclusively on an appraisal report to estimate the “market value” of the collateral property when making a mortgage loan. A BPO just won’t cut it. There are many circumstances for which a CMA or a BPO provide the kind of information needed to assist an owner or the owner’s agent in evaluating the options for dealing with a specific property – versus the structured, detailed analysis provided by an appraisal report. But that does not make them equivalent. A BPO or CMA is not a comprehensively sufficient analysis to establish “market value”, though it may be done competently enough to support a likely sales price prediction or a listing price marketing strategy.

### The Take-Away

So, unless you hold a current appraiser license, the next time someone asks you “What do you think that property is worth?”, choose your words carefully when you answer. “In today’s market, I think it would sell for \$XX” is always a more appropriate response for a real estate professional – broker or sales agent. The most professional approach is to simply avoid using the term “value” without an appropriate prior qualifier that makes a clear distinction that you are not offering “an opinion of value” - which is the legal definition of an “appraisal” in Texas, and requires an appraiser license to do competently and legally.

## Criminal History Background Check Implementation Working Group Members Appointed

The Board has appointment members to a working group which will make recommendations to the Board for Implementation of the Appraiser Qualifications Board (AQB) criteria for appraiser criminal history background reviews. The members of the working group are as follows:

- Tony Pistilli, Chief Appraiser, Solutionstar Settlement Services, North Richland Hills, TX
- Randall Kopfer, Senior Real Estate Representative – Appraiser, Lower Colorado River Authority, Austin, TX
- Kris Kastner, Certified Residential Appraiser & Owner/Operator, Brazos Valley Appraisals, College Station, TX
- William Trombly, Licensed Appraiser, Trombly Appraisals, LLC, Houston, TX
- Kathleen Muneio, Compliance Director/HR Manager, The William Fall Group, Inc., Toledo, OH
- Jeff Dickstein, Chief Compliance Officer, Pro Teck Valuation Services, Waltham, MA

The appointed working group will have their first meeting in January of 2016. These members have an important and essential task ahead of them. Congratulations to the appointed members.

## 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.

### IMPORTANT DATES TO REMEMBER

TALCB Board Meeting—February 19

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

## Experience Audits: What are they and What Should I Pay Attention To?

Applicants for a license with the Board are required to satisfy an experience component to their application in addition to the examination, education and criminal history requirements.

While the amount of experience hours required varies depending on the license category, all applicants must have their claimed experience audited. State and federal law requires the Board to do so by selecting a representative sample of an applicant's work product, and reviewing the appraisal reports and work files for compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). TEX. OCC. CODE §§ 1103.205 and 1103.206. An applicant whose work product does not generally comply with USPAP may not be granted a license, so the experience audit is an important part of the process applicants should know about.

### The Experience Audit Process

Applicants must submit an experience log and affidavit, which identifies all the work product being claimed for credit. The experience log and affidavit must be signed by the applicant and notarized, and the supervisory appraiser must sign the experience log. When submitting experience remember anything claimed for credit must:

- Fall within the categories of experience allowed under the Appraiser Qualifications Board criteria;
- Be performed when the applicant has legal authority to do the work (i.e., held a valid license or had other legal authority to perform the work claimed for credit);
- Generally comply with USPAP;
- Be supported by work files and appraisal reports; and
- Include evidence in the appraisal report showing the applicant was named or noted as having actively participated in the appraisal process. Merely observing your supervisory appraiser is not enough.

If the work product does not satisfy these requirements, an applicant may not be granted experience credit and the applicant's license application may be denied. 22 TEX. ADMIN. CODE § 153.15(h).

Once the application materials are complete, and

Board staff has confirmed the applicant has the correct amount of hours and months of experience, the completed experience log and affidavit are forwarded to the Standards and Enforcement Services Division ("TALCB SES") to conduct the audit. Applicants will receive correspondence from TALCB SES notifying them of the audit process and requesting 2 samples of their work product (2 appraisal reports and work files), which must be delivered to the Board within 60 days of the notice.

Once the Board receives the requested material, an appraiser investigator will be assigned to conduct the experience audit. Appraiser investigators all have extensive and varied experience working the in appraisal industry; all appraiser investigators are certified appraisers with residential and commercial backgrounds.

The appraiser investigators will examine appraisal reports and work files to evaluate both for USPAP compliance and the other items noted above. When the audit is complete, a report will be prepared for each sample of work product reviewed. The audit reports are then reviewed by an attorney and the division director before making a decision on how to proceed with the audit.

### Results of an Audit

In general there are four different outcomes that can result from an audit:

- The application is approved. If an applicant meets the requirements noted above and the work generally complies with USPAP, the audit will be cleared. So long as all the other licensure requirements are met (examination, education, etc.), the license will be issued.
- The application is approved on a contingent basis. If the work product has some compliance issues that are not too serious, an applicant may be offered the option of completing additional education, taking mentorship with a Board-approved mentor and/or submitting an additional portion of experience for evaluation. After completing these additional agreed-upon terms, the application may be approved. This tool is used to avoid denying applications where the applicant could improve their skills and correct deficiencies with some additional study.

- The application is approved for a probationary license. If the work product has some compliance issues that are not too serious, the applicant may be issued a license on a probationary basis. TEX. OCC. CODE § 1103.2091. The Board may set “terms and conditions” for the probationary license which may include remedial education, supervision by another appraiser, limitations on scope of practice or regular reporting to the Board. 22 TEX. ADMIN. CODE § 153.20(i). People who hold a probationary license must disclose this fact to clients prior to accepting an appraisal assignment. TEX. OCC. CODE § 1103.2091(c).
- The application is denied. If the work product does not comply with USPAP or does not comply with the points noted above, the application may be denied. A written notice of denial is sent to the applicant, explaining the basis for the denial. An applicant has 30 days from receipt of that letter to appeal. If appealed, a hearing is scheduled with the State Office of Administrative Hearings (“SOAH”) where the staff and the applicant put on evidence, testimony and argument about whether the work product meets the requirements. The SOAH administrative law judge then issues a written decision which is presented to the Board for action. If the denial is upheld the applicant must wait at least one year to reapply. If the denial is overturned, the license will be issued so long as all other licensure requirements are met.

### What to Watch For

During the course of conducting audits, we encounter a variety of issues. Since these are issues that have caused applicants problems in the past, we wanted to highlight them:

- Does it comply? Ensure the work product on your experience log complies with USPAP. If it is fee appraisal work, make sure you are meeting your obligations under Standards 1 and 2. If the work you are claiming credit for is a review appraisal, make sure you’ve satisfied the requirements under Standard 3 (and if you also made value conclusions, Standards 1 and 2). If you are claiming credit for mass appraisal work, review the requirements under USPAP Standard 6 to ensure you’ve met them.
- Is your contribution disclosed? Make sure that you are being named in the appraisal report or

signing it. To comply with USPAP and the Board’s experience audit rules, the report should also detail the significant professional assistance and active participation that you provided for that assignment. If some of your work product does not meet this requirement, let the Board staff know this up front. Do not attempt to cover up the issue or alter the appraisal and work file submitted for audit. That only causes problems.

- Do you have your work files? Be careful to maintain and provide your work files when requested. Board staff cannot conduct the required audit without a complete work file. Plus, keeping a work file that supports your opinions and conclusions made as an appraiser is a requirement of USPAP. Do not attempt to conceal a deficient work file by adding material after the fact. That only causes problems.
- Did you read what you signed? Pay attention to what you are signing. When you complete the experience log and the affidavit, read it carefully and look at the language. Make sure you understand what you are certifying by signing and submitting the document to the Board. Remember an affidavit is a sworn statement, made under oath. It can have significant legal consequences, including criminal penalties, when people knowingly make false statements submitted to the Board. Make sure you are comfortable that you are meeting the terms of that certification before you sign it. This is likewise applicable to the appraisal reports you are claiming for credit. Read and review the certification contained in the report before you sign it or add your name to the report. Make sure you agree that you have done all the things described in the certification and are confident with the quality of the work.

### What to Remember

Remember that applicants must have their work product audited for compliance with USPAP and other requirements. If the work product does not comply, the application may be denied or a contingent approval agreement (requiring additional training) or a probationary license (with terms and conditions) may be offered to the applicant. Make sure to review the requirements, so you can avoid potential problems during the audit. Consider the “what to watch for” items listed above, so your audit avoids issues that could prevent you from obtaining a license.

## Rules and Forms Actions at the November 20th Board Meeting

The Board took the following actions regarding rules and forms at its meeting on November 20, 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 EXTENDED

The Board extended emergency amendments to the following rules at its meeting on November 20, 2015. The emergency amendments to these rules will remain in effect for an additional 60 days. The Board has also adopted these same amendments as described below under "Adopted Rules."

#### 22 TAC §153.9. Applications

Emergency amendments to this rule implement changes to Chapter 55, Texas Occupations Code, adopted by the 84<sup>th</sup> 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 84<sup>th</sup> 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 84<sup>th</sup> 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 November 20, 2015. These amendments will be effective January 1, 2016.

#### 22 TAC §153.1, Definitions

The 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 84<sup>th</sup> Legislature.

#### 22 TAC §153.5, Fees

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

#### 22 TAC §153.9, Applications

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

#### 22 TAC §153.16, License Reinstatement

This 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 amendments align this rule with statutory changes to Chapters 55 and 1103, Texas Occupations Code, adopted by the 84<sup>th</sup> Legislature.

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

The 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 84<sup>th</sup> Legislature.

#### 22 TAC §153.21, Appraiser Trainees and Sponsors

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

#### 22 TAC §157.7, Denial of a License

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

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

**22 TAC §157.31, Investigative Conference**

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

**REPEAL**

**22 TAC §157.19, Prerequisite to Judicial Review**

The Board adopted 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 was moved to 22 TAC §157.18, Motions for Rehearing.

**PROPOSED RULES**

The Board proposed amendments to the following rules at the Board meeting on November 20, 2015. These proposed amendments will be on the agenda for adoption by the Board at the February 19, 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](mailto:general.counsel@talcb.texas.gov) and must be received before 5:00pm on Friday, January 29,

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 §153.18, Appraiser Continuing Education (ACE)**

The proposed amendments add additional opportunities for appraiser license holders to obtain continuing education credits consistent with criteria established by the Appraiser Qualifications Board and statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84<sup>th</sup> Legislature.

**22 TAC §153.22, Voluntary Appraiser Trainee Experience Reviews**

The proposed rule establishes a voluntary program through which an appraiser trainee may receive feedback about their appraisal work product from the Board before submitting an application for licensure.

**22 TAC §153.27, License by Reciprocity**

The proposed amendments streamline the Board's process for verifying an applicant's licensure in another state and will lower the cost and simplify the application process for applicants who apply for a license under this section.

**22 TAC §159.155, Periodic Review of Appraisals**

The proposed amendments specify that the scope of appraisal reviews conducted under this section must be sufficient to ensure that methods, assumptions, data sources, and conclusions are reasonable and appropriate.

**FORMS**

The Board approved the following forms, effective January 1, 2016:

- 1) Application for License Reinstatement (LCR-0);
- 2) Trainee Work Product Review Application (TWP-0); and
- 3) Confidentiality Agreement (CA-0).

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

# 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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Inside this Issue: From the Chair (page 1) Inspector Committee Vacancies Announced (page 2)

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## From the Chair...

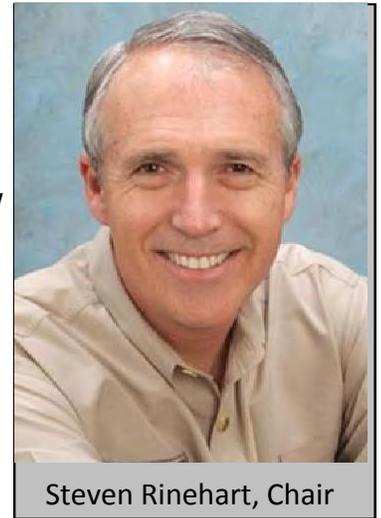
The Inspector Committee met in October and again in December. Our main focus has been to enhance our education. Both our Standards of Practice subcommittee and our Education subcommittee have also met in the last three months to review the potential for needed or desirable enhancements. We are under no particular time pressure to complete specific items, but rather are taking the time to ensure we only make changes that have significant benefits to consumers without placing any undue burdens on inspectors.

The Standards of Practice are being reviewed to ensure they adequately cover the scope of items that are reasonably necessary for consumers to make informed purchase and sale decisions. Beyond that, there are some safety items and some code based items that consumers reasonably expect to have inspected and that are easily accomplished. A confirmation and review of the most appropriate way to present condition reports and safety warnings is being looked at.

Regarding education, all qualifying courses approved more than four years ago are set for renewal by December 31, 2015. Also, new courses approved after January 1, 2016 will need to meet new delivery design standards that enhance learning and ensure student identity. We have also asked the Education

subcommittee to begin a comprehensive review of our education requirements to obtain a license. For professional inspectors, we have the highest requirements in the nation and a lack of good tools in place to minimize duplication of content between the 90, 130 and 200+ hour course options. An in-depth analysis will be done to ensure our education requirements remain strong but eliminate unnecessary duplication. For continuing education, we are exploring accepting for Texas requirements some classes taken by an inspector to comply with CE requirements in other states.

So stay involved as we attempt to simplify our guidance and improve our outputs. We hope that your Holiday season is filled with special times spent with your family and friends.



Steven Rinehart, Chair

## *TREC Inspector Committee Vacancies Announced*

The Texas Real Estate Commission invites interested persons to apply for appointment to an open public member position on the Real Estate Inspector Committee.

This advisory committee's purpose is to make recommendations to the Commission regarding a variety of inspection-related matters with the goal of ensuring a high degree of service to, and protection of, the public when dealing with inspectors. The committee consists of six professional inspectors and three public members. Public members serve staggered two year terms and cannot hold occupational licenses in the real estate field (e.g. appraiser, real estate broker/salesperson, mortgage broker, etc.); however, a municipal development planner, construction or safety code enforcement official, commercial banker, CPA or attorney is permitted.

While the advisory committee may meet by teleconference, it is anticipated that some travel to Austin may be necessary. Limited funds may be available for travel

reimbursement, but volunteer 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 of interest and a current resume to the Texas Real Estate Commission, Attn: Executive Director Douglas Oldmixon, PO Box 12188 Austin, TX 78711-2188 or by e-mail to [administrator@trec.texas.gov](mailto:administrator@trec.texas.gov). Materials must be received at TREC not later than January 15, 2016.

The mission of TREC is to assist and protect consumers of real estate services and foster economic growth in Texas. Through its programs of education, licensing and industry regulation, the Commission ensures the availability of capable and honest real estate service providers. More information at: [www.trec.texas.gov](http://www.trec.texas.gov).

### IMPORTANT DATES TO REMEMBER

TREIC Committee Meeting— Feb 1, 2016

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