



# TREC Advisor

Texas Real Estate Commission ★ Volume 16, Number 3 ★ May 2005

## Commission Postpones Action on Amendments to "Minimum Broker Services Rule"

The Texas Real Estate Commission decided to postpone taking final action on proposed amendments to 22 TAC section 535.2 at its meeting on Monday April 25, 2005.

After taking public testimony from interested persons and further deliberation, the Commission decided not to take final action to adopt the revisions that would have set a minimum service standard for Texas brokers who represent a client in an agency relationship.

The Commission instead decided to request another opinion from the Texas Office of the Attorney General regarding the possible effect of state and federal anti-trust laws on the proposed rule, and to respond on behalf of the Commission to the opinions expressed in the comment letter from the Federal Trade Commission and the US Department of Justice. The Texas Real Estate Commission received a comment letter signed by representatives of the Department of Justice and the Federal Trade Commission urging TREC not to adopt proposed amendments to 22 TAC section 535.2 regarding Broker's responsibility on April 21, 2005.

The Commission also took action to direct staff to request clarification from the Texas Legislature, in light of new business models that are in operation, of an existing statutory provision that prohibits a real estate licensee from engaging in negotiations with a person who is represented in an exclusive agency relationship.

Finally, the Commission requested staff to draft an interim disclosure statement to discuss and take possible action at the June 13, 2005 meeting.

To view a copy of the comment letter from the Federal Trade Commission and the US Department of Justice go to the "What's New" section of the TREC web site at [www.trec.state.tx.us](http://www.trec.state.tx.us).

## TREC Administrator Attends ARELLO meeting in Johannesburg



TREC Administrator Wayne Thorburn was elected the 2005 President of the international Association of Real Estate License Law Officials last October. In April 2005 he was the featured speaker at the inaugural meeting of ARELLO District 6 in Johannesburg, South Africa. Nearly 200 delegates from 5 countries participated.

District 6 includes Armenia, Australian Capital Territory, Hong Kong, New South Wales, New Zealand, Victoria, Northern Territory, Philippines, South Africa, United Kingdom, western Australia and Zimbabwe.

ARELLO President Wayne Thorburn- Texas, District Vice-President Linda Nyembe-South Africa and ARELLO Executive Vice-President Craig Cheatham.

ARELLO meetings allow members from all over the world to meet and compare their different laws, practices and problems affecting the real estate industry and its licensing entities.

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TEXAS REAL ESTATE  
COMMISSION

# Meeting Highlights

**THE MISSION of the Texas Real Estate Commission**

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.

*April 25, 2005*

The Texas Real Estate Commission held its regularly scheduled meeting at the TREC headquarters in Austin, Texas on Monday, April 25, 2005. Chairman John Walton presided.

The Commission recognized and had a moment of silence for former Commissioner Pete Cantu who passed away at the beginning of April.

Six Austin licensees were recognized for 50+ years of continuous licensure. They were Odie E. Ainsworth, Donald H. Cummins, Edward F. Hamel, Nelson O. Roberts, Sterling J. Sasser and Sidney S. Smith (Mr. Smith did not attend the meeting). The licensees received a copy of the resolution passed at the February meeting and a congratulatory letter from State Senator Gonzalo Barrientos.

Loretta DeHay, general counsel, presented the agenda item concerning discussion and possible action on 22 TAC §535.2. Approximately three hundred eighty written comments had been received with the majority in favor of adopting the rule. Oral comments were given by Lance Lacy, Texas Association of Realtors; Aaron Farmer, Texas Discount Brokers and his attorney, Don Walden; Bob Hale, Houston Association of Realtors; Earl Hopenrath, Intown Properties-Dallas; Tom Terrell, Grapevine; Peter Squier, Austin; Michelle Angelides, Lock & Key Realty; Jack McLamore; Ron Walker, legal counsel for TAR; and Alan Austin.

After discussion, the Commission voted to postpone any further action until the June 13, 2005 meeting.

The Commission adopted amendments to 22 TAC §§534.3-534.7. These amendments concerning employee training and education, historically underutilized businesses, vendor bid opening and tabulation, negotiation and mediation of certain contract disputes and vendor protest procedures are required by the various provisions of the Government Code.

The Commission proposed amendments to §§535.51, regarding general requirements; 535.71, concerning mandatory continuing education: approval of providers, courses and instructors; 535.121, regarding inactive licenses; 535.220 concerning profession conduct and ethics for inspectors; and the repeal of §535.217 concerning dishonest conduct by inspectors (see page 2). There was a lengthy discussion about the amendments to §535.220. John Cahill, Chairman-Texas Real Estate Inspector Committee (TREIC), explained the reasoning behind and the need for the rule. Andrew Kasznay, ASHI; Larry Foster, Fred Willcox and Fred Buck all former members of TREIC; and Alan Austin, Diligent Inspections; spoke in favor of the amendment. David Poisson, AHIA; Brian Murphy, TAREI; Everett Rawlings, NAHI; and Mike Crow, formerly a member of TREIC spoke against the amendment. After discussion the Commission voted to propose all the amendments.

The Commission appointed three new members to the Texas Real Estate Inspector Committee. They are Phillip Stojanik of Houston, Russell Strahan of Round Rock and Curtis Carr of Beaumont.

Three recovery fund claims were presented for possible action. The Commission voted to pay the claims for \$13,000, \$5,000 and \$32,000. The Commission voted to pay two claims presented against the Inspector Recovery Fund: one for \$8,000 and one for \$7,500.

The next meeting of the Commission will be June 13, 2005. There is also a meeting tentatively scheduled for August 15, 2005.

**Check out the TREC web site [www.trec.state.tx.us](http://www.trec.state.tx.us) for *ONLINE* filing of applications and renewals, useful consumer information and downloads, FAQs concerning Enforcement, Inspectors, and Education, among other things.**

Official publication of the  
**Texas Real Estate Commission**

Volume 16, Number 3  
May 2005

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Governor

Commission Members:

**John Walton**  
Chairman  
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Vice-Chair  
DALLAS

**Elizabeth Leal**  
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EL PASO

**James N. Austin**  
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HOUSTON

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VICTORIA

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BROWNSVILLE

**Paul H. Jordan**  
GEORGETOWN

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**Wayne Thorburn**

Desktop Publishing  
**Patricia Holder**

The TRECAdvisor (ISSN 1047-4579) is published by the Texas Real Estate Commission (TREC) as an educational service to licensees in the state of Texas. The purpose of the newsletter is to promote a better understanding of the Real Estate License Act and to inform all licensees of changes affecting laws and practices in the real estate industry. The TRECAdvisor is funded through legislative appropriations and subscriptions collected from TREC licensees. The official text of TREC rules is filed with the Office of the Secretary of State, Texas Register. TREC encourages reproduction of this newsletter with the appropriate acknowledgments. Subscriptions are available for \$4.00 for two years. Single issues are \$1.00. To order a subscription or a single issue write to TRECAdvisor, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. For information regarding TREC, contact:

**Texas Real Estate Commission**  
P.O. Box 12188  
Austin, Texas 78711-2188  
(512) 459-6544 or (800) 250-TREC  
<http://www.trec.state.tx.us>

## Rules Proposed at the April 25, 2005 meeting of the Texas Real Estate Commission

(for text of rules go to [www.trec.state.tx.us](http://www.trec.state.tx.us))

Rule Number	Topic of Rule	Summary of amendment
§535.51	Requirements for Licensure	Revises §535.51(c)(6) to clarify that an education evaluation must be obtained within one year of the date of application for a license.
§535.71	Mandatory Continuing Education: Approval of Providers, Courses and Instructors,	Revises the verification on MCE Form 14-1, Individual MCE Partial Credit Request Form, which an education provider must sign as evidence that the provider has no reason to believe the amount of credit claimed is inaccurate. Adds new subsection (hh) to allow accredited colleges and universities, and professional trade associations that are otherwise approved MCE providers, to use experts from other related fields to teach an approved MCE elective course without first registering as a commission-approved instructor.
§535.121	Termination of Salesperson's Association With Sponsoring Broker	Revises subsection (b) to clarify that a broker may notify the Commission that sponsorship of a salesperson has ended by either sending the license or a copy of the license to the Commission, or otherwise notifying the Commission that sponsorship has ended
§535.217	Real Estate Inspectors	Repeals §535.217 concerning Dishonest Conduct as Grounds for Disciplinary Action because the subjects addressed in this section will be covered in new proposed revisions to §535.220.
§535.220	Real Estate Inspectors	Revises §535.220 concerning real estate inspector professional conduct and ethics to prohibit contingency arrangements in cases where compensation depends on specific findings or on closing or settlement; to prohibit an inspector from paying a fee to any person for referral of inspections; to prohibit an inspector from receiving an undisclosed fee for an inspection from more than one party without the consent of the inspector's client; to prohibit an inspector from accepting a fee for recommending services or products to the property; to prohibit an inspector from conducting repair for a fee of any systems or components of property covered by the Standards of Practice on which the inspector has performed an inspection under an earnest money contract, lease, or exchange of real property within 12 months of the date of the inspection; to require that inspectors perform services and provide opinions based only on areas in which they are educated, trained, or have experience; and to prohibit an inspector from disclosing inspection results or client information without prior approval from the client, except for observed immediate safety hazards to occupants exposed to such hazards.

## *Licensees Honored for Over 50 Years of Continuous Licensure*

At its meeting on February 21, 2005, the Texas Real Estate Commission unanimously adopted a resolution commending seventy-eight individuals who have been continuously licensed for at least fifty years. Presentations of the framed resolution for each of these licensees are being made this Spring. The first round of presentations were The first events were held in Plainview and Amarillo on March 3rd followed by Lubbock on March 4th (see Volume 16, Number 2 of *TREC Advisor* for more information). The second round of presentations were held in Corpus Christi (Gloria Schulze, Sam Lawson Allen, and Reynaldo R. Alvarez) on March 18th; in Houston (Herbert F. Handley, Lillian Horovitz, Lloyd P. Fadrique, Willis Hough, James E. Boyles, Charles H. Sumner, Katie S. Adams, Freda S. and Ed Dietz, George A. Bourque, William P. Skinner and Gasper Michael De-George) on March 21st; in El Paso (William A. Cardon, John C. McGrath, Louis E. Maldonado, Victor M. Robles, Paul F. Barry, Melville Irving Levenson and Rodolfo H. Quinones) on April 7th; in San Antonio (Fred C. Anderson, Aubrey E. Beverly, Paul E. McSween, Charles Henry Noble, Frances Ann Oneill and Clinton Weilbacher) on April 13th; in Austin (Donald Hugh Cummins, Odie Edward Ainsworth, Edward Francis Hamel, Nelson Oliver Roberts, Sterling Joseph Sasser and Sidney Stewart Smith) on April 25th; and in Dallas (Alvin Eugene Brewster, Martha D. Carlson, James Richard Cobb, Vera Lee Davis, Ivis Lee Gentry, Monty Jacques Jackson, Henry Grady Jordan, Conrad Martin and Bertha Randall on April 28th.



### **Corpus Christi**

Commissioner Louise Hull and Administrator Wayne Thorburn made presentations.



### **Houston**

Commissioner William H. Flores and Administrator Wayne Thorburn made presentations.



### **El Paso**

Commissioner Elizabeth Leal (not shown) and Administrator Wayne Thorburn made presentations.



**San Antonio**  
Administrator Wayne Thorburn made presentations.



**Dallas**  
Commissioner Mary Frances Burleson  
and Assistant Administrator Sabrina Hassumani made presentations.



**Austin**  
Commission Chairman John Walton and Administrator Wayne Thorburn made presentations.



# Disciplinary Actions

## December 2004–January 2005

### Consumer Complaints

**Cisneros, Chris L.**  
(San Antonio); license #434294

Agreed 1 year suspension of salesperson license fully probated for 2 years, effective February 1, 2005; Failing within a reasonable time to account for earnest money belonging to another person in violation of §15(a)(6)(E) of The Real Estate License Act, Art. 6573a, Texas Civil Statutes [§1101.652(b)(9) of the Texas Occupations Code, effective June 1, 2003]; commingling money that belongs to another person with the licensee's own money, in violation of §15(a)(6)(E) of The Real Estate License Act, Art. 6573a, Texas Civil Statutes [§1101.652(b)(10) of the Texas Occupations Code, effective June 1, 2003], conduct which constitutes bad faith, dishonest dealings or untrustworthiness, in violation of §15(a)(6)(V) of The Real Estate License Act, Art. 6573a, Texas Civil Statutes [§1101.652(b)(2), Texas Occupations Code, effective June 1, 2003], acting negligently or incompetently in performing an act for which a person is required to hold a real estate license in violation of §15(a)(6)(W) of The Real Estate License Act, Art. 6573a, Texas Civil Statutes, [§1101.652(b)(1), Texas Occupations Code, effective June 1, 2003], failing within a reasonable time to deposit money received as escrow agent in a real estate transaction, in violation of §15(a)(6)(Y) of The Real Estate License Act, Art. 6573a, Texas Civil Statutes, [§1101.652(b)(30), Texas Occupations Code, effective June 1, 2003]

**Davidson, James Warren**  
(Pampa); license #414288

Agreed 30-day suspension of broker license, fully probated for 6 month, effective February 1, 2005; improperly completing promulgated contract forms, and allowing purchasers to gain unauthorized entry onto a property prior to closing, which are considered acting negligently or incompetently and conduct which constitutes bad faith, dishonesty or untrustworthiness, in violation of §1101.652(b)(1) and (b)(2), respectively, of The Real Estate License Act, Chapter 1101, Texas Occupations Code

**The Housesmith Group LLC**  
(Conroe); license #476640

Agreed reprimand of broker license, entered February 1, 2005; Agreed administrative penalty of \$750, entered February 1, 2005; acting negligently or incompetently by failing to oversee the activities of a salesperson who failed to timely deposit earnest money, in violation of §15(a)(6)(W) of The Real Estate License Act, Art. 6573a, Texas Civil Statutes [§1101.652(b)(2) of the Texas Occupations Code, effective June 1, 2003]; establishing an association with an unlicensed person who is expected to act as a real estate licensee, in violation of §15(a)(6)(S) of The Real Estate License Act, Art. 6573a, Texas Civil Statutes, [§1101.652(b)(26), Texas Occupations Code, effective June 1, 2003]

**Smith, William Gregory**  
(Conroe); license #335378

Agreed reprimand of salesperson license, entered February 1, 2005; Agreed administrative penalty of \$750, entered February 1, 2005; performing acts constituting acts of a real estate broker or salesperson without holding an active real estate salesperson or broker license in violation of §1(b) of The Real Estate License Act, Art. 6573a, Texas Civil Statutes [§1101.351 of the Texas Occupations Code, effective June 1, 2003]

**Smith, Ruth Porter**  
(Willis); license #264105

Agreed reprimand of broker license, entered February 1, 2005; associating with a person who performed acts of a real estate salesperson at a time when the salesperson was not actively licensed in accordance with the provisions of The Real Estate License Act, in violation of §15(a)(6)(S) of The Real Estate License Act, Art. 6573a, Texas Civil Statutes [§1101.652(b)(26) of the Texas Occupations Code, effective June 1, 2003]

**Miller, Christopher Paul**  
(Harker Heights); license #4078

Agreed reprimand of professional inspector license, entered February 8, 2005; Agreed administrative penalty of \$1,000, entered February 8, 2005; failing to protect the public against fraud, misrepresentation or unethical practices in the field of real estate inspections by allowing an unlicensed person to conduct real estate inspections and/or inspection business while associated with him, a violation of 22 TAC §535.220(c)(3), in violation of §1102.305 of the Texas Occupations Code; having knowledge of a possible violation of the rules of the Texas Real Estate Commission or Texas Occupations Code, Chapter 1102, and failing to report the possible violation to the Texas Real Estate Commission, a violation of 22 TAC §535.220(d)(3), in violation of §1102.305 of the Texas Occupations Code; and, failing to provide indirect supervision of a real estate inspector

#### Calendar of Events

##### Commission Meetings:

June 13, 2005  
August 15, 2005  
(Austin)

##### Broker-Lawyer Committee Meetings:

June 2-3, 2005  
(Austin)

##### Inspector Committee Meetings:

June 16, 2005  
July 22, 2005  
(Austin)

##### Web site:

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

##### Phone

(800) 250-TREC (8732)  
or  
(512) 459-6544

sponsored by the professional inspector in a manner which protects the public, a violation of 22 TAC §535.226(f), in violation of §1102.305 of the Texas Occupations Code

**Marinez, David Thomas Charles  
(San Antonio); license #368538**

Agreed reprimand of broker license, entered February 11, 2005; failing to negotiate a representation agreement with a client that clearly delineated the duties, rights and responsibilities of the parties, in violation of §1101.652(b)(1) of the Texas Occupations Code

**Fenoglio, Jacqueline  
(Houston); license #402069**

Revocation of salesperson license, effective March 4, 2005; failing to provide information to the Commission in response to Commission request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(c) of the Rules of the Texas Real Estate Commission

**Dicken, Jerry Wayne  
(Paris); license #309778**

Agreed reprimand of broker license, entered March 8, 2005; acted negligently or incompetently when, after the ending of a written exclusive listing agreement that included terms of a protection period and during an oral open listing agreement wherein it did not include a definite start or ending date or a protection period, Mr. Dicken made demands for the payment of a commission that he was not otherwise entitled to as he had not complied with the written exclusive listing agreement protection period terms, and the oral open listing agreement did not include a protection period, in violation of 15(a)(6)(W) of the Real Estate License Act [§1101.652(b)(1) of the Texas Occupations Code]

**Waddell, Willard Bemus  
(Mansfield); license #497639**

Agreed 1 month suspension of salesperson license fully probated for 6 months, effective March 10, 2005; Agreed administrative penalty of \$500, entered March 9, 2005; published, or caused to be published, advertisements, including a web site and listing agreement, that tended to create a misleading impression in others that Mr. Waddell was the person responsible for the operation of the real estate brokerage in violation of 1101.652(b)(23) of the Texas Occupations Code; acted negligently or incompetently when, in an attempt to promote a listing to a prospective buyer's agent, he mistakenly informed the other agent that the sellers would take a sales price that was in fact lower than the listed sales price and, under a mistaken belief that he had the seller's permission, Mr. Waddell accessed the property for purposes that were not expressly authorized under the written listing agreement, in violation of §1101.652(b)(1) of the Texas Occupations Code

**Grunnah, Robert James Jr.  
(Austin); license #499205**

Agreed 6 months suspension of salesperson license fully probated for 1 year, effective March 15, 2005; Agreed administrative penalty of \$1,000, entered February 25, 2005; acting negligently or incompetently in performing an act for which a person is required to hold a real estate license, in violation of §1101.652(b)(1) of the Texas Occupations Code; paying a commission or fees to or dividing a commission or fees with an unlicensed assistant for compensation for services as a real estate agent, in violation of §1101.652(b)(11) of the Texas Occupations Code; using a business name in brokerage business which had not been properly filed with the Commission, and publishing, or causing to be published, an advertisement which is misleading, or which is likely to deceive the public, or which in any manner tends to create a misleading impression, in violation of §1101.652(b)(23) of the Texas Occupations Code; and establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real estate licensee, in violation of §1101.652(b)(26) of the Texas Occupations Code

**D & J Real Estate Services, Inc.  
(Plano); license #435319**

Agreed administrative penalty of \$500 against broker license, entered March 21, 2005; paid a commission or fees to, or divided a commission or fees with, an unlicensed person for compensation for services as a real estate agent, in violation of §1101.652(b)(11) of the Texas Occupations Code; and established an association, by employment or otherwise, with an unlicensed person who was expected or required to act as a real estate licensee, in violation of §1101.652(b)(26) of the Texas Occupations Code.

**Ford, Patricia Davies  
(Austin); license #220593**

Agreed reprimand of salesperson license, entered March 24, 2005; Agreed administrative penalty of \$250, entered March 24, 2005; performing real estate brokerage services and accepting a fee or commission in year 2001, while salesperson's real estate license was on inactive status, in violation of §1(b) of the Real Estate License Act, Article 6573a, Texas Civil Statutes [§1101.351(c) of the Texas Occupations Code] and §15(a)(5) of the Real Estate License Act, Article 6573a, Texas Civil Statutes [§1101.652(a)(9) of the Texas Occupations Code]

## Administrative Complaints

**McCarver, Lori Kathleen  
(Dallas); license #406881**

Agreed reprimand of salesperson license, entered February 2, 2005; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(c) of the Rules of the Texas Real Estate Commission

**Rawlins, Mary Katherine  
(Dallas); license #359132**

Agreed reprimand of salesperson license, entered February 11, 2005; Agreed administrative penalty of \$250, entered February 11, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Garcia, Anna C.  
(Houston); license #479504**

Agreed reprimand of salesperson license, entered February 15, 2005; Agreed administrative penalty of \$250, entered February 15, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Gray, Sandra Gayle  
(Fort Worth); license #323968**

Agreed reprimand of broker license, entered February 17, 2005; agreed administrative penalty of \$250, entered February 17, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Fortune, James Marvin  
(Dallas); license #509004**

Revocation of salesperson license, effective February 23, 2005; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(c) of the Rules of the Texas Real Estate Commission

**Starnes, Lula Belle  
(Glen Rose); license #247145**

Revocation of salesperson license, effective February 23, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Crockett, Marvin  
(Houston); license #510088**

Revocation of salesperson license, effective February 24, 2005; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(c) of the Rules of the Texas Real Estate Commission

**Weaver, Trisha Renee  
(Missouri City); license #459451**

Agreed reprimand of salesperson license, entered February 28, 2005; Administrative penalty of \$250, entered February 28, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Meridith, James Wood  
(Austin); license #323074**

Agreed reprimand of broker license, entered March 2, 2005; Agreed administrative penalty of \$250, entered March 2, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Padua, Francisco Jose  
(Houston); license #477992**

Revocation of salesperson license, effective March 1, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Barr, Mary Renee  
(Huffman); license #370758**

Revocation of salesperson license, effective March 2, 2005; failing to complete mandatory

continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Fleck, Rodney Dean  
(Houston); license #486225**

Revocation of salesperson license, effective March 2, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Schleis, Laurie Jean  
(Spring); license #322629**

Agreed reprimand of salesperson license, entered March 4, 2005; Agreed administrative penalty of \$250, entered March 4, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Morris, Darryl Jonathan  
(Dallas); license #464503**

Agreed Reprimand of salesperson license, entered March 7, 2005; Agreed administrative penalty of \$250, entered March 7, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Ekunseitan, Andrew Babatunji  
(Irving); license #478663**

Agreed reprimand of salesperson license, entered March 7, 2005; Agreed administrative penalty of \$250, entered March 7, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Karle, Fred G.  
(McAllen); license #165629**

Agreed reprimand of broker license, entered March 8, 2005; Agreed administrative penalty of \$250, entered March 8, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Varin, Leticia M.  
(Hickory Creek); license #471662**

Agreed reprimand of salesperson license, entered March 11, 2005; Agreed administrative penalty of \$250, entered March 11, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Lougin, Eric Darnell  
(Houston); license #457680**

Agreed reprimand of salesperson license, entered March 17, 2005; Agreed administrative penalty of \$250, entered March 17, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

**Betts, Dwight Newton  
(Ovilla); license #175307**

Revocation of salesperson license, effective March 22, 2005; failing within a reasonable time to make good a check issued to the Commission and pay the processing fee, in violation of §1101.652(a)(4) of the Texas Occupations Code

**Cooper, Maria Elisa  
(Corpus Christi); license #437263**

Revocation of salesperson license, effective March 22, 2005; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(c) of the Rules of the Texas Real Estate Commission

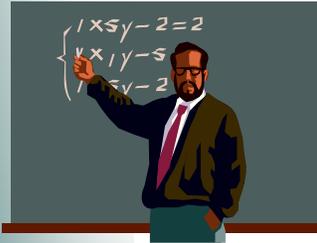
**Oh, Yoon Hee  
(Irving); license #479236**

Revocation of salesperson license, effective March 31, 2005; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(c) of the Rules of the Texas Real Estate Commission

**Myers, Terry E.  
(Spring); license #508991**

Revocation of salesperson license, effective March 31, 2005; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

## IMPORTANT INFORMATION For Education Providers



**The following information should prove beneficial to education provider staff members and students.**

### MCE PROVIDERS

MCE Rules were revised effective September 1, 2004 and copies can be accessed from TREC's web site. All MCE providers and their staff should become familiar with these rules and with the changes that were implemented effective January 1, 2005.

One of the rule revisions provides that all licensees under MCE be required to take a three hour legal update course and three hour legal ethics course created for and approved by TREC to satisfy the 6 legal hours of mandatory continuing education required by the Real Estate License Act. There has been some confusion as to when licensees are required to take the two new TREC courses. The TREC web site ([www.trec.state.tx.us](http://www.trec.state.tx.us)) is an excellent resource to get questions answered. The "Education & Exams" page on the website provides a link to MCE Frequently Asked Questions (FAQ's) regarding these requirements. We also recommend that licensees telephone our Communications staff at 1-800-250-TREC for advice or assistance.

- **MCE Pre-Course Announcements** - Prior to the commencement of an MCE course, an announcement must be made to inform students that they may evaluate the course and instructor at TREC's web site.
- **MCE Classroom Rosters** - At the end of a course, an authorized representative of the provider must review signed rosters to make sure that each licensee has provided his or her own license number and not that of their broker. If the wrong license number is given or if the student does not sign the roster, credit may not be awarded.

The cover sheet that accompanies the class roster must include the title of the course, the course number, the course completion date, and an authorized signature. If this information is not provided, TREC staff must call the provider which results in a delay in awarding credit in a timely manner.

- Licensees are always anxious to know when their education will be posted. Please inform them that MCE providers have ten days in which to submit classroom course completion rosters to TREC. It may then take from 7 to 10 business days after TREC receives them to get the hours posted to the system and credit awarded the licensee. This procedure may take a total of 20 business days from course completion. **Inform students that if a licensee has timely paid their renewal fee AND completed their MCE on or prior to their renewal date, they will NOT be fined the \$200 penalty fee if their education is not entered on TREC's system before the expiration of their license.** If this information is shared with students it may help curb telephone calls or emails inquiring about the status of education hours or classroom rosters.
- Providers who fax rosters and other course completion documents often wonder if these faxes have been received by TREC's Education staff. One way to ensure our receipt of these documents is to provide a cover sheet with the fax that includes a return fax number, the number of pages faxed and an area for Education staff to check off that the pages have been received. Education staff will then fax the cover sheet back to the provider to verify that the pages were received. **Faxed verification of receipt of the roster will be returned to you within 24 hours.**

When faxing course completion documents to our office, please do **not** send copies or originals or the same documents by regular mail.

- **Alternative Instructional Methods Reporting Forms (On-Line Course Delivery)** - Providers offering online courses (and who have not previously obtained approval from TREC to file electronic course completions) should inform the student that they must complete TREC Form 9-7 after completing the course and send it to the MCE provider (*NOT TREC*) for signature. It is then the responsibility of the MCE provider to submit the form to TREC within

ten business days for credit to be awarded. Again, upon TREC's receipt it may take from 7 to 10 business days to get the hours posted to the system.

- **Advertising** - All advertising (*including internet ads*) must meet the requirements of §535.72(h) of the Rules of the Commission. Internet advertising must be specific and must prominently disclose the name of the MCE provider that is offering MCE course(s) and include TREC's assigned MCE provider number and course numbers if numbers have been assigned.

Use caution when promoting the offer of 15 hours that include the old legal requirement and not TREC's new legal update and ethics courses. A generic statement that the 15 hours will satisfy MCE requirements may be misleading for licensees who need TREC's Legal Update and Ethics MCE courses. This is upsetting to licensees who need the new courses but take the old legal content and later find out that they have not met their MCE requirements.

### PROPRIETARY SCHOOLS (CORE PROVIDERS)

When providing information to students regarding the TREC exam, inform them that they have 6 months from the date they file their application with TREC to pass the exam. If the exam is not passed within that time period, they must re-apply. By the same token, if their evaluation of education documents request and fee is older than one year, they must also re-submit the education evaluation request and fee before they will be allowed to re-apply.

Effective April 2005 licensees under Sales Annual Education (SAE) were able to renew online at TREC's website. However, SAE can only be renewed online if the licensee has previously submitted course completion certificates and the hours have been posted to TREC's system.

Remember to send revisions to Core course final exams for each Core course offered according to the Exam Revision Schedule. This schedule can be obtained from your assigned TREC Education Specialist. Also, please inform your Education Specialist when you are no longer offering a core course.

- **Exam Proctors** - Section 535.71(a)(12) of the rules define who can proctor Core course exams. A broker cannot proctor the exam for an individual they plan to sponsor. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the commission.

### FOR YOUR OWN GOOD... CHECK THE EXPIRATION DATE OF YOUR LICENSE

**It is your responsibility to ensure that your license is renewed in a timely manner. Any education required must be completed before your license expiration date if you want to maintain an active real estate license, unless you pay an additional \$200 fee and complete your MCE within 60 days of the expiration date of your license.**

**Renewal forms are sent out to all licensees and may also be obtained on our web site. The Texas Real Estate Commission is not responsible for U.S. Postal Service delivery or knowing where to find you if you have moved and have not filed a change of address with our office. Failure to receive a renewal notice does not provide a valid excuse for not renewing your license.**

### Your License is Just a Click Away

In August of 2000, the Texas Real Estate Commission became the first state agency to provide online license renewals. In the last four years the Commission has worked continuously to improve its web site and the services that are offered there.

It is now possible to file and pay for the following licenses online:

- **BROKER**  
Original Application, Timely Renewal or Late Renewal for an Individual  
Original Application or Timely Renewal for a Corporation  
Timely Renewal for a Limited Liability Company
- **SALESPERSON**  
Original Application, Timely Renewal of a Two Year License or SAE License Renewal
- **INSPECTOR**  
Timely Renewals of Professional, Real Estate and Apprentice Inspector Licenses
- **EASEMENT OR RIGHT-OF-WAY**  
Timely Renewals of Business and Individual ERW certificates of registration.

**Go to the  
TREC web site  
[www.trec.state.tx.us](http://www.trec.state.tx.us)  
and  
make your next renewal  
online.**

## Enforcement Questions and Answers

More questions and answers can be found on the web site at  
[www.trec.state.tx.us](http://www.trec.state.tx.us)



### TREC Outstanding Employee: July 2004 - Dec 2004

TREC is proud to announce that **Bruce Wooley** of Beeville, Texas has received the Outstanding Employee Award for the second half of calendar year 2004.

Bruce is the investigator for the South Texas, West Texas and Panhandle regions. He exemplifies all the characteristics of a great investigator and team player. The quality of his work is outstanding. He goes out of his way to assist his fellow investigators and the Enforcement Division as a whole. He can always be counted on to go the extra mile. He is intelligent, conscientious, polite and loved and respected by all who know him. Bruce and "outstanding employee" are synonymous.

When he isn't working, Bruce enjoys hunting, fishing and ranching.

- Q.** Is it legal for a licensed real estate agent to "write" a lease purchase agreement since TREC does not promulgate a lease purchase contract form?
- A.** No. Under The Rules of the Texas Real Estate Commission, Sections 537.11(c) and (d), a licensee may not undertake to draw or prepare documents fixing and defining the legal rights of the principals to a transaction. Nor can they try to "splice" together any of the Commission's promulgated forms to create a new document to fit the situation.
- Q.** I would like to purchase and operate a property management company. Do I need a license?
- A.** It depends on what you actually do to operate the company. If you ONLY collect the rent money and maintain the property (schedule and hire repair persons, etc.), you do not need a license. Also, you do not need a license to share in the income earned by a real estate brokerage operation if you do not engage in acts for which a license is required and do not lead the public to believe that you are in the real estate brokerage business. However, if you do anything that is considered licensed real estate brokerage activity, you need a license. Brokerage activity includes, but is not limited to, showing or offering to show property or writing contracts for lease or sale of property.
- Q.** Is a licensee required to add an addendum to a One to Four Family Sales Contract informing the buyer that the property they wish to purchase is in a Municipal Utility District (MUD)?
- A.** Chapter 49 of the Texas Water Code requires the Seller to deliver a statutory notice informing the buyer of the tax rate, bonded indebtedness, or standby fee of the district prior to the final execution of a sales contract. TREC does not promulgate the statutory notice. We suggest the seller or his agent obtain the statutory notice and information directly from the MUD office or a title company. It is not an addendum to the sales contract, but rather a document signed by the parties. We would recommend that the listing broker and selling broker maintain a copy of the document along with other documents from the transaction.
- Q.** I work for a timeshare company and sell condo timeshares owned by the company. I do not have a real estate license. Do I need one?
- A.** No. As long as you are selling for the owner and you are an employee of the owner, you do not need a license. You must be an actual employee of the owner and cannot be an independent contractor. Withholding income and F.I.C.A. taxes from wages paid another person is considered evidence of employment. The employer/owner must be the record title holder of the real property. This is considered an exemption to the legal requirements for a license, and it does not extend to the employees of an employer/compact that is a subsidiary of a parent company where the parent company is the actual record title holder of the real property.
- Q.** How long should a real estate broker maintain files of sold properties?
- A.** For purposes of answering inquiries from the Real Estate Commission Enforcement Division about a transaction, the law gives a person four (4) years to file a complaint against a licensee, so it may be prudent for a broker to maintain files for a period of four or five years. However, there is no legal requirement by the Real Estate Commission for a licensee to keep files for any period of time. If you have a trust account, the law requires that you maintain records of deposits and withdrawals from the account for a period of four (4) years.
- Q.** Can TREC give me the name of a mediator to mediate a sales contract dispute?
- A.** TREC does not maintain names of mediators. Most of the larger metropolitan areas have a non-profit Dispute Resolution Center (or something similarly named) that can give you information regarding mediation sources. Additionally, they are listed in the Yellow Pages under "mediation" "arbitration" or "dispute resolution". Attorneys often do mediation work also, and local bar associations or the county courthouse may also have information regarding mediators.