

# You've been named in a TREC complaint ... now what?

Learn what steps you should take and what type of punishment you might face.

by Summer Mandell

**I**t might come unexpectedly. Or you might already know that you've made a mistake. But when you receive an envelope addressed to you from the Texas Real Estate Commission, you better open it.

As the state regulatory agency for real estate brokers, agents, and other industry professionals, one of TREC's primary duties is to protect real estate consumers. "Our goal at TREC is truly consumer protection, but that's achieved through education, training, and enforcement," says Kerri Galvin, former director of standards and enforcement services and current deputy general counsel for TREC.

Whether you expected it or not, if you are named in a TREC complaint—which can be filed by consumers, other licensees, or even commission staff—you're now a party in a process that can affect your ability to be a Texas REALTOR®.

## It's not always bad news

Galvin says that 99% of licensees have no recent violations. So while it's unlikely that you'll be part of a TREC complaint, a notice in the mail is not a reason to panic. Galvin says to keep calm and thoroughly review what TREC has sent you.

As you go through the complaint process, stay accessible to TREC officials and understand that it can take some time. Even after an investigation ends, an investigative report must be completed, and an attorney needs to decide on the discipline. And a time-intensive process is sometimes better. "If your complaint goes to the top of the attorney's list, it's probably something pretty bad," says Galvin. "You're going to get swift action, but it's not going to be the swift action you're looking for."

## Types of discipline

Each case is unique, and there are several levels of discipline. Violations don't always end in losing your license. Education is frequently a requirement for someone who breaks the rules. Here are the types of actions TREC can take:

**Advisory letter.** An advisory letter is an informal disciplinary action given in many situations, but is generally sent when there is some type of negligence, when someone was unaware of a requirement but there are no prior consumer complaints, or when the violation doesn't involve

## Broker/sales licensee disciplinary actions by type (FY 2011)

Advisory letter	389
Administrative penalty	126
Revocation	45
Reprimand	38
Probated suspension	36
Suspension	35
Surrender	19
Probated revocation	1

## Most frequent TREC complaints

Below are the top categories of complaints from three regions: Austin, San Antonio to El Paso; Dallas-Fort Worth area; Houston area, College Station, and Corpus Christi.

- Sales issues that include general negligence, false promise, rebate, and referrals
- Sales misappropriation
- Advertising
- Intermediary/IABS
- Leasing/property-management issues that include general negligence, false promise, rebate, and referrals
- Leasing/property management misappropriation
- Unlicensed activity, including brokers with business entities that were not licensed
- Broker supervision



great harm or continued consumer harm. Galvin points out that ignorance is not a valid excuse.

**Reprimand.** A reprimand is the next level of discipline. Galvin says a formal reprimand is often paired with a small administrative penalty or an education requirement.

**Suspension, revocation, and surrender.** “When you’re getting into something that requires a suspension, a revocation, or a voluntary surrender, you’re looking at things that are more serious, like property management where they comingled the money and spent it,” says Galvin.

**Probated suspension.** Probated suspension means that you can be an active licensee but you have more restrictions on your license than others. An administrative penalty could be issued as well as additional education requirements.

“Probation is very case specific,” Galvin says. “For example, if you’re a salesperson, perhaps you’re not allowed to apply for a broker’s license until you’re off of probation. In general, steeper discipline means that you did

### Complaints against brokers/sales licensees (FY 2011)

Complaints received	885
Complaints resolved	1,102
Complaints resulting in discipline	339
Complaints resulting in no violation	268

something egregious or you had multiple complaints.”

The TREC complaint process can seem overwhelming and stressful, but it doesn't have to be. If you find yourself named in a TREC complaint, don't panic; be proactive. ★

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## The TREC complaint process

It can take anywhere from one month to two years to complete the TREC complaint process. For the few cases pushing two years, Galvin says they become more like regular court procedures that involve hearings, discovery, and more.

Unlike some ethics complaints under the Texas Association of REALTORS® Citation Policy, TREC cannot accept anonymous complaints. To begin the complaint process, TREC must have a signed, written complaint that provides reasonable cause for an investigation. The next step is to determine if TREC has jurisdiction. “For instance, if the transaction that is the basis for the complaint took place more than four years ago, we don't have the authority through the statute of limits in our rules to review it,” says Galvin.

Once reasonable cause and jurisdiction have been established, a copy of the complaint is sent to the respondent, and the licensee is given an opportunity to answer.

Each case is different, which can affect how long and involved the investigation process is.

## 8 do's and don'ts if you're named in a complaint

Not sure how to respond if you find yourself a party in a TREC complaint?



**Do read the complaint.** Determine what TREC is asking you to respond to and what information it needs. Gather all applicable records and requested documents, and try to recall as much as possible about the transaction related to the claim.

**Do cooperate.** A TREC complaint process can take anywhere from one month to two years. Promptly returning your thorough response, answering investigators' questions, and being honest can keep the process on track and help those investigating your case to understand your perspective.

**Do notify TREC if you hire an attorney.** If you hire an attorney, you need to let TREC know as soon as possible. “Our attorneys have a legal obligation to work with your attorney once you have hired one,” says Kerri Galvin, deputy general counsel for TREC.

**Do keep your contact information current.** Always update your email and mailing address with TREC when they change. If you don't and you are part of a complaint, there is no exemption from it just because you didn't receive it. “If we go on to file an action against you and you don't get it ... we can get a valid default judgment against you,” says Galvin.

**Don't panic.** “Just because you have a complaint filed against you does not mean that we have concluded that you are guilty of anything,” says Galvin. “We're just trying to gather information.”

**Don't assume you will lose your license.** Galvin says there are many complaints that are closed as *no violation*, which means that TREC examined the evidence and it's clear that the licensee has not made a violation. Some complaints fall under *insufficient evidence*, which means that TREC hasn't determined whether or not you are guilty, but only that there is not enough evidence to prove a violation.

Other complaints can sometimes be resolved in an alternative-dispute resolution process, and there are other levels of discipline before losing your license.

**Don't procrastinate.** And don't fail to respond.

**Don't make misrepresentations.** It won't help your case.