

TREC Advisor



Our agency protects consumers of real estate services in Texas by ensuring qualified and ethical service providers through education, licensing, and regulation. We oversee the providers of real estate brokerage, appraisal, inspection, home warranty, right-of-way services, and timeshares, thereby safeguarding the public interest while facilitating economic growth and opportunity across Texas.

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Using An App to Hire a Temporary “Showing” Agent? *Beware!*

You can land you in hot water with TREC if you don't know what you are doing. Mobile apps used to “hire” another license holder to show your buyer a property are popping up everywhere. But will you be violating TREC's rules if you use the app?

Compensation Issues

Since showing a property is an activity that requires a license, an agent may not receive or pay valuable consideration for that activity except through their sponsoring broker or with written consent from their sponsoring broker. Do you have written consent from your broker to pay and/or receive money through the app?

Representation and Disclosure Issues

Keep in mind that in Texas there is no recognized license classification of “showing” agent. An agent either represents the buyer or the seller (or both as intermediary with clients' consent).

So who do you represent when you are a temporarily hired “showing” agent?

If you work for the same brokerage as the agent who “hired” you, it might not be an issue since the buyer is represented by the broker and both agents are sponsored by the same broker. Still, when hired as a “showing” agent you must make it clear to the client who you represent.

But what if the showing agent is not from the same brokerage as the hiring agent?

Under current Texas law, if an agent aids a buyer in a transaction without an

Practice Tip: Limit use of a “showing” app to agents within the same brokerage when broker has a written policy and consents to payments.

agreement to represent the buyer, that agent is a sub-agent of the seller and must put the interests of the seller first. Has this been disclosed to the buyer prior to their consent to another agent showing them the property? Has the seller consented to this arrangement?

What about other disclosures?

An IABS notice is required to be given at the first substantive communication about a specific property UNLESS the “showing” agent knows for certain that the buyer is already represented by the “hiring” agent - but how do you know the buyer is actually represented by the “hiring” agent? Another complication - what if the agent showing the house is from the same brokerage firm as the listing agent? Do intermediary disclosures have to be given? Whose responsibility is that - the “hiring” agent or the “showing” agent? Figuring out who the “showing” agent represents and giving all appropriate disclosures to the buyer is a paramount duty for the “showing” agent in this temporary situation.

More Questions than Answers

Other questions arise about the temporary showing agent’s function and duties in regards to the buyer. Are you going to answer any questions about the property? If not, has the “hiring” agent made it clear to the buyer that they are going to be shown a property but no questions will be answered at that time? Has the buyer consented to being merely escorted with no information available to them during the showing? Is the “hiring” agent or the “showing” agent violating the agent’s minimum duty to answer the buyer’s questions? If you do answer questions, how does that affect your role and liability for the transaction? Is the “showing” agent obligated to disclose known defects with the property when showing it?

What if the buyer decides they like the “showing” agent better and want to work with the “showing” agent going forward? What if the buyer does not like the house after the showing and the temporary “showing” agent knows of another house nearby the buyer might really like? Can the “showing” agent take them to see it? Who is representing the buyer then? Who earns the commission if the buyer buys that second house?



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Be Careful!

Keep in mind that license holders have a special fiduciary duty to their clients and a duty to treat all parties to a transaction fairly. Representation is not a “service” that can just be parceled out at will by one agent to another.

If all appropriate consents and disclosures are not given and received from all necessary parties, this “time-saving” showing app may end up costing the agent and their broker both time and money dealing with an administrative action or a civil lawsuit.

Strategic Planning Survey Closing

We have just completed our 2016 Strategic Planning Listening Tour. We were so pleased with the amazing turn out we had at all 9 of our tour stops! If you were not able to attend one of our sessions or have not had a chance to give us your thoughts, be sure to take advantage of our online survey before it closes April 15th! Check out our [online survey here](#).

From the Executive Director...

I just returned from a whirlwind tour of nine locations across Texas in March as part of our agency's Strategic Planning Listening Tour. First let me say thank you to the local boards in Austin, Lubbock, Waco, Collin County, Houston, McAllen, Harlingen and Brownsville that each hosted one of our two-hour information exchange sessions. We very much appreciate the extra effort that you took in making us welcome. And I was so impressed with the number of stakeholders that showed up at every location to offer input on the path forward for professional real estate regulation in this great state.

Know that if you were not able to make it to one of these sessions, we are still accepting input until early April via the survey link on our website. Although there are 20 questions suggested, you need only answer those for which you have some interest in offering input. All ideas are welcome; really!

Three topics got the largest share of attention during the tour – consumer information and education; how to make our advertising rules simpler; and how to enhance the competence of our license holders when providing professional representation services to the people of Texas. Three important topics!

The updated Consumer Protection Notice and the Information About Brokerage Services (IABS) forms have been very well received and their ease of explanation and understanding is greatly appreciated. We are pleased to hear that these common sense notices are providing the transparency that Texas consumers deserve. A few technical issues were raised on how best to post the forms on a license holder's main business website, and recommendations were offered. Please make sure you get these forms posted on your main business website to make your company's transparency more robust.

Lots of good ideas were offered on how to best achieve the two major requirements found in the law – disclose your status as a license holder and not mislead the receiver of any advertising effort

you make. While these may sound simple, they quickly become more complex as you apply them to each type of advertising medium you choose to use – and that may be used in the future as technology continuously takes potential client solicitation into new

areas not yet foreseen. One message came through clearly – make it as simple as possible but still effective and offer several options to meet these two goals – avoid “one size fits all” type solutions! Know that we are committed to work to satisfy that important request.

“Competence” is a unique mix of both education/training and experience. It is not accomplished once and for all time, but rather is a life-long commitment to learning the lessons taught by facilitators and sages in classrooms, by self-study, and in the school of experience gained from mentors, on the street, and in each transaction your clients ask you to guide them through. We discovered a consensus on the simple principle that competence requires at least this – no one should provide any professional service for the very first time without an experienced mentor overseeing the effort. This points to the incredible importance of the initial and ongoing training provided by a broker for the agents the broker sponsors.

I really appreciate the level of genuine engagement we received during this first step in the Strategic Plan process. We will continue to solicit your inputs as the Commissioners consider all of the ideas you have offered and translate them into policy proposals - to advance the mission of the agency to protect the consumers of real estate services in Texas through effective education, licensing and regulation.



Douglas E. Oldmixon

COMPLIANCE TIP: Posting Your IABS and Consumer Notice

Have you posted a completed IABS form in a readily noticeable location on the homepage of your business website? We have provided some helpful [tools on our website](#) to help you meet this new requirement.

Deadline for Revision of the Qualifying Real Estate Brokerage Course

New curriculum requirements were approved for the Real Estate Brokerage course in November of 2015. TREC rule (535.64) requires previously approved Real Estate Brokerage courses to be revised to meet the new curriculum requirements.

Qualifying course providers should revise and submit the new course to the Commission in advance of the above deadlines to allow time for review and approval and to ensure continued availability of courses to students.

The Qualifying Real Estate Course Application (QE CA-0) and Real Estate Brokerage (REB-0) course approval form is located at the TREC website.

<u>Deadline for Revision of Classroom Delivery Courses</u>	<u>Deadline for Revision of Distance Education Courses</u>
November 2, 2016	February 2, 2017

Proposed Rules from the February Meeting of the Commission

Proposed:

The following amendments or new rules were proposed at the February 8, 2016, meeting of the Commission and are up for adoption at the May 2, 2016, meeting. You can see the full text of these rules on the "Proposed Rules" section of the TREC website.

§535.63, Approval of Instructors of Qualifying Courses. The proposed amendments clarify qualifications needed to become an approved instructor of a TREC approved adult instructor training course. This amendment was recommended by the Commission's Education Standards Advisory Committee.

§535.64, Content Requirements for Qualifying Real Estate Courses. The proposed amendments provide consistency and better quality in Property Management qualifying courses and are recommended by the Commission's Education Standards Advisory Committee.

§535.73, Approval of Elective Continuing Education Courses. The proposed amendments correct the language so that it will not be misinterpreted. The statute and the intention of the Commission was to limit the daily presentation to 10 hours, not limit the length of the entire course.

Who Can File a Complaint? How?

The Standards & Enforcement Services (SES) Division has opened 1,133 new complaints so far this fiscal year (September 2015 – February 2016). For the Commission to have jurisdiction over a complaint it must show reasonable cause for investigation or that an investigation is necessary to enforce Commission laws and rules.

Any person can file a complaint including, for example, a party to the transaction, the child of a party to the transaction, or an agent involved in the transaction. Unless the complaint is filed by the Commission, however, we must have a signed, written complaint to investigate the complaint.

Oftentimes an SES attorney receives a call from a real estate agent concerned about the actions of another agent. In order for the Commission to investigate and address your concerns, we must

(as mentioned above) have the complaint in writing and signed. The SES Division cannot open a complaint based on a phone call or an anonymous complaint. Nor can SES conduct a covert investigation unless expressly authorized by the Commission.

If you feel there has been a violation of The Real Estate License Act or Commission Rules, you have a right to file a complaint. Please note that if you feel the National Association of Realtors® Code of Ethics has been violated you would need to file a complaint with your local board, not the Commission.

For information about complaints, including how to file them, please visit [our website](#).

IMPORTANT DATES TO REMEMBER

ESAC Committee Meeting—April 18

TREC Executive Committee Meeting—April 19

TREC Commission Meeting—May 2

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

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”](#).

TREC Employee Update



Thomas Hopes

Reception and Communication Services

Prior to joining the team Thomas recently held a sales agent license. He has now recognized his true passion, helping prepare people for life changing decisions. Educating and informing has become his focus. TREC is a great fit and is a place he can use his experience of 5 plus years of customer service, combined with his education, and desire to help others reach their goals. In his spare time, Thomas enjoys reading spiritual growth books and creating colorful food dishes! Glad to be part of the team!

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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THE URAR, TO BE OR NOT TO BE, THAT IS THE QUESTION

The Uniform Residential Appraisal Report (URAR) is the most commonly used appraisal report form in residential appraising. Most appraisers are familiar with it and feel comfortable in its use. However, it may not always be the right form for some residential appraisal assignments.

Regulatory Issues: 2016-2017 Uniform Standards of Professional Appraisal Practice (USPAP) states in STANDARD 2 that the appraisal report must not be misleading and must contain sufficient information to be properly understood. Additionally, as a regulatory attorney once observed: "If you say it in your appraisal report, the reader has the right to rely on your statements." So care should be taken in communicating your appraisal results, including the use of the appropriate report form.

URAR was designed only for mortgage finance assignments in general, and with the specific needs/requirements of Fannie Mae/Freddie Mac ([FNMA/FHLMC](#)) in mind. However, as promulgated by FNMA/FHLMC, the URAR does not fully comply with current USPAP requirements. Accordingly, in many assignments communicating the appraisal assignment results using the URAR may be problematic.

Non-Mortgage Assignments: Assignments where the URAR may not be the optimum form include:

- Litigation;
- Partial interests;

- Replacement cost for insurance purposes;
- Listing price services;
- Foreclosure/REO assignments;
- Property tax protests; and
- Probate/estate planning.

Current URAR Form: To comply with USPAP, completing the above and/or other appraisal assignments it may be necessary for the appraiser to adapt or modify the URAR form to comply with USPAP and/or meet client needs. The specialized nature of the form may make this a thankless task.

As mentioned, the URAR was designed by FNMA/FHLMC for their purposes only and therefore reflects their particular needs and requirements. Examples of this include: (a) emphasis being placed on the neighborhood without specifically addressing the market area; (b) a highest and best use section which assumes the current use, as improved, will be the highest and best use; and (c) an improvement description section that does not lend itself to detailed descriptions of accrued depreciation or any related analysis. Additionally, the certifications (there are 25 incorporated in the form, but USPAP requires only 10) reflect specific FNMA/FHLMC requirements that restrict/limit the appraiser's flexibility in using the form.

THE URAR, TO BE OR NOT TO BE, THAT IS THE QUESTION (CONTINUED)

Furthermore, there is language in the form specifically forbidding or restricting changes or modifications of the intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications.

While in the past there were not many options, that is no longer the case. So when a non-finance residential assignment calls for the use of a form summarizing the appraiser's findings, what are the current options available?

Narrative Format: Creating a narrative report has always been an alternative but it negates many of the advantages of a form. Some appraisers have created template report formats for use in lieu of the URAR, but these are typically not created to any particular standard or form and may not meet client needs.

General Purpose Forms: Software vendors offer suites of general purpose residential forms. All the major providers of software offer versions of non-FNMA/FHLMC centric forms. While retaining the general layout and "feel" of the URAR, the specifics related to mortgage lending and secondary mortgage market requirements have been removed/changed. An added advantage of these general purpose forms includes their being updating more frequently than the URAR.

AI Reports: The Appraisal Institute created a family of residential appraisal forms/addendums to handle a wide range of non-mortgage lending

appraisal assignments. Unlike other forms, the AI Reports are a hybrid form/narrative report, using a modular format. This allows the appraiser to have more control, flexibility, and the ability to pick and chose only those elements germane to the assignment.

June, 1993 URAR: The "old" version of the URAR has been a choice for many appraisers, especially in the past when there were few alternatives. Problems with using this form include it having many of the same mortgage finance specific limitations of the current form, and also being 23 years "out of date." Much in the way of modification/changes could be required to properly use this form today.

So, there you have it. The current URAR is probably not the proper form for every residential assignment. However, today there are a number of alternatives which preserve the advantages of a form report without requiring extensive changes or modifications. All the alternative forms discussed above may be found in your software vendors package of forms.

Keep in mind whichever form you use, the appraiser has the ultimate responsibility for compliance with USPAP.

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.

From the Commissioner...

During our agency's recent Strategic Planning "Listening Tour" at nine different locations across Texas in March, I was impressed with the number of stakeholders that showed up at every location to offer input on the path forward for professional real estate regulation in this great state. Only a few appraisers attended each location, but we made sure to address appraiser-related issues. Here's what we learned.

Topics raised during the tour by and about appraisers include these – appraisers completing appraisal assignments in areas of the state where the appraiser does not work regularly; a widespread belief that agreed "contract price" is really the strongest and even "conclusive" evidence of "market value"; and inputs on the Appraisal Qualifications Board (AQB) talking points regarding adding some flexibility to current qualifications for appraisal practice to address the perceived "aging" or "shortage" of appraisers.

The first two topics actually reflect a certain frustration with the independent role that appraisers play in establishing real estate "market value" for mortgage loan collateral purposes, and the all too common misperception that no party (or their representative) to a transaction can communicate directly with the appraiser. Also, the prevalence of appraisal management companies in the residential real estate market adds another layer of complexity to resolving incorrect or missing information in an appraisal.

The willingness of AQB to discuss potential alternatives to the requirement of a 4 year college degree to achieve certification, add a practical education/experience curriculum, reconsider the total number of experience hours, grant some credit for "related" experience, analyze the real impact of residency requirements for supervisors, and the potentially negative use of the title "trainee" – these topics all received some insightful comments which were summarized and forwarded to AQB by the Board.

A certain sense of "unpredictability" with respect to the ongoing transitions in the appraisal field can be disconcerting and that leads to an understandable frustration for direct market participants and other stakeholders.

Slow federal action on providing clarity after the Dodd-Frank Act adds to that uncertainty. Know that the Board remains fully engaged with the federal regulators and with other states via the Association of Appraiser Regulatory Officials (AARO) to attempt to influence these matters in a positive direction. At the state level, we dialogue with appraiser professional associations constantly, and also regularly communicate with other state agencies with actual or potentially overlapping jurisdiction. In these and other ways, we seek to make appraisal regulation somewhat simpler and more predictable.

Know that if you were not able to make it to one of the input sessions, we are still accepting your comments until early April via the survey link on our website. Although there are 20 questions suggested, you need only answer those for which you have some interest. All ideas are welcome; really!

I really appreciate the level of genuine engagement we received during this first step in the Strategic Plan process. We will continue to solicit your inputs as the Board consider all of the ideas you have offered and translate them into policy proposals - to advance the mission of the agency to protect the consumers of real estate services in Texas through effective education, licensing and regulation.



Douglas E. Oldmixon

Rules and Forms Actions at the February 19th

Board Meeting

The Board took the following actions regarding rules and forms at its meeting on February 19, 2016. 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.

ADOPTED RULES

The Board adopted a new rule and amendments to the following rules at its meeting on February 19, 2016. These amendments took effect March 14, 2016.

22 TAC §153.18, Appraiser Continuing Education (ACE)

The amendments to this rule 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 84th Legislature.

22 TAC §153.22, Voluntary Appraiser

Trainee Experience Reviews

This new 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 amendments to this rule 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.

FORMS

The Board took no action regarding forms at its meeting on February 19, 2016.

IMPORTANT DATES TO REMEMBER

AQB Fingerprinting Requirements Working Group Meeting—April 11

TALCB Executive Committee Meeting—April 26

TALCB Board Meeting—May 13

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

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 Executive Director (page 1) Public Member Needed for Inspector Committee (page 2) Have you thought about being a Ride-Along Instructor? (page 2)

From the Executive Director...

Thank you if you were able to attend one of the nine stops on the agency's biennial strategic planning listening tour last month. This listening tour allows the agency to get input directly from stakeholders across the state. Know that if you were not able to make it to one of these sessions, we are still accepting input via the survey link on our website. Although there are 20 questions included, you need only answer those for which you have some interest. All ideas are welcome; really!

Remember you are always invited to attend our Committee meetings to share your insights. Meetings of the full Committee are also video recorded and available for viewing from a link on the meetings page of the Commission website. If you can't attend, I encourage you to watch the meetings and provide feedback to the Committee on any issue or concerns you may have. Your involvement is essential to keeping the Committee informed of the issues impacting the industry and the consumers of Texas.

Over the balance of 2016, the Committee will continue to examine ways to improve inspector education. They will be reviewing the current education requirements to obtain a license in Texas, focusing on reducing redundancy in qualifying courses where applicable, and moving the emphasis onto the quality of education, rather than the quantity of hours. The use of valuable "ride-along" courses is an example of this emphasis on better content. If you are qualified, we still need

more inspectors who are willing to provide this important education to students seeking to enter the field. Will you help?

Additionally, the Standards of Practice Subcommittee will be continuing its work of reviewing the Standards of Practice to ensure they adequately cover the scope of items that are reasonably necessary for consumers to make informed purchase and sale decisions. The Enforcement Committee will also review actions taken by the agency to ensure sensible regulation via targeted education and discipline. If these reviews reveal any need for legislative changes, we will work with the industry to be prepared.

Thank you for ensuring the Committee and Commission remain true to their charge to protect and serve the people of Texas by effective education, licensing and regulation.



Douglas E. Oldmixon

Public Member Needed for Inspector Committee

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

The inspector committee is an advisory committee consisting of both inspector and public members. Its 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. Public members serve for two-year terms.

Individuals wishing to be considered for appointment as a public member cannot hold occupational licenses in the real estate field (e.g. appraiser, real estate broker or sales agent,

mortgage broker, etc.); however, a municipal development planner, construction or safety code enforcement official, commercial banker, CPA or attorney is permitted. The committee is permitted to meet via teleconference, however, some travel to Austin may be necessary. While committee members can be reimbursed for travel expenses, members are not compensated for their time.

Individuals wishing to be considered for appointment as a public member of the committee 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 executivedirector@trec.texas.gov.

Have you thought about being a Ride-Along Instructor?

As of March 1, inspector applicants are required to complete some hands on training via an in-person ride-along course. This allows an applicant to witness inspections and learn about the process first hand with an experienced inspector. An inspector conducting a ride-along inspection for an applicant also benefits. Not only is the inspector able to earn money for conducting the ride-along, that inspector is also eligible to receive continuing education credit.

If you have five years of active licensure as a Texas professional inspector, have performed a minimum of 200 inspections as a Texas professional inspector, and have three years of experience in teaching and/or sponsoring trainees or inspectors, you qualify to be a ride-along instructor. There is a particular need for instructors to conduct ride-along inspections in West Texas and the Valley. You can find the [application form](#) and more information about this opportunity on the [TREC website](#).

IMPORTANT DATES TO REMEMBER

TREIC Committee Meeting— April 18, 2016

Check the [TREC website](#) regularly for postings of all of our upcoming meetings.