# Materials for the November 15, 2010 Meeting of the Texas Real Estate Commission Room 235 Austin, Texas

**AGENDA FOR TEXAS REAL ESTATE COMMISSION (TREC) MEETING**
Conference Room 235, TREC Headquarters Office
1101 Camino La Costa, Austin, Texas

**November 15, 2010, at 10:00 a.m.**

CALL TO ORDER

1. Call to order and pledges of allegiance

MINUTES

2. Approval of minutes of August 9, 2010 Commission meeting
3. Discussion and possible action to excuse commissioner absence(s), if any

STAFF AND COMMITTEE REPORTS

4. Reports by administrator, general counsel, and division directors which may include reports of monthly activities and statistical data for communications, licensing, education, enforcement, information technology, staff services, recovery trust account and fund activity, and updates on new and ongoing agency activity; questions by commissioners to division directors regarding issues raised by the monthly activities reports; discussion of current topics raised by monthly reports; requests by commissioners for additional information or reports from staff; and introduction of new employees

5. Report by Texas Real Estate Inspector Committee

PUBLIC COMMENTS

6. General comments from visitors on non-agenda items

RULES FOR POSSIBLE ADOPTION

7. Discussion and possible action to adopt amendments or take other action on 22 TAC Chapter 535 as follows:

   a. Subchapter A. General Provisions Relating to the Requirement of Licensure
      i. Rename Subchapter heading to "Definitions"
      ii. New §535.1, concerning Definitions
      iii. Repeal §535.1 concerning License Required
   b. Subchapter B. Definitions
      i. Rename Subchapter heading to "General Provisions Relating to the Requirement of Licensure"
      ii. Amend §535.2, concerning Broker Responsibility
      iii. Amend §535.3, concerning Compensation to or paid by a Salesperson
      iv. New §535.4, concerning License Required
      v. New §535.5, concerning License Not Required

Pursuant to the Americans with Disabilities Act, any requests for reasonable accommodation needed by persons wishing to attend this meeting should be submitted to Loretta DeHay at 512-465-3900.

vi. Repeal §535.12, concerning General
vii. Repeal §535.13, concerning Dispositions of Real Estate
viii. Repeal §535.15, concerning Negotiations
ix. Amend §535.16, concerning Listing.
x. Amend §535.17, concerning Appraisals
xi. Repeal §535.19, concerning Locating Property
xii. Amend §535.20, concerning Procuring Prospects.
xiii. Repeal §535.21, concerning Unimproved Lot Sales; Listing Publications

c. Subchapter C. Exemptions to Requirements of Licensure
   i. Amend §535.31, concerning Attorneys at Law
   ii. Amend §535.32, concerning Exemptions: Attorneys in Fact
   iii. Amend §535.34, concerning Salespersons Employed by an Owner of Land and Structures Erected by the Owner
   iv. Repeal §535.35, concerning Employees Renting and Leasing Employer's Real Estate
d. Subchapter D. The Commission
   i. Amend §535.42, concerning Jurisdiction and Authority
e. Subchapter E. Requirements for Licensure
   i. New §535.50, concerning Definitions
   ii. Amend §535.53 concerning Corporations and Limited Liability Companies
   iii. New §535.54, concerning General Provisions Regarding Education and Experience Requirements for a License
   iv. New §535.55, concerning Education Requirements for a Salesperson License
   v. New §535.56, concerning Education and Experience Requirements for a Broker License
   vi. New §535.57, concerning Examination Requirements for a License
f. Subchapter F. Education, Experience, Educational Programs, Time Periods and Type of License
   i. Amend§535.61, concerning Examinations
   ii. Amend §535.62, concerning Acceptable Courses of Study
   iii. Repeal §535.63, concerning Education and Experience Requirements for a License
   iv. New §535.63, concerning Accreditation of Core Education Schools
   v. Repeal §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors
   vi. New §535.64, concerning Obtaining approval to offer a course
   vii. Repeal §535.65, concerning Changes in Ownership or Operation of School; Presentation of Courses; Advertising; and Records
   viii. New §535.65, concerning Operation of Core Education Schools
   ix. Repeal §535.66, concerning Payment of Annual Fee; Audits; Investigations and Enforcement Actions
   x. New §535.66, concerning Core Education Providers; Audits; Investigations; and Enforcement Actions
   xi. New §535.67, concerning Approval of Instructors
   xii. New §535.68, concerning Additional Information related to an application
g. Subchapter G. Mandatory Continuing Education
   i. Amend §535.71, concerning Mandatory Continuing Education; Approval of Providers, Courses, and Instructors

ii. Amend §535.72, concerning Mandatory Continuing Education: Presentation of Courses, Advertising and Records
iii. Amend §535.73, concerning Compliance and Enforcement.
iv. New §535.74, concerning Additional Information related to an application

h. Subchapter I. Licenses
i. Amend §535.91, concerning Renewal Notices
ii. Amend §535.92, concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements
iii. Amend §535.94, concerning Hearing on Application Disapproval: Probationary Licenses
iv. New §535.96, concerning Permanent Mailing Address and other Contact Information

i. Subchapter L. Termination of Salesperson's Association with Sponsoring Broker
i. Amend §535.121, concerning Inactive License
ii. Amend §535.122, concerning Reactivation of License
iii. Amend §535.123, concerning Inactive Broker Status

j. Subchapter M. Non-residents
i. Amend §535.131, concerning Unlawful Conduct; Splitting Fees
ii. Amend §535.132, concerning Eligibility of Licensure

k. Subchapter N. Suspension and Revocation of Licensure
i. Amend §535.141, concerning Initiation of Investigation
ii. Amend §535.143, concerning Fraudulent Procurement of License
iii. Amend §535.144, concerning When Acquiring or Disposing of Own Property.
iv. Amend §535.145, concerning False Promise
v. Amend §535.146, concerning Failure to Properly Account for Money; Commingling
vi. Amend §535.147, concerning Splitting Fee with Unlicensed Person
vii. Amend §535.148, concerning Receiving an Undisclosed Commission or Rebate
viii. Amend §535.149, concerning Lottery or Deceptive Trade Practice
ix. Amend §535.153, concerning Violating an Exclusive Agency
x. Repeal §535.154, concerning Misleading Advertising
xi. New §535.154, concerning Advertising
xii. Amend §535.159, concerning Failing To Properly Deposit Escrow Monies
xiii. Amend §535.160, concerning Failing to Properly Disburse Escrow Money
xiv. Amend §535.161, concerning Failing to Provide Information

l. Subchapter O. Hearing on Suspension or Revocation of Licensure
i. Amend §535.171, concerning Hearing: Subpoenas and Fees

m. Subchapter P. Penalty for Unlicensed Activities
i. Amend §535.181, concerning Penalty

n. Subchapter Q. Administrative Penalties
i. Amend §535.191, concerning Schedule of Administrative Penalties

o. Subchapter R. Real Estate Inspectors
i. New §535.201, concerning Definitions
ii. Amend §535.206, concerning The Texas Real Estate Inspector Committee
iii. New §535.209, concerning Examinations
iv. Repeal §535.212., concerning Education and Experience Requirements for an Inspector License
v. New Amend §535.212, concerning Education and Experience for an Inspector

License

vi. Repeal §535.213, concerning Schools and Courses of Study in Real Estate Inspection
vii. New §535.213, concerning Approval of Courses in Real Estate Inspection
viii. Repeal §535.214, concerning Examinations
ix. New §535.214, concerning Providers of Real Estate Inspection Courses
x. Amend §535.215, concerning Inactive Inspector Status
xi. Amend §535.216, concerning Renewal of License or Registration.
xii. New §535.217, concerning Contact Information.
xiii. Amend §535.218, concerning Continuing Education
xiv. Amend §535.221, concerning Advertisements
xv. Amend §535.222, concerning Inspection Reports
xvi. Amend §535.226, concerning Sponsorship of Apprentice Inspectors and Real Estate Inspectors

p. Subchapter S. Residential Rental Locators
   i. Amend §535.300, concerning Advertising by Residential Rental Locators.

8. Discussion and possible action to adopt amendments to 22 TAC Chapter 537 as follows:
   a. Amend §537.20 concerning Standard Contract Form TREC No. 9-8
   b. Amend §537.28 concerning Standard Contract Form TREC No. 20-9
   c. Amend §537.30 concerning Standard Contract Form TREC No. 23-10
   d. Amend §537.31 concerning Standard Contract Form TREC No. 24-10
   e. Amend §537.32 concerning Standard Contract Form TREC No. 25-7
   f. Amend §537.37 concerning Standard Contract Form TREC No. 30-8
   g. Amend §537.43 concerning Standard Contract Form TREC No. 36-6
   h. Amend §537.47 concerning Standard Contract Form TREC No. 40-4

RULES FOR POSSIBLE PROPOSAL

9. Discussion and possible action to propose amendments to 22 TAC §535.400 concerning Easement or Right-of-Way Agents

10. Discussion and possible action to propose amendments to 22 TAC Chapter 537 as follows:
   a. Amend §537.45 concerning Standard Contract Form TREC No.
   b. Amend §537.46 concerning Standard Contract Form TREC No. 39-7

11. Discussion and possible action to propose amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act as follows:
   a. Amend §539.61 concerning Applications and Licensing
   b. Amend §539.121 concerning Examinations
   c. New Subchapter P concerning Complaints and new §539.150 concerning Complaints

RULE REVIEW

12. Discussion and possible action to adopt the review of 22 TAC Chapter 535

PENDING BUSINESS

13. Discussion and possible action on legislative housekeeping measures

Pursuant to the Americans with Disabilities Act, any requests for reasonable accommodation needed by persons wishing to attend this meeting should be submitted to Loretta DeHay at 512-465-3900.

## NEW BUSINESS

14. Discussion and possible action to approve changes to home inspector license application forms and miscellaneous inspector-related forms

15. Discussion and possible action to approve changes to salesperson, broker, and easement and right of way application forms and miscellaneous related forms

16. Discussion and possible action to approve changes to school, provider, course and instructor forms, and miscellaneous education related forms

17. Discussion and possible action to approve Non-Realty Items Addendum

18. Discussion and possible action to approve fiscal year 2011 budget

19. Discussion and possible action to approve real estate recovery trust account and real estate inspector recovery fund investment policies under the Public Funds Investment Act

20. Discussion and possible action regarding Ethics Commission opinion EAO-492 (2010)

## CONTESTED CASES

21. Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of SOAH Docket NO. 329-10-3251; Texas Real Estate Commission v. Andrew K. Mills

## RECOVERY FUND

22. Recovery fund matters
    a. Executive session to discuss pending litigation pursuant to Texas Government Code §551.071
    b. Discussion and possible action to authorize settlement of recovery fund claims

## FUTURE MEETINGS

23. Discussion and possible action to schedule future meetings

24. Adjourn

**The Texas Real Estate Commission may meet with its attorney in executive session on any item listed above as authorized by the Texas Open Meetings Act, Tex. Gov't Code, §551.071.**

Pursuant to the Americans with Disabilities Act, any requests for reasonable accommodation needed by persons wishing to attend this meeting should be submitted to Loretta DeHay at 512-465-3900.

**Agenda Item 1:**
Call to order and pledges of allegiance

**USA**

I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation under God, Indivisible, with Liberty and Justice for All. "

**TEXAS**

Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."

**Agenda Item 2:**

Approval of minutes of August 9, 2010 Commission Meeting

MINUTES OF THE MEETING OF THE
TEXAS REAL ESTATE COMMISSION
August 9, 2010
Room 235, 1101 Camino La Costa
Austin, Texas

On Monday, August 9, 2010, at 10:04 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Chairman Eckstrum called the meeting to order. The Chairman asked Commissioner Wukasch to lead the attendees in the pledges of allegiance to the United States and Texas flags. The chairman recognized Gary Maler, Real Estate Center at Texas A&M, former commissioner, Don Harvey; and Lori Levy, Texas Association of Realtors. The Chairman informed the audience that the public comment section of the agenda was designated for discussion items not o the agenda. Mr. Oldmixon explained that comment slips were available; those in support or against a particular item could fill out a slip to that effect and their comment would be read into the record. Those wishing to speak on any agenda item should fill out the slip indicating their wish to speak. All slips should be given to the recording secretary.

Chairman John Eckstrum presided, and Patricia Holder recorded the minutes. The following commissioners, constituting a quorum, were in attendance:

John Eckstrum, Chairman

Troy C. Alley, Jr.

Adrian Arriaga

Chris Day

Jaime Hensley

Joanne Justice

Tom C. Mesa

Dona Scury

Avis Wukasch

Staff present included Karen Alexander, Devon Bijansky, Lorie DeAnda, Loretta DeHay, Kerri Galvin, Gwen Jackson, Douglas Oldmixon and Tom Watson.

Chairman Eckstrum moved to agenda item two, approval of minutes of May 17, 2010 Commission meeting. Upon motion of Ms.Wukasch, duly seconded by Mr. Alley, the Commission adopted the minutes as presented in the meeting materials.

The Chairman moved to agenda item three, discussion and possible action to excuse commissioner absence(s), if any. There were no absences.

Chairman Eckstrum moved to agenda item four, reports by administrator, general counsel, and division directors which may include reports of monthly activities and statistical data for communications, licensing, education, enforcement, information technology, staff services, recovery trust account and fund activity, and updates on new and ongoing agency activity; questions by commissioners to division directors regarding

issues raised by the monthly activities reports; discussion of current topics raised by monthly reports; requests by commissioners for additional information or reports from staff; and introduction of new employees.

Douglas Oldmixon, administrator, spoke concerning the length of the agenda and that the reports from Broker's Responsibility Working Group and Education Working Group would not be presented in detail since most of the items contained in those reports had been incorporated into proposed rules and legislative items. He stated that the LBB and Governor's office had denied the request for an exemption from the 5% reduction for the pass through fees collected by the agency. This meant that the agency was forced to reduce its budget by almost 7.5%. The toll free lines had been eliminated as planned in June. Mr. Oldmixon also reported on various speaking engagements and meeting that had occurred since the last meeting. He reported that the Strategic Plan had been filed. There had been several training sessions for employees regarding the VERSA implementation and functions. He stated that the VERSA implementation had been postponed until September so that further testing could be performed. Mr. Oldmixon introduced Laura Pittman, a new employee in the Staff and Support Services Division. He recognized Diane Fletcher who was retiring after 25 years with the agency and Carol Taylor who was retiring after 27 years.

Lorie Deanda, Director of Reception and Communications Services presented the C1 report concerning Customer Service Statistics. Gwen Jackson, Director of Education and Licensing Services presented the L1 report concerning fiscal year comparisons between the number of applications and license renewals received by the Commission; the L2 report concerning licensee and registrant status; and the L3 report, concerning examination activity. Kerri Galvin, Director of Standards and Enforcement Services, presented the case status report, the case age report requested by Commissioner Arriaga, a report of the Residential Service Company report and a report concerning Timeshare registrations. She also reported on current staffing actions and implementation of a new program regarding Administrative Decisions. Tom Watson, Director in Information and Technology Services, presented the I1 report concerning electronic outlet services statistics. Karen Alexander presented the S1 report concerning the Agency Financial Report; the S2 report concerning the Real Estate Recovery Trust Account No. 971 Investments, Current Securities; the S3 report, concerning the Real Estate Recovery Trust Account No. 971 Investments, Payments and Repayments; and the S4 report concerning the Real Estate Inspector Recovery Fund.

Chairman Eckstrum moved to agenda item five, reports of, and discussion and possible action regarding: (a) Broker Responsibility Working Group; (b) Education Working Group including Recommendations from 2009 Education Task Force; (c) Texas Real Estate Inspector Advisory Committee and (d) the Broker Lawyer Committee. The Chairman moved to agenda item 5(c).

Larry Foster, Chairman of the Texas Real Estate Inspector Committee, presented his report. Areas presented in the report included concerned the members of the committee, the newly formed commentary committee and its Chair Jill Frankel, and the committee's work on the proposed changes to the inspector rules.

Mr. Eckstrum moved to agenda item fifteen, discussion and possible action to approve annual audit report. Rene Gonzalez presented the agenda item for discussion and possible action.. Upon motion of Ms. Wukasch, seconded by Ms. Justice, the Commission approved the annual audit report as presented.

The Chairman moved to agenda item sixteen, discussion and possible action to appoint an internal auditor. Ms. Alexander stated that staff was recommending that Garza Gonzales and Associates be appointed as the internal auditor for the agency. Upon motion of Mr. Mesa, duly seconded by Ms. Justice, the Commission appointed Garza Gonzales and Associates as the internal auditor.

Mr. Eckstrum moved back to agenda item six, general comments from visitors on nn-agenda items. No comments were presented.

The Chairman moved to agenda item seven, discussion and possible action to adopt amendments to: (a) 22 TAC Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees, (b) 22 TAC Chapter 533, Practice and Procedure, (c) 22 TAC Chapter 537, Professional Agreements and Standard Contracts, (d) 22 TAC Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53, (e) 22 TAC §535.51, General Requirements, (f) 22 TAC §535.101, Fees, (g) 22 TAC §535.208, Application for a License, and (h) 22 TAC §535.210, Fees.

Ms. DeHay presented the agenda items for discussion and possible action to adopt. Upon motion of Mr. Day, duly seconded by Mr. Mesa, agenda item 7(a) was adopted with the addition of a reference to the TREC web site. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, agenda item 7(b) was adopted as presented. Upon motion of Ms. Justice, duly seconded by Mr. Alley, agenda item 7(c) was adopted as presented. Upon motion of Mr. Arriaga, duly seconded by Mr. Alley, agenda item 7(d) was adopted as presented. Upon motion of Ms. Justice, duly seconded by Mr. Arriaga, agenda item 7(e) was adopted as presented. Upon motion of Ms. Wukasch, duly seconded by Mr. Arriaga, agenda item 7(f) was adopted as presented. Upon motion of Ms. Wukasch, du;y seconded by Ms. Justice, agenda items 7(g) and (h) were adopted as presented.

Chairman Eckstrum moved to agenda item eight, discussion and possible action to propose changes to 22 TAC Chapter 535. Ms. DeHay presented the agenda items for discussion and possible action to propose.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice the Commission approved the proposal of amendments to Subchapter A. General Provisions Relating to the Requirement of Licensure as follows: repeal the Subchapter heading and §535.1 concerning License Required; propose new Subchapter heading A. Definitions and new §535.1, concerning Definitions with the addition of explanatory language detailing that definitions in this section refer to chapter 535 only.

Upon motion of Mr. Arriaga, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to Subchapter B. Definitions as follows: the repeal Subchapter heading and proposal of new Subchapter heading B. General Provisions Relating to the Requirement of Licensure; amendments to §535.2, concerning Broker Responsibility (removing the deletion of the phrase “authorized acts”) and §535.3, concerning Compensation to or paid by a Salesperson; new §535.4, concerning License

Required and new §535.5, concerning License Not Required; the repeal §535.12, concerning General, repeal §535.13, concerning Dispositions of Real Estate and repeal §535.15, concerning Negotiations; amendments to §535.16, concerning Listing and §535.17, concerning Appraisals (with the relettering of subsections (a)-(e)); the repeal of §535.19, concerning Locating Property; amendments to §535.20, concerning Procuring Prospects; and the repeal of §535.21, concerning Unimproved Lot Sales; Listing Publications.

Upon motion of Ms. Wukash, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to Subchapter C. Exemptions to Requirements of Licensure as follows: the amendments to §535.31, concerning Attorneys at Law, §535.32, concerning Exemptions: Attorneys in Fact, and §535.34, concerning Salespersons Employed by an Owner of Land and Structures Erected by the Owner; and the repeal §535.35, concerning Employees Renting and Leasing Employer's Real Estate.

Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the proposal of amendments to Subchapter D. the Commission, amending §535.42, concerning Jurisdiction and Authority.

Upon motion of Ms. Wukasch, duly seconded by Ms.Justice, the Commission approved the proposal of amendments to Subchapter E. Requirements for Licensure as follows: new §535.50, concerning Definitions; amendments to §535.53 concerning Corporations and Limited Liability Companies; new §535.54, concerning General Provisions Regarding Education and Experience Requirements for a License, new §535.55, concerning Education Requirements for a Salesperson License, new §535.56, concerning Education and Experience Requirements for a Broker License (with corrected paragraph lettering), and new §535.57, concerning Examination Requirements for a License.

Upon motion of Mr. Arriaga, duly seconded by Mr. Alley, the Commission approved the proposal of amendments to Subchapter F. Education, Experience, Educational Programs, Time Periods and Type of License as follows: amendments to §535.61, concerning Examinations, §535.62, concerning Acceptable Courses of Study (removing the deletion of the word "professional"); the repeal §535.63, concerning Education and Experience Requirements for a License; new §535.63, concerning Accreditation of Core Education Schools (showing the change of approval from 2 years to 4 years on courses (core), and schools); the repeal §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors; new §535.64, concerning Obtaining approval to offer a course; the repeal §535.65, concerning Changes in Ownership or Operation of School; Presentation of Courses; Advertising; and Records; new §535.65, concerning Operation of Core Education Schools; the repeal §535.66, concerning Payment of Annual Fee; Audits; Investigations and Enforcement Actions; and new §535.66, concerning Core Education Providers; Audits; Investigations; and Enforcement Actions, §535.67, concerning Approval of Instructors and §535.68, concerning Additional Information related to an application.

Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved

the proposal of amendments to Subchapter G. Mandatory Continuing Education as follows: amend §535.71, concerning Mandatory Continuing Education; Approval of Providers, Courses, and Instructors, §535.72, concerning Mandatory Continuing Education: Presentation of Courses, Advertising and Records and §535.73, concerning Compliance and Enforcement; and new §535.74, concerning Additional Information related to an application.

Upon motion of Ms. Hensley, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to Subchapter I. Licenses as follows: amend §535.91, concerning Renewal Notices, §535.92, concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements, §535.94, concerning Hearing on Application Disapproval: Probationary Licenses; and new §535.96, concerning Permanent Mailing Address and other Contact Information.

Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the proposal of amendments to Subchapter L. Termination of Salesperson's Association with Sponsoring Broker as follows: amend §535.121, concerning Inactive License, §535.122, concerning Reactivation of License and §535.123, concerning Inactive Broker Status.

Upon motion of Mr. Alley, duly seconded by Ms. Wukasch, the Commission approved the proposal of amendments to Subchapter M. Non-residents as follows: amend §535.131, concerning Unlawful Conduct; Splitting Fees and §535.132, concerning Eligibility of Licensure.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to Subchapter N. Suspension and Revocation of Licensure approval as follows: amend§535.141, concerning Initiation of Investigation, §535.143, concerning Fraudulent Procurement of License, §535.144, concerning When Acquiring or Disposing of Own Property, §535.145, concerning False Promise, §535.146, concerning Failure to Properly Account for Money; Commingling, §535.147, concerning Splitting Fee with Unlicensed Person, §535.148, concerning Receiving an Undisclosed Commission or Rebate and the form adopted by reference, §535.149, concerning Lottery or Deceptive Trade Practice, and §535.153, concerning Violating an Exclusive Agency; the repeal of §535.154, concerning Misleading Advertising; new §535.154, concerning Advertising; and amend §535.159, concerning Failing To Properly Deposit Escrow Monies, §535.160, concerning Failing to Properly Disburse Escrow Money, and §535.161, concerning Failing to Provide Information.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the proposal of amendments to Subchapter O. Hearing on Suspension or Revocation of Licensure amending §535.171, concerning Hearing: Subpoenas and Fees.

Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission approved the proposal of amendments to Subchapter P. Penalty for Unlicensed Activities amending §535.181, concerning Penalty.

Upon motion of Mr. Arriaga, duly seconded by Mr. Mesa, the Commission approved the proposal of amendments to Subchapter Q. Administrative Penalties amending 535.191, concerning Schedule of Administrative Penalties.

The Chairman called for executive session to discuss pending litigation pursuant to Texas Government Code §551.071 and if necessary, to receive legal advice from general counsel on posted agenda items under Texas Government Code, §§551.071. The executive session began at 12:30 p.m. The meeting returned to open session at 1:31 p.m.

Ms. Bijansky presented agenda item eight (o) concerning Real Estate Inspectors for discussion and possible action to propose. Comments were offered by Larry Foster, concerning the procedure for the committee offering its opinion when it was in opposition to staff's recommendations, receiving materials in advance of the meeting and comments against the lowering of the pass rate for inspector examinations. Fred Willcox, and Scott Emerson spoke in favor of lowering the pass rate on the inspector examinations. Mr. Emerson also commented on the advertising rules concerning social media and the three day delivery of inspection reports. Mike Cothron spoke in opposition to the lowering of the pass rate for inspector examinations. Upon motion Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the proposal of Subchapter R. Real Estate Inspectors as follows: new §535.201, concerning Definitions; amend §535.206, concerning The Texas Real Estate Inspector Committee as presented in Ms. Bijansky's memo presented at the meeting; new §535.209, concerning Examinations with the determination that the subject matter would be revisited after the upcoming legislative session; the repeal §535.212., concerning Education and Experience Requirements for an Inspector License; new §535.212, concerning Education and Experience for an Inspector License; repeal §535.213, concerning Schools and Courses of Study in Real Estate Inspection; new §535.213, concerning Approval of Courses in Real Estate Inspection; repeal §535.214, concerning Examinations; new §535.214, concerning Providers of Real Estate Inspection Courses; amend §535.215, concerning Inactive Inspector Status; amend §535.216, concerning Renewal of License or Registration; new §535.217, concerning Contact Information; amend §535.218, concerning Continuing Education; amend §535.221, concerning Advertisements; amend §535.222, concerning Inspection Reports; and amend §535.226, concerning Sponsorship of Apprentice Inspectors and Real Estate Inspectors.

Upon motion Ms. Hensley, duly seconded by Mr. Mesa, the Commission approved the proposal of Subchapter S. Residential Rental Locators as follows amending §535.300, concerning Advertising by Residential Rental Locators.

Upon motion Ms. Wukasch, duly seconded by Mr. Arriaga, the Commission approved the proposal of amendments to 22 TAC Chapter 537 as follows changing the references in the contracts from "garage" to "garage doors" where appropriate. Amend §537.20 concerning Standard Contract Form TREC No. 9-8, §537.28 concerning Standard Contract Form TREC No. 20-9, §537.30 concerning Standard Contract Form TREC No. 23-10, §537.31 concerning Standard Contract Form TREC No. 24-10, amend §537.32 concerning Standard Contract Form TREC No. 25-7, amend §537.37 concerning Standard Contract Form TREC No. 30-8, amend §537.43 concerning Standard Contract

Form TREC No. 36-6, amend §537.47 concerning Standard Contract Form TREC No. 40-4 and new 22 TAC §537.53 concerning Standard Contract Form TREC No. 46-0.

Chairman Eckstrum moved to agenda item nine, discussion regarding comments on the review of 22 TAC Chapter 535. No comments had been received.

Mr. Eckstrum moved to agenda item ten, discussion and possible action to adopt the review of: (a) 22 TAC Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees; (b) 22 TAC Chapter 533, Practice and Procedure; (c) 22 TAC Chapter 537, Professional Agreements and Standard Contracts and (d) 22 TAC Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53. Upon motion of Ms. Wukasch, duly seconded by Ms. Hensley, the Commission adopted the review.

The Chairman moved to agenda item eleven, discussion and possible action regarding Ethics Commission opinion regarding commissioners or staff teaching certain Mandatory Continuing Education. Mr. Oldmixon presented the agenda item for discussion and possible action. The Ethics Commission stated that its opinion had not changed and commissioners or staff were not allowed to teach Mandatory Continuing Education as stated in their previous opinion. No action was needed.

Chairman Eckstrum moved to agenda item twelve, discussion and possible action to approve license application and renewal forms. Ms. Jackson presented the agenda item for discussion and possible action. Upon motion of Mr. Arriaga, duly seconded by Ms. Justice, the Commission approved the license application and renewal forms as submitted.

Mr. Eckstrum moved to agenda item thirteen, discussion and possible action to approve Legislative Appropriations Request for Fiscal Years 2012-2013. Ms. Alexander presented the agenda item for discussion and possible action. Upon motion of Ms. Justice, duly seconded by Ms. Hensley, the Commission approved the Legislative Appropriations Request as submitted.

The Chairman moved to agenda item fourteen, discussion and possible action on legislative housekeeping measures. Mr. Oldmixon presented the agenda item for discussion and possible action. Mike Cothron spoke concerning inspector issues. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the list of legislative suggestions as submitted.

Chairman Eckstum moved to agenda item seventeen, consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings. Mr. Day presided over this agenda item.

Upon motion of Ms. Wukasch, duly seconded by Mr. Mesa, the Commission approved the Proposal for Decision In the Matter of Emily Ann Mattox, SOAH Docket No. 329-10-1577.REC.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of James Edward McCune, Jr., SOAH Docket No. 329-10-2606.REC.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of Jason A Hunt, SOAH Docket No. 329-10-3250, REC.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of Sonia Keeton-Griffin, SOAH Docket No. 329-10-3572.REC.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of Jovan Property Management LLC. SOAH Docket No. 329-10-3573.REC.

Lewis Lector, attorney for Mr. Hix spoke concerning the matter. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of Jim S. Hicks, SOAH Docket No. 329-10-6222.REC granting him a five year probationary license, standard terms and conditions, corrections to conclusion of law number four to correctly reflect the pertinent agency rule and that Mr. Hix not transport passengers while performing his duties as a licensee.

The Chairman moved to agenda item nineteen, discussion and possible action to schedule future meetings. After discussion, the next meetings are scheduled for November 15, 2010 and February 14, 2011 at 10:00 a.m.

The Chairman adjourned the meeting at 3:36 p.m.

_____
Patricia Holder, Secretary for the Meeting

APPROVED this the 15th day of November, 2010.

_____
John Eckstrum
Chairman

ATTEST:

_____
Douglas E. Oldmixon
Administrator

**Agenda Item 3:**

Discussion and possible action to excuse commissioners absence(s), if any

**SUMMARY**

Provides for the excused absence for commissioners unable to attend

**STAFF RECOMMENDATION**

Approve excused absence as presented.

**MOTION**

**MOVED,** that the absence(s) of _____

for the following dates, _____

is/are hereby excused.

**Agenda Item 4:**

Reports by administrator, general counsel, and division directors which may include reports of monthly activities and statistical data for communications, licensing, education, enforcement, information technology, staff services, recovery trust account and fund activity, and updates on new and ongoing agency activity; questions by commissioners to division directors regarding issues raised by the monthly activities reports; discussion of current topics raised by monthly reports; requests by commissioners for additional information or reports from staff; and introduction of new employees

# Staff Reports for August 2010

# Texas Real Estate Commission

## Monthly Staff Reports

## Contents


| Report | Report Description | Division | Director |
|---|---|---|---|
| C1 | Customer Service Statistics | Reception and Communications Services | Lorie DeAnda |
| L1 | Fiscal Year Comparison | Education and Licensing Services | Gwen Jackson |
| L2 | Real Estate Licensee Status | Education and Licensing Services | Gwen Jackson |
| L3 | Examination Statistics | Education and Licensing Services | Gwen Jackson |
| L4 | Instructor Distribution | Education and Licensing Services | Gwen Jackson |
| E1 | Case Status | Standards and Enforcement | Kerri Galvin |
| E2 | Open Case Age Report | Standards and Enforcement | Kerri Galvin |
| I1 | Electronic Information Outlet Statistics | Information Technology Services | Tom Watson |
| S1 | Agency Financial Statement | Staff and Support Services | Karen Alexander |
| S2 | Real Estate Recovery Fund Investments - Current Securities | Staff and Support Services | Karen Alexander |
| S3 | Real Estate Recovery Fund Payments and Repayments | Staff and Support Services | Karen Alexander |
| S4 | Inspection Recovery Fund Status | Staff and Support Services | Karen Alexander |

# Reception and Communications Services

Revised: November 11, 2010

## Customer Service Statistics

### August 2010

| RCS Measures | Current Month | FY2010 YTD Total | FY2009 Prior YTD Total |
|---|---|---|---|
| Agency Incoming Calls (target - 400,000) | **29,219** | **343,484** | **409,470** |

| Communications Incoming Calls | Monthly Total | FY2010 YTD Total | FY2009 Prior YTD Total |
|---|---|---|---|
| CO Lines | 17,529 | 128,392 | 63,061 |
| TREC 1-800 | 0 | 87,328 | 85,254 |
| TALCB Local Line | 732 | 6,027 | 5,597 |
| TALCB 1-877 | 0 | 2,527 | 2,470 |
| **Total** | **18,261** | **224,274** | **156,382** |

| Reception Walk Ins | Monthly Total | FY2010 YTD Total | FY2009 Prior YTD Total |
|---|---|---|---|
| Licensing | 533 | 5,024 | |
| Education | 302 | 2,226 | |
| Inspector | 20 | 130 | |
| Enforcement | 9 | 148 | |
| TALCB Licensing | 21 | 152 | |
| TALCB Enforcement | 5 | 30 | |
| **Total** | **890** | **7,710** | |

| Communications E-Mail | Current Month | FY2010 YTD Total | FY2009 Prior YTD Total |
|---|---|---|---|
| E-mail Inquiries | **2,064** | **14,450** | **9,555** |

# Licensing Services Division

## Fiscal Year Comparison

### Fiscal Year 2010 - Year to Date

| | This YTD 9/09 – 08/10 | | Last YTD 9/08 – 08/09 | | Change Count | Change Percent |
|---|---|---|---|---|---|---|
| ***Applications Received*** | | | | | | |
| Broker Original Applications Received | 2613 | | 2620 | | -7 | -0.27% |
| Sales Original Applications Received | 11225 | | 10425 | | 800 | 7.67% |
| ***Total Original Applications*** | 13838 | | 13045 | | 793 | 6.08% |
| | | | | | | |
| Broker Late Renewal Applications Received | 1454 | | 1507 | | -53 | -3.52% |
| Sales Late Renewal Applications Received | 6953 | | 7807 | | -854 | -10.94% |
| **Total Late Renewal Applications Received** | 8407 | | 9314 | | -907 | -9.74% |
| | | | | | | |
| ***Licenses Issued from Applications*** | | | | | | |
| Broker Licenses from Original Applications | 2459 | | 2452 | | 7 | 0.29% |
| Sales Licenses from Original Applications | 8936 | | 8582 | | 354 | 4.12% |
| ***Total Licenses from Original Applications*** | 11395 | | 11034 | | 361 | 3.27% |
| | | | | | | |
| Broker Licenses from Late Renewal Applications | 1565 | | 1612 | | -47 | -2.92% |
| Sales Licenses from Late Renewal Applications | 7101 | | 7840 | | -739 | -9.43% |
| ***Total Licenses from Late Renewal Applications*** | 8666 | | 9452 | | -786 | -8.32% |
| | | | | | | |
| ***Renewal Activity for Expirations*** | | | | | | |
| Broker Timely Renewals and Percentage | 16,520 | 83.34% | 14,966 | 81.73% | 1,554 | 1.61% |
| Sales Timely (1 year) Renewals and Percentage | 4,661 | 58.45% | 8,879 | 54.52% | -4,218 | 3.93% |
| Sales Timely (2 year) Renewals and Percentage | 38,305 | 73.98% | 34,972 | 71.59% | 3,333 | 2.39% |
| ***Total Timely Renewals from Broker and Sales*** | 59,486 | 74.76% | 58,817 | 70.49% | 669 | 4.27% |

# Licensing Services Division

## Licensee and Registrant Status

## August 2010

### Real Estate Licensees

| | Aug 09 | Sep 09 | Oct 09 | Nov 09 | Dec 09 | Jan 10 | Feb 10 | Mar 10 | Apr 10 | May 10 | Jun 10 | Jul 10 | Aug 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ***Broker Licensees*** | | | | | | | | | | | | | |
| Individual (Active) | 34,150 | 34,139 | 34,138 | 34,132 | 34,131 | 34,153 | 34,191 | 34,249 | 34,283 | 34,261 | 34,247 | 34,229 | 34,248 |
| Corporation (Active) | 4,024 | 4,018 | 4,025 | 4,030 | 3,996 | 4,022 | 4,017 | 4,012 | 4,019 | 4,000 | 4,001 | 3,985 | 3,975 |
| LLC (Active) | 2,708 | 2,729 | 2,762 | 2,791 | 2,787 | 2,866 | 2,911 | 2,946 | 2,991 | 3,022 | 3,058 | 3,088 | 3,107 |
| Non-resident (Active) | 493 | 495 | 492 | 490 | 488 | 484 | 487 | 485 | 488 | 483 | 484 | 488 | 490 |
| Partnership (Active) | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| *Total Active Status* | 41,377 | 41,383 | 41,419 | 41,445 | 41,404 | 41,527 | 41,608 | 41,694 | 41,783 | 41,768 | 41,792 | 41,792 | 41,822 |
| *Inactive Status* | 1,659 | 1,652 | 1,658 | 1,664 | 1,658 | 1,677 | 1,665 | 1,648 | 1,617 | 1,623 | 1,614 | 1,614 | 1,613 |
| ***Total Brokers*** | **43,036** | **43,035** | **43,077** | **43,109** | **43,062** | **43,204** | **43,273** | **43,342** | **43,400** | **43,391** | **43,406** | **43,406** | **43,435** |
| ***Sales Licensees*** | | | | | | | | | | | | | |
| Active Status | 74,462 | 74,656 | 75,000 | 74,806 | 74,020 | 73,587 | 73,586 | 74,173 | 74,571 | 74,519 | 73,891 | 73,898 | 74,058 |
| Inactive Status | 26,721 | 26,349 | 26,070 | 26,102 | 26,776 | 27,242 | 27,196 | 26,954 | 26,684 | 26,567 | 27,184 | 27,113 | 26,905 |
| ***Total Sales*** | **101,183** | **101,005** | **101,070** | **100,908** | **100,796** | **100,829** | **100,782** | **101,127** | **101,255** | **101,086** | **101,075** | **101,011** | **100,963** |
| Total Active | 115,839 | 116,039 | 116,419 | 116,251 | 115,424 | 115,114 | 115,194 | 115,867 | 116,354 | 116,287 | 115,683 | 115,690 | 115,880 |
| Total Inactive | 28,380 | 28,001 | 27,728 | 27,766 | 28,434 | 28,919 | 28,861 | 28,602 | 28,301 | 28,190 | 28,798 | 28,727 | 28,518 |
| ***Total Brokers & Sales*** | **144,219** | **144,040** | **144,147** | **144,017** | **143,858** | **144,033** | **144,055** | **144,469** | **144,655** | **144,477** | **144,481** | **144,417** | **144,398** |

### Inspectors

| | Aug 09 | Sep 09 | Oct 09 | Nov 09 | Dec 09 | Jan 10 | Feb 10 | Mar 10 | Apr 10 | May 10 | Jun 10 | Jul 10 | Aug 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ***Inspector Licensees*** | | | | | | | | | | | | | |
| Professional Inspectors(active) | 2,345 | 2,334 | 2,324 | 2,323 | 2,324 | 2,329 | 2,323 | 2,328 | 2,339 | 2,323 | 2310 | 2290 | 2271 |
| Professional Inspectors(inactive) | 966 | 977 | 988 | 986 | 1,005 | 995 | 997 | 995 | 991 | 976 | 968 | 957 | 951 |
| Real Estate Inspectors(active) | 136 | 107 | 107 | 106 | 103 | 105 | 103 | 106 | 105 | 106 | 101 | 95 | 97 |
| Real Estate Inspectors(inactive) | 31 | 28 | 31 | 29 | 36 | 34 | 34 | 34 | 34 | 32 | 33 | 34 | 33 |
| Apprentice Inspectors(active) | 86 | 65 | 63 | 62 | 59 | 56 | 63 | 62 | 68 | 67 | 71 | 72 | 72 |
| Apprentice Inspectors(inactive) | 22 | 21 | 21 | 22 | 22 | 21 | 19 | 19 | 20 | 17 | 17 | 13 | 15 |
| ***Total Inspectors*** | **3,586** | **3,532** | **3,534** | **3,528** | **3,549** | **3,540** | **3,539** | **3,544** | **3,557** | **3,521** | **3,500** | **3,461** | **3,439** |

### Easement & Right-of-way Registrants

| | Aug 09 | Sep 09 | Oct 09 | Nov 09 | Dec 09 | Jan 10 | Feb 10 | Mar 10 | Apr 10 | May 10 | Jun 10 | Jul 10 | Aug 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ***ERW Registrants*** | | | | | | | | | | | | | |
| Businesses | 39 | 38 | 38 | 37 | 36 | 37 | 39 | 41 | 41 | 41 | 42 | 42 | 42 |
| Individuals | 1,893 | 1,835 | 1,757 | 1,742 | 1,713 | 1,710 | 1,686 | 1,659 | 1,643 | 1,631 | 1,667 | 1,683 | 1,705 |
| ***Total Registrants*** | **1,932** | **1,873** | **1,795** | **1,779** | **1,749** | **1,747** | **1,725** | **1,700** | **1,684** | **1,672** | **1,709** | **1,725** | **1,747** |

### Total Licensees and Registrants

| | Aug 09 | Sep 09 | Oct 09 | Nov 09 | Dec 09 | Jan 10 | Feb 10 | Mar 10 | Apr 10 | May 10 | Jun 10 | Jul 10 | Aug 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ***All Licensees & Registrants*** | **149,737** | **149,445** | **149,476** | **149,324** | **149,156** | **149,320** | **149,319** | **149,713** | **149,896** | **149,670** | **149,690** | **149,603** | **149,584** |

# Licensing Services Division

## Examination Activity

### August 2010

## Monthly Results

| | Salesperson | Broker | R. E. Inspector | Prof. Inspector |
|---|---|---|---|---|
| Examinations Passed | 804 | 153 | 0 | 18 |
| Examinations Failed | 599 | 72 | 5 | 37 |
| ***Examinations Taken*** | **1,403** | **225** | **5** | **55** |
| | | | | |
| Applicants Examined | 1,148 | 185 | 4 | 43 |
| 1st Time Passed | 680 | 128 | 0 | 13 |
| | | | | |
| Examination Pass Rate | 57.3% | 68.0% | 0.0% | 32.7% |
| Applicant Pass Rate | 70.0% | 82.7% | 0.0% | 41.9% |
| 1st Time Pass Rate | 59.2% | 69.2% | 0.0% | 30.2% |

## Year-to-Date Results

| | Salesperson | Broker | R. E. Inspector | Prof. Inspector |
|---|---|---|---|---|
| Examinations Passed | 9,105 | 1,544 | 12 | 213 |
| Examinations Failed | 7,117 | 701 | 23 | 409 |
| ***Examinations Taken*** | **16,222** | **2,245** | **35** | **622** |
| | | | | |
| Applicants Examined | 10,394 | 1,637 | 22 | 355 |
| 1st Time Passed | 6,575 | 1,171 | 10 | 115 |
| | | | | |
| Examination Pass Rate | 56.1% | 68.8% | 34.3% | 34.2% |
| Applicant Pass Rate | 87.6% | 94.3% | 54.5% | 60.0% |
| 1st Time Pass Rate | 63.3% | 71.5% | 45.5% | 32.4% |

# Licensing Services Division

## Instructor Distribution

### August 2010

| Approved Instructor Distribution | Aug 09 | Sep 09 | Oct 09 | Nov 09 | Dec 09 | Jan 10 | Feb 10 | Mar 10 | Apr 10 | May 10 | June 10 | July 10 | Aug 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| MCE Electives Only | 2,447 | 2,430 | 2,409 | 2,392 | 2,276 | 2,379 | 2,387 | 2,398 | 2,387 | 2,392 | 2,403 | 2,379 | 2,389 |
| Core and MCE Electives | 844 | 849 | 854 | 857 | 840 | 842 | 837 | 837 | 837 | 801 | 800 | 783 | 761 |
| Core, MCE Electives and TREC MCE Legal | 6 | 7 | 7 | 7 | 5 | 4 | 4 | 4 | 4 | 4 | 4 | 4 | 4 |
| Core, MCE Electives and TREC MCE Ethics | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Core, MCE Electives, TREC MCE Legal and Ethics | 499 | 503 | 515 | 521 | 555 | 563 | 562 | 559 | 558 | 571 | 566 | 555 | 549 |
| MCE Electives and TREC MCE Legal | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| MCE Electives and TREC MCE Ethics | 4 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| MCE Electives, TREC MCE Legal and Ethics | 293 | 276 | 244 | 233 | 225 | 214 | 207 | 204 | 193 | 190 | 184 | 182 | 179 |
| ***Total Approved Instructors*** | **4,097** | **4,071** | **4,034** | **4,015** | **3,906** | **4,007** | **4,002** | **4,007** | **3,984** | **3,963** | **3,962** | **3,908** | **3,887** |

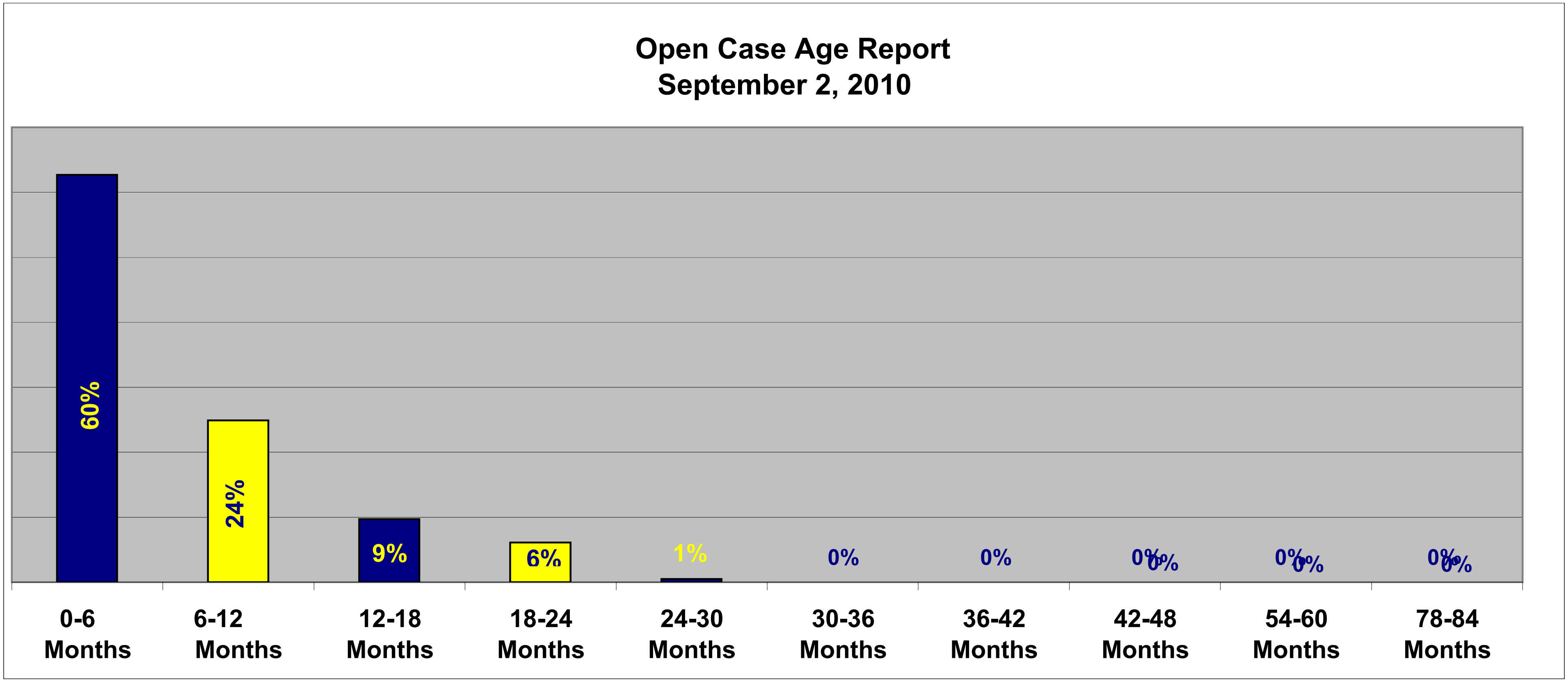
# Enforcement Division Report

## Case Status

### AUGUST 2010

| | August 2010 | YTD |
|---|---|---|
| **Open at Beginning of the Month** | 566 | ------- |
| **Opened During the Month** | 251 | 2,919 |
| **Closed During the Month** | (270) | 3,401 |
| **Open at End of Month** | 547 | ------- |

| | Sep-09 | Oct-09 | Nov-09 | Dec-09 | Jan-10 | Feb-10 | Mar-10 | Apr-10 | May-10 | Jun-10 | Jul-10 | Aug-10 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Opened During Month:** | 285 | 254 | 238 | 220 | 182 | 220 | 248 | 264 | 248 | 269 | 240 | 251 |
| **Administrative** | 55 | 43 | 44 | 52 | 45 | 45 | 63 | 60 | 70 | 63 | 51 | 61 |
| **Public Complaints** | 98 | 87 | 84 | 57 | 67 | 102 | 101 | 107 | 104 | 114 | 102 | 113 |
| **Application Investigations** | 54 | 50 | 40 | 47 | 21 | 23 | 25 | 28 | 23 | 35 | 22 | 23 |
| **Moral Character Determinations** | 23 | 22 | 22 | 25 | 25 | 26 | 33 | 24 | 25 | 21 | 28 | 18 |
| **Non-Jurisdictional Complaints** | 55 | 52 | 48 | 39 | 24 | 24 | 25 | 45 | 26 | 36 | 37 | 36 |
| | | | | | | | | | | | | |
| **Closed During Month:** | 324 | 401 | 276 | 269 | 225 | 329 | 236 | 242 | 271 | 236 | 322 | 270 |
| **Administrative** | 29 | 35 | 25 | 15 | 15 | 40 | 11 | 35 | 1 | 24 | 35 | 4 |
| **Public Complaints** | 118 | 157 | 132 | 154 | 144 | 127 | 172 | 103 | 162 | 133 | 160 | 173 |
| **Application Investigations** | 102 | 111 | 51 | 40 | 33 | 76 | 16 | 36 | 26 | 33 | 35 | 31 |
| **Moral Character Determinations** | 10 | 41 | 18 | 17 | 7 | 57 | 8 | 18 | 48 | 28 | 54 | 26 |
| **Non-Jurisdictional Complaints** | 65 | 57 | 50 | 43 | 26 | 29 | 29 | 50 | 34 | 18 | 38 | 36 |
| **Open at End of Month** | 991 | 844 | 806 | 757 | 714 | 605 | 616 | 638 | 615 | 648 | 566 | 547 |



Open Case Age Report
September 2, 2010
60%
24%
9%
6%
1%
0%
0%
0%
0%
0%
0%
0%
0%
0-6 Months
6-12 Months
12-18 Months
18-24 Months
24-30 Months
30-36 Months
36-42 Months
42-48 Months
54-60 Months
78-84 Months

# Information Technology Services Division

## Electronic Information Outlet Statistics

**August 2010**

| World Wide Web | Current Month | FYTD Total | Prior FYTD Total |
|---|---|---|---|
| Total Pages Viewed | 3,569,356 | 33,382,945 | 28,098,022 |
| Total pages Viewed (Jul 10) | 2,362,156 | 29,813,589 | 25,674,375 |
| Total pages Viewed (Jun 10) | 2,822,451 | 27,451,433 | 23,486,422 |

| TREC E-Mail Notification List | Current Total |
|---|---|
| Current Subscribers | 232,804 |

| Online Transactions | Total | Online | Online Percent | FYTD Online Percent | Prior FYTD Percent |
|---|---|---|---|---|---|
| **Applications** (Performance Measure:70%) | **1261** | **1010** | **80.1%** | **80.2%** | **80.2%** |
| Broker Application | 156 | 134 | 85.9% | 82.7% | 80.4% |
| Broker Late Renewal Application | 102 | 61 | 59.8% | 52.7% | 52.9% |
| Salesperson Application | 983 | 811 | 82.5% | 84.8% | 85.4% |
| Corporate Application | 20 | 4 | 20.0% | 18.1% | 27.2% |
| **Renewals** (Performance Measure 80%) | **6050** | **5344** | **88.3%** | **88.2%** | **86.5%** |
| Broker Renewals | 1604 | 1436 | 89.5% | 88.3% | 88.6% |
| Salesperson SAE Renewal | 451 | 334 | 74.1% | 73.3% | 77.2% |
| Salesperson MCE Renewal | 3452 | 3258 | 94.4% | 93.7% | 92.8% |
| Corporate Renewals | 160 | 143 | 89.4% | 90.3% | 91.7% |
| Limited Liability Company Renewals | 104 | 95 | 91.3% | 82.5% | 89.1% |
| Professional Inspector Renewals | 197 | 55 | 27.9% | 26.3% | 29.0% |
| Real Estate Inspector Renewals | 4 | 1 | 25.0% | 25.5% | 33.3% |
| Apprentice Inspector Renewals | 3 | 2 | 66.7% | 20.0% | 30.4% |
| Easement ROW Business Renewals | 0 | 0 | | 5.0% | 8.0% |
| Easement ROW Individual Renewals | 75 | 20 | 26.7% | 19.8% | 18.2% |

## Staff & Support Services Division

## Agency Financial Statement

### August 2010

### THRU 12TH MONTH OF FISCAL YEAR 2010

| STRATEGIES | FY 2010 APPROPRIATION* | 5% REDUCTION | FY2010 ADJUSTED APPROPRIATION | 12/12 ANNUAL APPROPRIATION | TWELVE MONTHS EXPENDITURES AND A/P | $ VARIANCE OVER(-) OR UNDER** | % VARIANCE OVER(-) OR UNDER | ENCUMBRANCES |
|---|---|---|---|---|---|---|---|---|
| **Licensing** | $ 2,757,962.16 | $ (32,175.00) | $ 2,725,787.16 | $ 2,725,787.16 | $ 2,401,606.68 | $ 324,180.48 | 11.89% | $ 0.00 |
| **Enforcement** | 1,794,741.69 | (17,235.00) | 1,777,506.69 | 1,777,506.69 | 1,704,245.40 | 73,261.29 | 4.12% | 0.00 |
| **Communication/Information** | 847,108.82 | (8,150.00) | 838,958.82 | 838,958.82 | 825,273.62 | 13,685.20 | 1.63% | 0.00 |
| **Indirect Administration** | 1,810,724.54 | (42,520.00) | 1,768,204.54 | 1,768,204.54 | 1,724,007.14 | 44,197.40 | 2.50% | 0.00 |
| **TOTAL** | **$ 7,210,537.21** | **$ (100,080.00)** | **$ 7,110,457.21** | **$ 7,110,457.21** | **$ 6,655,132.84** | **$ 455,324.37** | 6.40% | **$ 0.00** |

* Total appropriations have been increased by $25,610 for benefit replacement pay.

In the Licensing strategy, subscription fees in the amount of $301,948 have been collected and remitted to the Texas Online vendor.

In the Licensing strategy, FBI criminal history background check fees in the amount of $941,271.75 have been collected and remitted to DPS. $148,278.25 will be lapsed due to revenue collections falling short of the estimated appropriation.

** Of the variance, capital budget unexpended balances of $172,052 were transferred forward to FY2011 and $119,729 of unobligated operating funds were transferred into capital budget and transferred forward to FY2011. This flexibility is granted by Art. IX, Sec. 14.02 of the GAA. Capital budget may be carried forward within the biennium, or non-capital budget may be transferred into capital budget within certain limits. If funds in the capital budget are not required in FY2011, they may be transferred to the 5% Budget Reduction appropriation. Also, from the variance, an additional $10,000 was transferred to the 5% Budget Reduction appropriation to offset the remaining amount required in FY2011.

# Staff & Support Services Division

## Real Estate Recovery Trust Account No. 971 Investments
## Current Securities

### August 2010

| Purchase Date | Par Value | Purchase Price | Beginning Market Value | Additions Changes | Ending Market Value | Accrued Interest | Description | Maturity Date |
|---|---|---|---|---|---|---|---|---|
| 12/21/2004 | 200,000.00 | 0.00 | 200,375.00 | (200,375.00) | 0.00 | 0.00 | U.S. T-Notes, 5.75% | 08/15/2010 |
| 11/29/2005 | 100,000.00 | 99,750.00 | 100,812.50 | (312.50) | 100,500.00 | 1,593.75 | U.S. T-Notes, 4.25% | 10/15/2010 |
| 05/28/2009 | 200,000.00 | 200,750.00 | 200,562.50 | (125.00) | 200,437.50 | 291.67 | U.S. T-Notes, 0.875% | 12/31/2010 |
| 02/24/2006 | 100,000.00 | 102,000.00 | 102,562.50 | (375.00) | 102,187.50 | 208.33 | U.S. T-Notes, 5.00% | 02/15/2011 |
| 05/24/2005 | 300,000.00 | 318,421.88 | 314,531.25 | (1,031.25) | 313,500.00 | 625.00 | U.S. T-Notes, 5.00% | 08/15/2011 |
| 02/28/2007 | 100,000.00 | 99,750.00 | 105,468.75 | (312.50) | 105,156.25 | 1,125.00 | U.S. T-Notes, 4.50% | 11/30/2011 |
| 08/29/2007 | 200,000.00 | 205,000.00 | 213,687.50 | (625.00) | 213,062.50 | 406.25 | U.S. T-Notes, 4.875% | 02/15/2012 |
| 02/20/2009 | 200,000.00 | 222,000.00 | 215,500.00 | (437.50) | 215,062.50 | 2,375.00 | U.S. T-Notes, 4.750% | 05/31/2012 |
| 12/06/2007 | 100,000.00 | 104,750.00 | 107,875.00 | (187.50) | 107,687.50 | 182.29 | U.S. T-Notes, 4.375% | 08/15/2012 |
| 05/27/2008 | 100,000.00 | 101,062.50 | 106,531.25 | (62.50) | 106,468.75 | 843.75 | U.S. T-Notes, 3.375% | 11/30/2012 |
| 02/20/2009 | 200,000.00 | 219,250.00 | 216,500.00 | (125.00) | 216,375.00 | 322.92 | U.S. T-Notes, 3.875% | 02/15/2013 |
| 04/28/2010 | 200,000.00 | 217,625.00 | 220,625.00 | 375.00 | 221,000.00 | 354.17 | U.S. T-Notes, 4.25% | 08/15/2013 |
| 08/31/2010 | 200,000.00 | 221,375.00 | 0.00 | 221,625.00 | 221,625.00 | 333.33 | U.S. T-Notes, 4.00% | 02/15/2014 |
| 08/31/2010 | 100,000.00 | 112,406.25 | 0.00 | 112,562.50 | 112,562.50 | 177.08 | U.S. T-Notes, 4.25% | 08/15/2014 |
| **Totals** | $ 2,300,000.00 | $ 2,224,140.63 | $ 2,105,031.25 | $ 130,593.75 | $ 2,235,625.00 | $ 8,838.54 | | |

| | Current Month | | Cumulative Totals | |
|---|---|---|---|---|
| **Receipts:** | | | | |
| License's Remittances to Recovery Fund | $ 16,120.00 | | $ 6,219,030.08 | |
| Interest Realized | 7,973.41 | | 6,004,325.06 | |
| Repayments to Recovery Fund (Principal and Interest) | 1,674.70 | | 1,106,684.49 | |
| Administrative Penalties | 6,388.33 | | 827,941.67 | |
| **Total Received** | | **$ 32,156.44** | | **$ 14,157,981.30** |
| **Disbursements:** | | | | |
| Investments Purchased (Offset by Matured Security) | $ 112,531.25 | | 2,224,140.63 | |
| Accrued Interest Purchased | (1,181.48) | | 532.61 | |
| Payments from Recovery Fund | 23,684.38 | | 11,351,089.34 | |
| Rider Disbursements | 93.10 | | 13,932.99 | |
| **Total Disbursed** | | **$ 135,127.25** | | **$ 13,589,695.57** |
| **Totals** | | **(102,970.81)** | | **568,285.73** |
| | | (Current Month) | | |

| | |
|---|---|
| Reserved for Investment | **0.00** |
| Reserved for Potential Payments Within 90 Days | **(482,200.00)** |
| **Balance** | **$ 86,085.73** |

Investment Position: The Fund is capable of meeting all known obligations.
Investment Compliance: The Investment Policy of the Commission has been followed.

Karen Alexander, Investment Officer

Barbara Kolb, Alternate Investment Officer

# Staff & Support Services Division

## Real Estate Recovery Trust Account No. 971 Investments
## Payments and Repayments

### August 2010

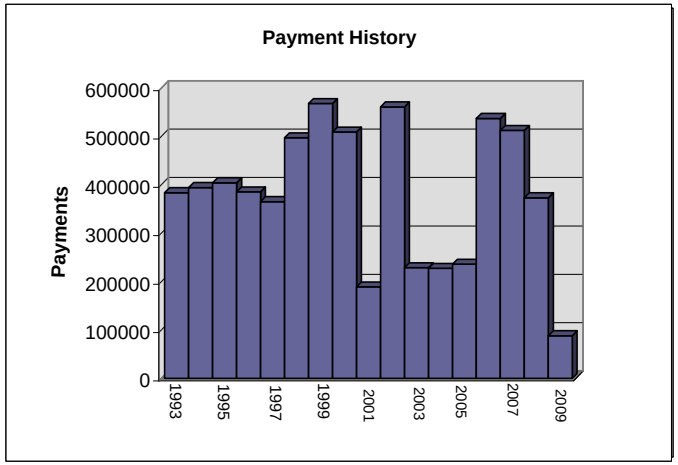
| Month-Year | Payment Total | Repayment Total | Admin Penalties Total | Rider Disbursements | Payments FY2010-To-Date | Number of Payments |
|---|---|---|---|---|---|---|
| **August 2009** | 0.00 | 999.82 | 5,550.00 | 0.00 | | |
| **September 2009** | 50,000.00 | 3,387.69 | 10,846.66 | 0.00 | 50,000.00 | 1 |
| **October 2009** | 141,603.36 | 792.56 | 4,250.00 | 0.00 | 141,603.36 | 3 |
| **November 2009** | 0.00 | 897.20 | 200.00 | 38.00 | 0.00 | 0 |
| **December 2009** | 117,623.29 | 2,119.20 | 2,908.33 | 99.89 | 117,623.29 | 3 |
| **January 2010** | 50,000.00 | 1,582.18 | 1,582.18 | 0.00 | 50,000.00 | 1 |
| **February 2010** | 31,786.14 | 1,867.61 | 4,583.33 | 57.80 | 31,786.14 | 2 |
| **March 2010** | 73,847.53 | 1,984.41 | 2,283.33 | 43.00 | 73,847.53 | 5 |
| **April 2010** | 27,465.00 | 7,795.06 | 11,458.33 | 94.70 | 27,465.00 | 1 |
| **May 2010** | 0.00 | 1,876.98 | 2,708.33 | 0.00 | 0.00 | 0 |
| **June 2010** | 0.00 | 1,705.53 | 6,208.33 | 0.00 | 0.00 | 0 |
| **July 2010** | 20,627.43 | 589.70 | 98,808.38 | 0.00 | 20,627.43 | 2 |
| **August 2010** | 23,684.38 | 1,674.70 | 6,388.33 | 93.10 | 23,684.38 | 2 |
| | **536,637.13** | **27,272.64** | **157,775.53** | **426.49** | **536,637.13** | **20** |

**Payment History**

| Fiscal Year | # of Payments | Total Payments |
|---|---|---|
| thru 1992 | 345 | 4,350,190.77 |
| 1993 | 33 | 384,067.85 |
| 1994 | 31 | 394,466.36 |
| 1995 | 29 | 404,449.31 |
| 1996 | 26 | 385,724.99 |
| 1997 | 20 | 365,445.94 |
| 1998 | 27 | 497,406.17 |
| 1999 | 21 | 568,326.88 |
| 2000 | 18 | 509,279.95 |
| 2001 | 11 | 189,405.09 |
| 2002 | 19 | 561,110.81 |
| 2003 | 11 | 228,924.68 |
| 2004 | 8 | 227,794.75 |
| 2005 | 8 | 236,012.61 |
| 2006 | 22 | 537,356.93 |
| 2007 | 14 | 512,774.82 |
| 2008 | 12 | 373,414.95 |
| 2009 | 5 | 88,299.35 |
| **Total** | **660** | **$10,814,452.21** |

**Potential Payments***

| | |
|---|---|
| **Next 3 Months** | **482,200.00** |




*Potential Payments: Payments could be made in the time periods indicated. Several time/work variables can affect the actual payment dates.

# Staff & Support Services Division

## Real Estate Inspection Recovery Fund No. 0988

### August 2010

| | Monthly Activity | | |
|---|---|---|---|
| | Beginning Balance | Current Month | Cumulative Totals |
| **Beginning Balance** | $ 626,679.84 | $ | **$ 626,679.84** |
| **Receipts:** | | | |
| Licensees' Remittances to Recovery Fund | | $ 2,500.00 | |
| Interest Realized | | 555.26 | |
| Repayments | | 444.21 | |
| Administrative Penalties | | 0.00 | |
| **Total Received in Current Month** | | | **$ 3,499.47** |
| **Disbursements:** | | | |
| Payments from Recovery Fund | | $ 0.00 | |
| Cash Transfer to General Revenue | | 0.00 | |
| Rider Disbursements | | 0.00 | |
| **Total Disbursed in Current Month** | | | **$ 0.00** |
| **Total** | | | **$ 630,179.31** |
| **Reserved for Potential Payment within 90 Days** | | | **(4,266.00)** |
| **Available Fund Balance** | | | **625,913.31** |

| Payment History | | | |
|---|---|---|---|
| Fiscal Year | | Number of Payments | Total Payments |
| thru 1992 | | 2 | $ 4,309.26 |
| 1993 | | 2 | 15,000.00 |
| 1994 | | 5 | 31,473.40 |
| 1995 | | 4 | 25,668.83 |
| 1996 | | 2 | 7,500.00 |
| 1997 | | 1 | 7,500.00 |
| 1998 | | 4 | 30,000.00 |
| 1999 | | 1 | 7,500.00 |
| 2000 | | 6 | 45,000.00 |
| 2001 | | 0 | 0.00 |
| 2002 | | 2 | 15,000.00 |
| 2003 | | 1 | 7,500.00 |
| 2004 | | 4 | 32,523.96 |
| 2005 | | 5 | 28,567.39 |
| 2006 | | 5 | 49,837.11 |
| 2007 | | 1 | 12,500.00 |
| 2008 | | 0 | 0.00 |
| 2009 | | 1 | 12,500.00 |
| 2010 | YTD | 2 | 16,205.00 |
| Total | | | **$ 348,584.95** |

Investment Position: The Fund is capable of meeting all known obligations.
Investment Compliance: The Investment Policy of the Commission has been followed.

Karen Alexander, Investment Officer

Barbara Kolb, Alternate Investment Officer

**Agenda 5:**
Report by Texas Real Estate Inspector Committee

**SUMMARY**
Report to be presented at meeting

**STAFF RECOMMENDATION**

**MOTION**

**Agenda Item 6:**
General comments from visitors on non-agenda items.

**Agenda Item 7(a):**

Discussion and possible action to adopt amendments to:

a.Subchapter A. General Provisions Relating to the Requirement of Licensure

i. Rename Subchapter heading to "Definitions"

ii. New §535.1, concerning Definitions

iii. Repeal §535.1 concerning License Required

## SUMMARY

TREC adopts new §535.1, concerning Definitions without changes to the proposed text as published in the September 10, 2010 issue of the *Texas Register* (35 TexReg 8248). The subchapter is renamed from "General Provisions Relating to the Requirements of Licensure" to "Definitions"; the rule is repealed because the subjects addressed are covered in new amendments to Subchapter B which TREC is simultaneously adopting as part of a comprehensive rule review of 22 TAC Chapter 535. As the reformation of the subchapters comprehensively addresses the subjects of the repealed rule, repeal of the rule is necessary to avoid confusion and repetition.

i. The subchapter name is renamed from "General Provisions Relating to the Requirements of Licensure" to "Definitions". The new subchapter name and new rule are adopted as part of a comprehensive rule review of 22 TAC Chapter 535.

ii. New §535.1 provides definitions for commonly used terms and phrases in Chapter 535. Generally speaking, the new rule corrects typographical errors, reorganizes, clarifies, and streamlines existing rules, and updates cites to new laws and codes.

iii. The subchapter is renamed from "General Provisions Relating to the Requirements of Licensure" to "Definitions"; the rule is repealed because the subjects addressed are covered in new amendments to Subchapter B which TREC is simultaneously adopting as part of a comprehensive rule review of 22 TAC Chapter 535. As the reformation of the subchapters comprehensively addresses the subjects of the repealed rule, repeal of the rule is necessary to avoid confusion and repetition.

The reasoned justification for the amendments to the rules is to make them more streamlined and readable.

No comments were received on the rule as proposed.

## STAFF RECOMMENDATION

Adopt the amendment as proposed

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit new §535.1, Definitions and the repeal of existing 535.1, General Provisions Relating to the Requirements of Licensure, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

# Agenda Item 7(a)
## Subchapter A. Definitions
## [~~General Provisions Relating To the Requirements of Licensure~~]

***§535.1.Definitions.***

**The following terms and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.**

**(1) Act--Texas Occupations Code, Chapter 1101.**

**(2) Business entity--A corporation, limited liability, partnership or other entity authorized under the Texas Business Organizations Code to engage in the real estate brokerage business in Texas and required to be licensed under Texas Occupations Code, Chapter 1101.**

**(3) Chapter 1102--Texas Occupations Code, Chapter 1102.**

**(4) Compensation--A commission, fee or other valuable consideration for real estate brokerage services provided by a license holder under the Act.**

**(5) Denial of a license--To disapprove an applicant for a broker, salesperson, apprentice inspector, real estate inspector, or professional inspector for failure to satisfy the commission as to the applicant's honesty, trustworthiness and integrity, or, if the applicant seeks registration as an easement or right-of-way agent, to disapprove an application for registration under §535.400 of this title (relating to Registration of Easement or Right-of-Way Agents).**

**(6) Inactive broker--A licensed broker who does not sponsor salespersons or perform any activities for which a broker license is required and who has been placed on inactive status by the commission.**

**(7) MCE--Mandatory Continuing Education required under the Act.**

**(8) Mailed--Sent by United States Mail to the last known mailing address or by email to the last known email address of a license holder under Chapter 1101 or Chapter 1102, or applicant, unless the commission is otherwise required by law to notify such persons by Unites States Mail.**

**(9) Place of business--A place where the licensee meets with clients and customers to transact business.**

**(10) Promptly--Three (3) calendar days unless otherwise defined in a specific chapter or section.**

**(11) Reasonable time--Ten (10) calendar days unless otherwise defined in a specific chapter or section.**

**(12) Rule--Any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission and is filed with the Texas Register, including 22 TAC Chapters 533, 534, 535, and 537.**

**(13) SAE--Salesperson Annual Education required under the Act.**

**(14) State--One of the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.**

**(15) Trust account--Any trust, escrow, custodial, property management account, or other account in which a licensee holds money on behalf of another person.**

**(16) Trust funds--Clients' money, earnest money, rents, advance fees, security deposits, or any money held on behalf of another person.**

**[~~Subchapter A. General Provisions Relating To the Requirements of Licensure~~]**

***[~~§535.1. License Required.~~ ]***

**Agenda Item 7(b):**

Discussion and possible action to adopt amendments to:

b. Subchapter B. Definitions

i. Rename Subchapter heading to "General Provisions Relating to the Requirement of Licensure"
ii. Amend §535.2, concerning Broker Responsibility
iii. Amend §535.3, concerning Compensation to or paid by a Salesperson
iv. New §535.4, concerning License Required
v. New §535.5, concerning License Not Required
vi. Repeal §535.12, concerning General
vii. Repeal §535.13, concerning Dispositions of Real Estate
viii. Repeal §535.15, concerning Negotiations
ix. Amend §535.16, concerning Listing.
x. Amend §535.17, concerning Appraisals
xi. Repeal §535.19, concerning Locating Property
xii. Amend §535.20, concerning Procuring Prospects.
xiii. Repeal §535.21, concerning Unimproved Lot Sales; Listing Publications

**SUMMARY**

TREC adopts amendments to §535.2, regarding Broker; §535.3, regarding Compensation to or Paid by a Salesperson; §535.16, regarding Listings; §535.17, regarding Appraisals; §535.20, regarding Procuring Prospects; new §535.4, regarding License Required; and §535.5, regarding License Not Required without changes to the proposed text as published in the September 10, 20101, issue of the *Texas Register* (35 TexReg 8249).

TREC renames the subchapter name from "Definitions" to "General Provisions Relating to the Requirements of Licensure".

The amendments to §535.2 articulate a broker's responsibilities to their sponsored salespersons, the public, and other brokers. Under the rule, a broker is required to advise a sponsored salesperson of the scope of the salespersons authorized activities under the act and clarifies the liability of the broker for the activities of the salesperson if the broker permits a salesperson to engage in activities beyond the scope originally authorized. The amendments clarify that a broker is responsible for any property management activity conducted by their sponsored salespersons and for advertising of sponsored salespersons. The amendments permit a broker to designate in writing another licensee to be responsible for day-to-day supervision of sponsored salespersons; however, the broker would continue to have overall responsibility of the salespersons. The amendments require a broker to maintain records of transactions for a period of 4 years; maintain written policies and procedures addressing specified activities; and promptly deliver commission correspondence to sponsored salespersons. The amendments clarify that the broker responsibility rules are not meant to create an employer/employee relationship where there is none.

The amendments to §535.3 regarding Compensation to or Paid by a Salesperson require that an agreement between a broker and sponsored salesperson regarding the compensation a salesperson receives or pays to other licensees must be in writing. New §535.4 regarding License Required is a compilation of existing rules that are put together into one comprehensive rule that addresses the instances in which a license is required under the Act, as well as a new provision which clarifies that a corporation or limited liability company owned by a broker or salesperson which receives compensation on behalf of the licensee must be licensed as a broker under the Act. New §535.5 regarding License Not Required is a compilation of existing rules that are put together into one comprehensive rule that addresses the instances in which a license is not

required under the Act. The amendments to §535.16 change the name of the section and reorganize the subsections. The amendments to §535.17 reorganize the subsections. The amendment to §535.20 changes the name of the rule from "Procuring Prospects" to "Referrals from Unlicensed Persons."

The repeals are adopted because the subjects addressed in the subchapter heading and sections are covered in new amendments to Subchapter B which TREC is simultaneously adopting as part of a comprehensive rule review of 22 TAC Chapter 535. As the reformation of the subchapters and sections comprehensively address the subjects of the repealed rules, repeal of the rules is necessary to avoid confusion and repetition.

The Texas Association of Realtors, the Texas Apartment Association and the Metrotex Association of Realtors commented on several rules proposed under Subchapter B. The commission received a total of four comments on the rules as proposed.

Comment: One person commented favorably on 22 TAC §§535.2 and 535.4 as proposed.

Comment: One person commented favorably on §§535.4 and 535.5 as proposed.

Comment: One person commented favorably on proposed §535.4.

Comment: One commenter expressed concerns about whether an agent may assign their commission to a third party once the agent receives the commission.

Response: The rule does not prohibit an agent from assigning any fees the agent earns to a third party, such as a principal to a transaction or a company who advances loans to agents, as long as the agent is not paying the third party for brokerage services provided by the third party. Also, according to the new rule, a company created for the express purpose of collecting fees for the agent would be required to have a broker license.

Comment: One commenter suggested adding a rule to preclude brokers from recruiting agents by advertising that an applicant may complete a program of study in less time that the number of credit hours awarded.

Response: The commission appreciates the suggestion but believes that the issue is addressed in the new rules simultaneously being adopted under Subchapter F of Chapter 535 regarding misleading advertising by schools.

The amendments and new rules are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

No comments were received on the repeal of the rules as proposed.

## STAFF RECOMMENDATION

Adopt the amendments, new rules and repeals as proposed

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendment to §535.2, regarding Broker; §535.3, regarding Compensation to or Paid by a Salesperson; §535.16, regarding Listings; §535.17, regarding Appraisals; §535.20, regarding Procuring Prospects; new §535.4, regarding License Required; and §535.5, regarding License Not Required, and adopts the repeal of §535.12, regarding General; §535.13, regarding Dispositions of Real Estate; §535.15, regarding Listings; §535.19, regarding Locating Property; and §535.21, regarding Unimproved Lot Sales; Listing Publications, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

**Agenda Item 7(b)**
**Subchapter B. General Provisions Relating to the Requirements of Licensure**
**§535.2, §535.3, new §535.4, §535.5, §535.16, §535.17, §535.20**

***§535.2. Broker [ ~~Broker's~~ ] Responsibility.***

(a) **A broker is required to advise a sponsored salesperson of the scope of the salesperson's authorized activities under the Act. Unless such scope is limited or revoked in writing, a [ ~~A~~ ]** broker is responsible for the authorized acts of the broker's salespersons, but the broker is not required to supervise the salespersons directly. **If a broker permits a sponsored salesperson to conduct activities beyond the scope explicitly authorized by the broker, those too will be deemed to be authorized acts for which the broker is responsible.**

(b) A real estate broker acting as an agent owes the very highest fiduciary obligation to the agent's principal and is obliged to convey to the principal all information of which the agent has knowledge and which may affect the principal's decision. **[A ~~broker is obligated under a listing contract to negotiate the best possible transaction for the principal, the person the broker has agreed to represent.~~ ]**

(c) A broker is responsible for the proper handling of **trust funds [escrow ~~monies~~ ]** placed with the broker, although the broker may authorize other persons to sign checks **on behalf of [ ~~for~~ ]** the broker.

**(d) A broker is responsible for any property management activity which requires a real estate license that is conducted by the broker's sponsored salespersons.**

**(e) A broker may designate another licensee to assist in administering compliance with the Act and Rules, but the broker may not relinquish overall responsibility for the supervision of licensees sponsored by the broker. Any such designation must be in writing.**

**(f) Listings may only be solicited and accepted in a broker's name.**

**(g) A broker is responsible to ensure that a sponsored salesperson's advertising complies with §535.154 of this chapter.**

**(h) Except for records destroyed by an "Act of God" such as a natural disaster or fire not intentionally caused by the broker, the following records, at a minimum, shall be maintained for at least four (4) years from the date of closing or termination of the contract in a format that can readily be made available to the commission.**

**(1) Disclosures;**

**(2) Commission Agreements such as listing agreements, buyer representation agreements or other written agreement relied upon to claim compensation;**

**(3) Work files;**

**(4) Contracts and related addenda;**

**(5) Receipts and disbursements of compensation for services subject to the Act;**

**(6) Property management contracts;**

**(7) Documents required by USPAP for appraisals; and**

**(8) Sponsorship agreements between the broker and sponsored salespersons.**

**(i) A broker shall maintain on a current basis written policies and procedures to ensure that:**

**(1) Each sponsored salesperson is advised of the scope of the salesperson's authorized activities subject to the Act and is competent to conduct such activities.**

**(2) Each sponsored salesperson maintains their license in active status at all times while they are engaging in activities subject to the Act.**

**(3) Any and all compensation paid to a sponsored salesperson for acts or services subject to the Act is paid by, through, or with the written consent of the sponsoring broker.**

**(4) Each sponsored salesperson is provided on a timely basis, prior to the effective date of the change, notice of any change to the Act, Rules, or commission promulgated contract forms.**

**(5) In addition to completing statutory minimum continuing education requirements, each sponsored salesperson receives such additional educational instruction the broker may deem necessary to obtain and maintain on a current basis competency in the scope of the sponsored salesperson's practice subject to the Act.**

**(6) Each sponsored salesperson complies with the commission's advertising rules.**

**(7) All trust accounts, including but not limited to property management trust accounts, and other funds received from consumers are handled by the broker with appropriate controls.**

**(8) Records are properly maintained pursuant to subsection (f) of this section.**

**(j) A broker must promptly respond to sponsored salespersons. clients, and licensees representing other parties in real estate transactions.**

**(k) A sponsoring broker shall deliver to or otherwise provide, within a reasonable time after receipt, mail and other correspondence from the commission to their sponsored salespersons. A broker may deliver such correspondence by facsimile or email.**

**(l) When the broker is a business entity, the designated broker is the person responsible for the broker responsibilities under this section.**

**(m) This section is not meant to create or require an employer/employee relationship between a broker and a sponsored salesperson.**

***§535.3.Compensation to or Paid by a Salesperson.***

A salesperson may not receive a commission or other fee except with the **written** consent of the salesperson's sponsoring broker or the broker who sponsored the salesperson when the salesperson became entitled to the commission or fee. A salesperson may not pay a commission or other fee to another person except with the **written** consent of the salesperson's sponsoring broker.

***§535.4.License Required.***

**(a) The Act applies to persons acting as real estate brokers or salespersons while physically within this state, regardless of the location of the real estate involved or the residence of the person's customers or clients. For the purposes of the Act, a person conducting brokerage business from another state by mail, telephone, the Internet, email or other medium is also considered acting within this state if all the prospective buyers, sellers, landlords, or tenants are legal residents of this state, and the real property concerned is located wholly or in part within this state.**

**(b) This section does not prohibit cooperative arrangements between non-resident brokers and Texas brokers pursuant to §1101.651(a)(2) of the Act and §535.131 of this title (relating to Unlawful Conduct: Splitting Fees).**

**(c) Unless otherwise exempted by the Act, a person must be licensed as a broker or salesperson to show a broker's listings.**

**(d) The employees, agents or associates of a licensed broker, including a business entity licensed as a broker, must be licensed as brokers or salespersons if they direct or supervise other persons who perform acts for which a license is required.**

**(e) A real estate license is required for a person to solicit listings or to negotiate in Texas for listings.**

**(f) A corporation or limited liability company owned by a broker or salesperson which receives compensation on behalf of the licensee must be licensed as a broker under the Act.**

**(g) Unless otherwise exempted by the Act, a person who manages real property or collects rentals for an owner of real property and also rents or leases the property for the owner for valuable consideration must be licensed.**

**(h) A person must be licensed as a broker to operate a rental agency.**

**(i) A real estate license is required of a subsidiary corporation, which, for compensation, negotiates in Texas for the sale of its parent corporation's real property.**

**(j) Arranging for a person to occupy a residential property is an act requiring a real estate license if the actor:**

**(1) does not own the property or lease the property from its owner;**

**(2) receives a valuable consideration; and**

**(3) is not exempted from the requirement of a license by §1101.005 of the Act.**

**(k) Except as provided by this section a real estate license is required for a person to receive a fee or other consideration for assisting another person to locate real property for sale, purchase, rent, or lease, such as the operation of a service which finds apartments or homes.**

**(l) The compilation and distribution of information relating to rental vacancies or property for sale, purchase, rent, or lease is activity for which a real estate license is required if payment of any fee or other consideration received by the person who compiles and distributes the information is contingent upon the sale, purchase, rental, or lease of the property. An advance fee is a contingent fee if the fee must be returned if the property is not sold, purchased, rented, or leased.**

**(m) A person must be licensed as a broker or salesperson if, for compensation, the person:**

**(1) advertises for others regarding the sale, purchase, rent or lease of real property;**

**(2) accepts calls received in response to such advertisements; and**

**(3) refers the callers to the owner of the property.**

***§535.5.License Not Required.***

**(a) Acting as a principal, a person may purchase, sell, lease, or sublease real estate for profit without being licensed as a broker or salesperson.**

**(b) A person may acquire an option or contract to purchase real estate and then sell it or offer to sell it without having a real estate license.**

**(c) A person who owns property jointly may sell and convey title to his or her interest in the property, but to act for compensation or with the expectation of compensation as an agent for the other owner, the person must be licensed unless otherwise exempted by the Act.**

**(d) A real estate license is not required for an individual employed by a business entity for the purpose of buying, selling, or leasing real property for the entity. An entity is considered to be an owner if it holds record title to the property or has an equitable title or right acquired by contract with the record title holder.**

**(e) Trade associations or other organizations that provide an electronic listing service for their members, but do not receive compensation when the real estate is sold, are not required to be licensed under the Act.**

**(f) Auctioneers are not required to be licensed under the Act when auctioning real property for sale. However, a licensed auctioneer may not show the real property, prepare offers, or negotiate contracts unless the auctioneer is also licensed under the Act.**

**(g) An answering service or clerical or secretarial employees identified to callers as such to confirm information concerning the size, price and terms of property advertised are not required to be licensed under the Act.**

**(h) A broker may hire an unlicensed person to act as a host or hostess at a property being offered for sale by the broker, provided the unlicensed person engages in no activity for which a license is required.**

***§535.16.Listings ; Net Listings .***

(a) **A broker is obligated under a listing contract to negotiate the best possible transaction for the principal, the broker has agreed to represent. [~~Trade associations or other organizations which provide a computerized listing service for their members, but which do not receive compensation when the real estate is sold would not be, are not required to be licensed under Texas Occupations Code, Chapter 1101 (the Act).~~ ]**

(b) A "net listing" is a listing agreement in which the broker's commission is the difference ("net") between the sales proceeds and an amount desired by the owner of the real property. A broker may not take net listings unless the principal requires a net listing and the principal appears to be familiar with current market values of real property. **[~~When a broker accepts a listing, the broker enters into a fiduciary relationship with the principal, whereby the broker is obligated to make diligent efforts to obtain the best price possible for the principal.~~]** The use of a net listing places an upper limit on the principal's expectancy and places the broker's interest above the principal's interest with reference to obtaining the best possible price. If a net listing is used, **the listing agreement must [ ~~a broker should modify the listing agreement so as to~~ ]** assure the principal of not less than the principal's desired price and **[~~to~~]** limit the broker to a specified maximum commission.

(c) (No change.)

***§535.17.Appraisals.***

**~~[(a) A salesperson may make, sign, and present real estate appraisals for the salesperson's sponsoring broker, but the salesperson must submit appraisals in the broker's name and the broker is responsible for the appraisals.]~~**

**~~[(b) The Texas Occupations Code, Chapter 1101 (the Act) does not apply to appraisals performed by the employees of a financial institution or investment firm in connection with a contemplated loan or investment by their employers.]~~**

**(a)[~~(c)~~]** Except as provided by this section, appraisals of real property performed in this state by Texas real estate licensees must be conducted in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect at the time the appraisal is performed. If a real estate licensee, for a separate fee, provides an opinion of value or comparative market analysis which does not conform with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, the licensee shall also provide the person for whom the opinion or analysis is prepared with a written statement containing the following language: "THIS IS AN OPINION OF VALUE OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."

**(b)[~~(d)~~]** The statement required by subsection (a) of this section must be made part of any written opinion or analysis report and must be reproduced verbatim.

**(c)[~~(e)~~]** The exception allowed by subsection (a) of this section does not apply to a transaction in which the Resolution Trust Corporation or a federal financial institutions regulatory agency has required compliance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.

**(d) A salesperson may prepare, sign, and present real estate appraisals for the salesperson's sponsoring broker, but the salesperson must submit appraisals in the broker's name and the broker is responsible for the appraisals.**

**(e) The Act does not apply to appraisals performed by the employees of a financial institution or investment firm in connection with a contemplated loan or investment by their employers.**

***§535.20. Referrals From Unlicensed Persons [ ~~Procuring Prospects~~ ].***

(a) Referring a prospective buyer, seller, landlord, or tenant to another person in connection with a proposed real estate transaction is an act requiring the person making the referral to be licensed if the referral is made with the expectation of receiving

valuable consideration. For the purposes of this section, the term "valuable consideration" includes but is not limited to money, gifts of merchandise having a retail value greater than $50, rent bonuses and discounts.

(b) A person is not required to be licensed as a real estate broker or salesperson if all of the following conditions are met.

(1) The person is engaged in the business of selling goods or services to the public.

(2) The person sells goods or services to a real estate licensee who intends to offer the goods or services as an inducement to potential buyers, sellers, landlords or tenants.

(3) After selling the goods or services to the real estate licensee, the person refers the person's customers to the real estate licensee.

(4) The payment to the person for the goods or services is not contingent upon the consummation of a real estate transaction by the person's customers.

**Subchapter B. Definitions**
**§535.12, §535.13, §535.15, §535.19, and §535.21**

***[~~§535.12.General.~~]***

***[~~§535.13.Dispositions of Real Estate.~~]***

***[~~§535.15.Negotiations.~~]***

***[~~§535.19.Locating Property.~~]***

***[~~§535.21.Unimproved Lot Sales; Listing Publications.~~]***

**Agenda Item 7(c):**

Discussion and possible action to adopt amendments to:

c. Subchapter C. Exemptions to Requirements of Licensure

i. Amend §535.31, concerning Attorneys at Law

ii. Amend §535.32, concerning Exemptions: Attorneys in Fact

iii. Amend §535.34, concerning Salespersons Employed by an Owner of Land and Structures Erected by the Owner

iv. Repeal §535.35, concerning Employees Renting and Leasing Employer's Real Estate

## SUMMARY

The Texas Real Estate Commission (TREC or the commission) adopts amendments to §535.31, regarding Attorneys at Law; §535.32, regarding Attorneys in Fact; and §535.34, regarding Salespersons Employed by an Owner of Land and Structures Erected by the Owner without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8253), and will not be republished.

The amendments to §535.31 shorten the reference to the Act as defined in the definitions section of the rules. The amendments to §535.32 clarify that a power of attorney must be valid and changes the term "agency" to "brokerage." The amendments to §535.34 references the provision in the Act to which it refers, clarifies that an independent contractor is not an employee, and incorporates the text repealed from §535.35.

The repeal is adopted because the subjects addressed in the section are covered in new amendments to Subchapter C which TREC is simultaneously adopting as part of a comprehensive rule review of 22 TAC Chapter 535. As the reformation of the subchapters and sections comprehensively address the subjects of the repealed rule, repeal of the rule is necessary to avoid confusion and repetition.

No comments were received on the rules as proposed.

## STAFF RECOMMENDATION

Adopt the amendments as proposed

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.31, regarding Attorneys at Law; §535.32, regarding Attorneys in Fact; and §535.34, regarding Salespersons Employed by an Owner of Land and Structures Erected by the Owner and the repeal of §535.35, regarding Employees Renting and Leasing Employer's Real Estate, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

**Agenda Item 7(c)**
**Subchapter C. Exemptions to Requirements of Licensure**
**§535.31, §535.32, and §535.34**

***§535.31.Attorneys at Law.*** A licensed attorney is exempt from the requirements of **[~~Texas Occupations Code, Chapter 1101, (~~]the Act[ ~~)~~]** but cannot sponsor real estate salespersons or serve as the designated officer or manager of a licensed corporation or limited liability company unless the attorney is also licensed as a real estate broker. This provision is not a waiver of the standards of eligibility and qualification elsewhere established in the Act.

***§535.32.Attorneys in Fact.*** A person holding a **valid** power of attorney **[~~which is~~]** recorded in the county in which the particular real property is located and which specifically describes the real property to be sold may act as a real estate agent for the owner of such property without being licensed as a real estate broker or salesperson, provided the person does not use powers of attorney to engage in the real estate **brokerage** **[~~agency~~]** business.

***§535.34.Salespersons Employed by an Owner of Land and Structures Erected by the Owner.***

**(a) As referenced in §1101.5(6) of the Act, "salesperson, [~~Salesperson~~]** employed by an owner" means a person employed and directly compensated by an owner. **An independent contractor is not an employee.**

**(b) Withholding income taxes and Federal Insurance Contributions Act (F.I.C.A.) taxes from wages paid another person is considered evidence of employment.**

***[~~§535.35.Employees Renting and Leasing Employer's Real Estate.~~]***

**Agenda Item 7(d):**

Discussion and possible action to adopt amendments to:

(d) Subchapter D. The Commission

i. Amend §535.42, concerning Jurisdiction and Authority

**SUMMARY**

The Texas Real Estate Commission (TREC or the commission) adopts an amendment to §535.42, regarding Jurisdiction and Authority without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg), and will not be republished.

The amendment to §535.42 makes the section more readable. The amendment is adopted as part of a comprehensive rule review of 22 TAC Chapter 535.

No comments were received on the rule as proposed.

**STAFF RECOMMENDATION**

Adopt the amendment and new rule as proposed

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendment to §535.42, regarding Jurisdiction and Authority in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

**Agenda Item 7(d)**
**Subchapter D. The Commission**
**§535.42**

***§535.42.Jurisdiction and Authority.*** The commission does not:

**(1)** mediate disputes between or among licensees concerning entitlement to sales commissions ; or

**(2)** recommend individual licensees to the public.

**Agenda Item 7(e):**

Discussion and possible action to adopt amendments to:

e. Subchapter E. Requirements for Licensure
   i. New §535.50, concerning Definitions
   ii. Amend §535.53 concerning Corporations and Limited Liability Companies
   iii. New §535.54, concerning General Provisions Regarding Education and Experience Requirements for a License
   iv. New §535.55, concerning Education Requirements for a Salesperson License
   v. New §535.56, concerning Education and Experience Requirements for a Broker License
   vi. New §535.57, concerning Examination Requirements for a License

**SUMMARY**

The Texas Real Estate Commission (TREC or the commission) adopts new §535.50, regarding Definitions; amendments to §535.53, regarding Corporations and Limited Liability Companies; new §535.54, regarding General Provisions Regarding Education and Experience for a License; new §535.55, regarding Education Requirements for a Salesperson License; new §535.56, regarding Education and Experience requirements for a Broker License; and new §535.57, regarding Examination Requirements for a License with changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8255).

The differences between the rule as proposed and the rule as finally adopted are as follows: In new §535.56(b)(3), "eight-year" is changed to "six-year" to provide consistency with the change from six years to four years as detailed below; §535.54 is changed to clarify that a bachelor's degree from an accredited college or university counts towards all the related education requirements for a salesperson or broker license, and the proposed amendment regarding acceptance of associate's degrees is deleted.

The amendments and new rules are adopted as part of a comprehensive rule review of 22 TAC Chapter 535.

The definitions in §535.50 are moved from §535.71 and apply to Subchapter E regarding Requirements for Licensure; Subchapter F regarding Pre-License Education and Examination, and Subchapter G regarding Mandatory Continuing Education. Subchapter F only applies to examinations and accreditation of schools, instructors and courses in pre-license education programs.

The amendments to §535.53 clarify the requirements for obtaining and maintaining a broker license for a corporation or limited liability company. New subsection (c) of §535.53 provides that if a corporation or limited liability company is dissolved with the Office of the Secretary of State the license becomes null and void.

New §§535.54, 535.55, and 535.56 are moved from existing §535.63 in Subchapter F since these sections apply to general education, experience and examination requirements for a license and more appropriately fit under Subchapter E (Requirements for License). New subsection (b) in §535.54 provides that a bachelor's degree count towards all the related education requirements for a salesperson license or broker license.

New §535.57 is moved from existing §535.61. The commission has the authority under §1101.362 of the Act to waive some or all of the education and experience requirements for someone who has been licensed within the six years preceding the date the application is filed. Under current §535.56, the commission has waived the education and experience required for a broker license for a broker who was licensed in the preceding six years (the maximum authorized under the Act) and otherwise meets the requirements of the section.

The rule changes the period from six years to four years so that a person who was licensed in the preceding four years and otherwise meets the requirements of the section (experience) could apply for a broker license. Under new §535.56, the applicant would be required to take the examination if the applicant was licensed more than two years prior to the filing of the application.

Generally speaking, the amendment and new rules correct typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules.

The reasoned justification for the amendments is more streamlined, consistent and readable rules, and to ensure adequate education of brokers getting back into the industry after being out for a significant period of time.

The Texas Association of Realtors and the Metrotex Association of Realtors commented on 22 TAC §535.54.

The commission received 6 comments on the rules as proposed.

Comment: One commenter believes that the commission should evaluate anyone with an associate's degree to determine whether the courses taken meet the related course requirements for a salesperson license.

Response: The commission agrees with the commenter and has changed the rule to be consistent with the comment.

Comment: Two commenters disagree with the proposed changes to §535.54 because they believe that it lowers the bar for licensing of salespersons and brokers.

Response: The commission has changed the rule to be consistent with the comment with respect to an associate's degree. With respect to a bachelor's degree, the commission respectfully disagrees with the commenters. Staff experience with evaluation of applicants with bachelor degrees shows that there are normally sufficient basic education requirements in such degree programs to meet the related course requirements for a salesperson or broker license. In addition, the commission has revised the rule to clarify that only bachelor's degrees from accredited colleges or universities will be deemed to meet the related course requirements for a license.

Comment: Two commenters disagree with the proposed changes to §535.54 because they believe that it lowers the bar for licensing of salespersons and brokers because the commission would be accepting the bachelor's degree to count for all education requirements.

Response: The commission respectfully clarifies to the commenters that §535.54(b) applies only to related coursework, not real estate education.

Comment: One commenter disagrees with the changes to §535.56 because the commenter believes that it waters down the requirements for a broker's license.

Response: The commission respectfully disagrees with the comment. The changes would permit an applicant to use existing education requirements if the applicant had been previously licensed no more than 4 years before. The existing rule permits an applicant with a previous broker's license to reapply within 6 years based on then existing education requirements. Therefore, the new rule actually raises the bar by changing the time period from 6 to 4 years.

**STAFF RECOMMENDATION**

Adopt the amendments and new rules proposed

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.53, regarding Corporations and Limited

Liability Companies; new §535.54, regarding General Provisions Regarding Education and Experience for a License; new §535.55, regarding Education Requirements for a Salesperson License; new §535.56, regarding Education and Experience requirements for a Broker License; and new §535.57, regarding Examination Requirements for a License with change in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

Agenda Item 7(e)
Subchapter E. Requirements for Licensure
§535.50, §535.53, - §535.57

***§535.50.Definitions.***

**The following words and terms, when used in Subchapter E, F or G of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.**

**(1) Alternative delivery method--A method of course delivery other than classroom or correspondence. Alternative delivery method courses include online courses and webinars.**

**(2) Applicant--A person seeking approval to be a provider or instructor of a course for which core or mandatory continuing education credit is given.**

**(3) Certified MCE instructor--An instructor approved by the Texas Real Estate Commission and certified to teach the required legal update course or the required ethics course.**

**(4) Distance learning course--A correspondence course, alternative delivery method course or course offered through video presentation.**

**(5) Elective credits--The hours of mandatory continuing education required to renew a license for which a specific course is not required.**

**(6) Hour--Fifty minutes of actual session time.**

**(7) Instructor--A person approved by the Texas Real Estate Commission to teach core or mandatory continuing education courses.**

**(8) MCE--Mandatory Continuing Education.**

**(9) Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. 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.**

**(10) Provider--Any person offering a course for which credit may be granted by the Commission to a licensee or applicant, regardless of whether the Commission must approve or certify the person to offer the course.**

**(11) Related course--A course determined to be acceptable by the commission to count towards related credit. The commission will periodically publish lists of acceptable real estate related courses.**

**(12) Required legal course or legal credits--The required legal update or legal ethics courses or credits earned for attending such courses.**

**(13) Required legal ethics course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.**

**(14) Required legal update course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.**

**(15) School--A person accredited by the Texas Real Estate Commission to offer courses for which core credit is given.**

**(16) Student--An individual taking a core or MCE course for TREC credit.**

***§535.53.Corporations and Limited Liability Companies.***

(a) For the purposes of qualifying for, maintaining, or renewing a license, a corporation or limited liability company must designate one **individual [** ~~**person**~~ **]** holding an active Texas real estate broker license to act for it. **The designated broker must be an officer of the corporation or a manager of a limited liability company.** The corporation or limited liability company may not act as a broker during any period in which it has not

designated a person to act for it who meets the requirements of **[~~Texas Occupations Code, Chapter 1101 (~~ ]the Act[ ~~)~~]. Upon any change in the corporation or limited liability company's designated individual, the corporation or limited liability company must provide proof to the commission of the designated individual's current status as an officer or manager for that entity.** A broker may not act as a designated person at any time while the broker's license is inactive, expired, suspended or revoked.

(b) (No change.)

**(c) If a licensed corporation or limited liability company is dissolved with the Office of the Secretary of State, then the license immediately becomes null and void.**

***§535.54.General Provisions Regarding Education and Experience Requirements for a License.***

**(a) License or experience in another state. Except as provided by this subchapter and the Act, the commission will not accept a person's license in another state or experience in real estate brokerage or any related business in satisfaction of education or experience required for a license.**

**(b) Coursework requirements in related subjects. A person who has earned a bachelor's degree from an accredited college or university will be deemed to have completed the number of related hours required for a salesperson or broker license.**

**(c) The commission will not grant credit to a student who was previously awarded credit for completing a course with substantially the same course content within the previous two-year period.**

***§535.55.Education Requirements for a Salesperson License.*** **Notwithstanding §1101.451(f) of the Act, the commission may waive the education required for a real estate salesperson license if the applicant:**

**(1) was licensed either as a Texas real estate broker or as a Texas real estate salesperson within six years prior to the filing of the application; and**

**(2) completed any core real estate courses or real estate related courses that would have been required for a timely renewal of the prior license, or, if the renewal of the prior license was not subject to the completion of core real estate courses or real estate related courses, completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license.**

***§535.56.Education and Experience Requirements for a Broker License.***

**(a) An applicant for a broker license must have two years of experience actively practicing as a broker or salesperson in Texas during the 36 months prior to filing the application, as follows:**

**(1) Experience is measured from the date a license is issued, and inactive periods caused by lack of sponsorship, or any other reason, cannot be included as active experience.**

**(2) Under §1101.357 of the Act, a person who is the designated officer of a corporation or limited liability company that is licensed as a real estate broker in another state is deemed to be a licensed real estate broker in another state. A person licensed in another state may derive the required two years' experience from periods in which the person was licensed in one or more states.**

**(b) Notwithstanding §1101.451(f) of the Act, the commission may waive education and experience required for a real estate broker license if the applicant satisfies each of the following conditions.**

**(1) The applicant was licensed as a Texas real estate broker or salesperson within four years prior to the filing of the application.**

**(2) If the applicant was previously licensed as a Texas real estate broker, the applicant has completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior**

**to the filing of an application for an active license. If the applicant was previously licensed as a Texas real estate salesperson, the applicant satisfies all current education requirements for an original broker license.**

**(3) The applicant has at least two years of active experience as a licensed real estate broker or salesperson during the eight-year period prior to the filing of the application.**

***§535.57.Examination Requirements for a License.***

**(a) Notwithstanding §1101.451(f) of the Act, the commission shall waive the examination requirement for an applicant for a broker license who has been licensed as a broker in this state within two years prior to the filing of the application. The commission shall waive the examination requirement for an applicant for a salesperson license who has been licensed in this state as a broker or salesperson within two years prior to the filing of the application.**

**(b) The commission may waive the national portion of the examination of an applicant for a broker or salesperson license if the applicant maintains an active license in another state, equivalent to the license being applied for, and has passed a comparable national examination accredited or certified by a nationally recognized real estate regulator association.**

**Agenda Item 7(f):**

Discussion and possible action to adopt amendments to:

f. Subchapter F. Education, Experience, Educational Programs, Time Periods and Type of License
   i. Amend§535.61, concerning Examinations
   ii. Amend §535.62, concerning Acceptable Courses of Study
   iii. Repeal §535.63, concerning Education and Experience Requirements for a License
   iv. New §535.63, concerning Accreditation of Core Education Schools
   v. Repeal §535.64, concerning Accreditation of Schools and Approval of Courses and Instructors
   vi. New §535.64, concerning Obtaining approval to offer a course
   vii. Repeal §535.65, concerning Changes in Ownership or Operation of School; Presentation of Courses; Advertising; and Records
   viii. New §535.65, concerning Operation of Core Education Schools
   ix. Repeal §535.66, concerning Payment of Annual Fee; Audits; Investigations and Enforcement Actions
   x. New §535.66, concerning Core Education Providers; Audits; Investigations; and Enforcement Actions
   xi. New §535.67, concerning Approval of Instructors
   xii. New §535.68, concerning Additional Information related to an application

**SUMMARY**

The Texas Real Estate Commission (TREC or the commission) adopts amendments to §535.61, concerning examinations; §535.62, concerning Acceptable Courses of Study; new §535.63, concerning Accreditation of Core Education Schools; new §535.64, concerning Obtaining Approval to Offer a Course; new §535.65, concerning Operation of Core Education Schools; new §535.66, concerning Core Education Providers: Audits, Investigations, and Enforcement Actions; new §535.67, concerning Approval of Instructors; and new §535.68, concerning Additional Information Related to an Application with changes to the proposed text as published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8706).

The differences between the rule as proposed and the rule as finally adopted are as follows: Section 535.65(4) clarifies that a school may rely on published objective information such as pass rates in advertising regarding the school's course of instruction; §535.65(10) is changed to require schools to use, at a minimum, course and instructor evaluation criteria established by the commission, rather than requiring schools to use evaluation forms approved by the commission; and §535.65(9)(D) regarding records retention is clarified to address records that are maintained in an electronic format.

The commission renames the subchapter name from "Education, Experience, Educational Programs, Time Periods and Type of Licensure" to "Pre-License Education and Examination."

The subchapter name as amended more appropriately addresses the new content of the subchapter which TREC is simultaneously adopting as part of a comprehensive rule review of 22 TAC Chapter 535. As the reformation of the subchapters comprehensively addresses the subjects of the adopted amendments and new rules, it is necessary to avoid confusion and repetition.

Section 535.61 is amended to delete a redundant provision regarding the confidentiality of the examination as contents of the examination are confidential under the Texas Public Information Act, Texas Government Code Chapter 552. The amendments to §535.61(a)(1) and (3) remove the

requirements of intent or knowledge. Thus, engaging in any of the listed activities with respect to the TREC exam is considered grounds for disciplinary action regardless of the intent or knowledge of the applicant or licensee. Subsections (f) and (g) are moved to new §535.57.

The amendments to §535.62(a) delete a reference to acceptable real estate related courses as the term "related course" is defined in new §535.50. The following amendments to §535.62 are adopted as part of the reformation of the section to group similar subjects into the same sections and to clarify the subject matter of each rules. Paragraphs (1) and (2) of subsection (a) are moved from existing §535.62(f)(1) and (2); the first sentence of subsection (b) is moved from §535.62(b); paragraph 5 of subsection (b) is amended to track the terminology used in the Act; subsection (c) is reworded for clarity; paragraphs (3) and (4) of subsection (d) are moved from existing §535.62(d)(9) and (e). Subsections (e) - (g) are moved from other parts of existing §535.62 to put like subject matter together. Existing §535.62(d)(6)(B) regarding courses offered by an alternative delivery method were deleted because distance learning certification (required under §535.62(g)(1)) ensures the requirements of that subparagraph and it was therefore redundant. Although the remaining provisions of §535.62 indicate that they were deleted, there were moved to other sections for clarity.

Existing §535.63 was repealed and moved to new §§535.54 - 535.56. Much of new §535.63 is moved from existing §535.64 which addresses accreditation of schools. The renewal period for accreditation of schools is changed from five years to four years in §535.63(b). For purposes of calculation a school's passage rate in §535.63(b)(3), the commission will use a four year period instead of a five year period (current). Thus a school's passage rate will be calculated by dividing the number of students affiliated with that school who passed the examination on their first attempt in the four-year period ending on the last day of the previous quarter by the total number of the school's graduates who took the exam for the first time in the same period.

Existing §535.64 is repealed and replaced with new §535.64 which contains the parts of existing §535.64 that deal with obtaining approval to offer a course. There are new course renewal provision in subsections (f) and (g) of new §535.64. A course approval expires four years from the date of approval, and if any school that offers the same course obtains TREC approval to offer the same course, the expiration date remains unchanged. The requirement in existing §535.64 that examination preparation course be submitted to TREC for approval is deleted.

Existing §535.65 is repealed and replaced with new §535.65. The text of new §535.65 comes from existing §535.65 except that it has been rearranged, streamlined and reformatted for clarity and consistency. A new provision in paragraph (2)(D) addresses the requirements for schools which do not maintain an office in the State of Texas. A provision in paragraph (10) clarifies that a school must provide to students and maintain for commission review instructor and course evaluation for each course. At a minimum, schools must use evaluation criteria approved by the commission. Under paragraph (9)(D), a school is required to maintain records of each student enrolled for a minimum of four years; and the full class file and student enrollment agreements must be retained for at least 24 months following completion; records may be retained electronically if they are held in a common format such as pdf or html.

Existing §535.66 is repealed and replaced with new §535.66. The text of new §535.66 comes from existing §535.66 except that it has been rearranged, streamlined and reformatted for clarity and consistency.

New §535.67 contains the part of existing §535.64 that deals with approval of instructors. The renewal period for instructor approval is changed from five years to two years.

New §535.68 contains the parts of existing §535.64(m) which deal with additional information related to an application for a school, course or instructor; and §535.64(n) which addresses the commission's delegation of authority to staff.

Generally speaking, the amendments and new sections correct typographical

errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules. The changes in the rules reflect a non-substantive variation from the proposed rules to make the affected rule consistent with other rules.

Existing §535.63 is repealed and language is moved to new §§535.54 - 535.56. Much of new §535.63 is moved from existing §535.64 which addresses accreditation of schools.

Existing §535.64 is repealed and replaced with new §535.64 which contains the parts of existing §535.64 that deal with obtaining approval to offer a course.

Existing §535.65 is repealed and replaced with new §535.65. The text of new §535.65 comes from existing §535.65 except that it has been rearranged, streamlined and reformatted for clarity and consistency.

Existing §535.66 is repealed and replaced with new §535.66. The text of new §535.66 comes from existing §535.66 except that it has been rearranged, streamlined and reformatted for clarity and consistency.

The reasoned justification for the repeals is more streamlined, consistent and readable rules.

The Texas Association of Realtors and the Texas Apartment Association commented on the rules as proposed.

The commission received 4 comments on the rules as proposed.

Comment: Three commenters suggested that the commission should not require that schools use a commission approved form for course and instructor evaluations. Instead, the commission should permit schools to use their own forms as long as they use commission approved criteria at a minimum.

Response: The commission agrees with the comments and has changed the rules accordingly.

Comment: Two comments suggested that the commission should clarify that schools may rely on published objective information such as pass rates for advertising purposes.

Response: The commission agrees with the comments and has changed the rules accordingly.

Comment: One commenter disagrees with changing the approval process for instructors from five years to two years.

Response: The commission respectfully disagrees with the commenter and believes it is appropriate to changes the renewal period to two years to be consistent with renewal periods for a license from the agency.

Comment: Two commenters suggested that the commission should clarify records retention requirements for records held in an electronic format.

Response: The commission agrees with the comments and has revised §535.65(9)(D) accordingly.

No comments were received on the proposed repeal of the rules

**STAFF RECOMMENDATION**

Adopt the amendments as presented

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.101 concerning Fees in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

***§535.61. Examinations.***

(a) [~~**The contents of examinations administered by the commission or by a testing service under contract with the commission are confidential.**~~**]** The following conduct with respect to licensing examinations is prohibited and is grounds to impose disciplinary action against any licensee of the commission or any education provider **accredited by the commission** or instructor approved by the commission, and shall further be grounds for disapproval of an application for any license, accreditation, or approval issued by the commission:

(1) obtaining or attempting to obtain specific questions or answers from an applicant, a commission employee or any person hired by or associated with the testing service[~~, for the purpose of using the information to pass an examination or for the purpose of providing the questions or answers to another person who is either an applicant or a potential applicant~~];

(2) removing or attempting to remove questions or answers from an examination site; or

(3) providing or attempting to provide examination questions or answers to another person~~**[, knowing the person is an applicant or prospective applicant, or that the person intends to provide the questions or answers to an applicant or potential applicant]**~~.

(b) - (c) (No change.)

(d) Applicants may use silent, battery-operated, electronic, pocket sized calculators which are nonprogrammable. If a calculator has printout capability, the testing service must approve use of such calculator prior to the examination. Applicants may not use calculators with alphabetic keyboards **or communication capabilities**.

(e) (No change.)

~~**[(f) Notwithstanding Texas Occupations Code §1101.451(f), the commission shall waive the examination of an applicant for a broker license who has been licensed as a broker in this state no more than two years prior to the filing of the application. The commission shall waive the examination of an applicant for a salesperson license who has been licensed in this state as a broker or salesperson no more than two years prior to the filing of the application.]**~~

~~**[(g) The commission may waive the national portion of the examination of an applicant for a broker or salesperson license if the applicant maintains a license, equivalent to the license being applied for, and has passed a comparable national examination accredited or certified by a nationally recognized real estate regulator association.]**~~

***§535.62. Acceptable Courses of Study.***

(a) Acceptable core real estate courses are those courses prescribed by **[**~~**Texas Occupations Code, Chapter 1101 (the Act),**~~**]** §1101.003 **of the Act and the following courses.** **[**~~**and by this section. Acceptable real estate related courses are those courses which have been determined to be acceptable by the commission. The commission will periodically publish lists of acceptable real estate related courses.**~~**]**

**(1) Promulgated Contract Forms (or equivalent), which shall include but is not limited to unauthorized practice of law, broker-lawyer committee, current promulgated forms, commission rules governing use of forms and case studies involving use of forms.**

**(2) Residential Inspection for Real Estate Agents (or equivalent), which shall include but is not limited to repair-related contract forms and addenda, inspector and client agreements, inspection standards of**

**practice and standard inspection report form, tools and procedures, electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations) and structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).**

**(b) Applicants must submit evidence of course completion, such as transcripts or course completion certificates, unless the provider has provided or will provide course completion documentation to the commission.** The commission may require an applicant to furnish **supporting** materials such as course outlines, syllabi and course descriptions **[~~in support of credit instruments~~]**. The commission may require official transcripts to verify course work. Provided all the requirements of this section are satisfied, the commission shall accept core real estate courses or real estate related courses submitted by an applicant for a **[~~real estate~~]** broker or **[~~real estate~~]** salesperson license if the course was offered by any of the following providers:

(1) a school accredited by the commission or **by** the real estate regulatory agency of another state;

(2) - (4) (No change.)

(5) **Texas** **[~~a~~]** professional trade association **in the real estate industry**.

(c) The commission shall **grant classroom credit for qualifying courses as follows:** **[~~measure classroom hour credits using the following equivalents:~~]**

(1) **15 hours of classroom credit will be granted for one** **[~~One~~]** semester hour **[~~: 15 hours~~]**.

(2) **10 hours of classroom credit will be granted for one** **[~~One~~]** quarter hour **[~~: 10 hours~~]**.

(3) **10 hours of classroom credit will be granted for one qualifying** **[~~One~~]** continuing education unit **[~~: 10 hours~~]**.

(d) A core real estate course [~~also~~] must meet each of the following requirements to be accepted **for core credit**.

(1) The course contained the content required by **[~~Texas Occupations Code, Chapter 1101, (the Act),~~]** §1101.**003** **of the Act**[~~,~~] or this section.

(2) The daily course presentation did not exceed ten hours.

**(3) The course was of broader applicability than just techniques or procedures utilized by a particular brokerage or organization.**

**(4) The course was not awarded credit by an accredited college or university based on life experience or solely by examination.**

**~~[(3) With the exception of courses conducted by correspondence or by an alternative delivery method such as by computer, the student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule]~~**

**~~[(4) For a classroom course, successful completion of a final examination or other form of final evaluation was a requirement for receiving credit from the provider.]~~**

**~~[(5) For a correspondence course, the course must have been offered by or in association with an accredited college or university, and students receiving credit for the course must pass either:]~~**

**~~[(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or]~~**

**~~[(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks course credit.]~~**

**~~[(6) If a correspondence course was offered by a proprietary school in association with an accredited college or university, the proprietary school has certified to the commission that the course~~**

~~was offered in accordance with the college or university's curriculum accreditation standards. Using the name of the proprietary school "in association with" the name of the college or university on the course completion certificate or electronic course submission constitutes certification to the commission that the course was offered in compliance with the college or university's curriculum accreditation standards.]~~

~~[(7) For a course offered by an alternative delivery method, the course met the following requirements.]~~

~~[(A) The course must be certified by a distance learning certification center that is acceptable by the commission.]~~

~~[(B) The rationale for the education processes implemented in the course must be based on sound instructional strategies which have been systematically designed and proven effective through educational research and development. The basis and rationale for any proposed instructional approach must be specified in the application for approval. The following types of programs will not be approved:]~~

~~*[(i)* those which consist primarily of text material; or]~~

~~*[(ii)* those which primarily consist of questions similar to those on the state licensing examination.]~~

~~[(C) An approved instructor or the provider's coordinator/director shall grade the written course work.]~~

~~[(D) Every provider offering an approved course under this subsection shall:]~~

~~*[(i)* ensured that a qualified person is available to answer students' questions or provide assistance as necessary;]~~

~~*[(ii)* satisfy the commission that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and]~~

~~*[(iii)* certify students as successfully completing the course only if the student;]~~

~~*[(I)* has completed all instructional modules required to demonstrate mastery of the material;]~~

~~*[(II)* has attended any hours of live instruction and/or testing required for a given course; and]~~

~~*[(III)* has passed either:]~~

~~[(-a-) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or]~~

~~[(-b-) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks credit.]~~

~~[(8) The student must not have completed more than one course with substantially the same course content within a three year period.]~~

~~[(9) The course did not primarily concern techniques or procedures utilized by a particular brokerage or organization.]~~

~~[(10) For a classroom course, the course was offered in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.]~~

**(e) A classroom course must meet the following additional requirements to be accepted for core credit.**

**(1) The course was offered in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.**

**(2) The student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule.**

(3) Successful completion of a final examination or other form of final assessment of the student was a requirement for receiving credit from the provider.

(f) A correspondence course must meet the following additional requirements to be accepted for core credit.

(1) The course was offered by or in association with an accredited college or university, and students receiving credit for the course were required to pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students and graded by the instructor or, if the examination was graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks course credit.

(2) If a correspondence course was offered by a school in association with an accredited college or university, the school has certified to the commission that the course was offered in accordance with the college or university's curriculum accreditation standards. Using the name of the school "in association with" the name of the college or university on the course completion certificate or electronic course submission constitutes certification to the commission that the course was offered in compliance with the college or university's curriculum accreditation standards.

(g) A course offered by an alternative delivery method must meet the following additional requirements to be accepted for core credit.

(1) The course was certified by a distance learning certification center that is acceptable to the commission.

(2) An approved instructor or the provider's coordinator/director graded the written course work; and

(3) The provider:

(A) ensured that a qualified person was available to answer students' questions or provide assistance as necessary;

(B) certified students as successfully completing the course only if the student:

*(i)* completed all instructional modules required to demonstrate mastery of the material;

*(ii)* attended any hours of live instruction and/or testing required for a given course; and

*(iii)* passed either:

*(I)* a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

*(II)* an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks credit.

~~[(e) Course credits awarded by an accredited college or university for life experience or by examination are acceptable only for real estate related courses.]~~

~~[(f) In addition to the courses of study specified in the Act, §1101.003, the following shall be considered core real estate courses.]~~

~~[(1) Promulgated Contract Forms (or equivalent) shall include but not be limited to unauthorized practice of law, broker-lawyer committee, current promulgated forms, commission rules governing use of forms and case studies involving use of forms.]~~

~~[(2) Residential Inspection for Real Estate Agents (or equivalent) shall include but not be limited to repair-related contract forms and addenda, inspector and client agreement, inspection standards of~~

~~practice and standard inspection report form, tools and procedures, electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations) and structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).]~~

***§535.63. Accreditation of Core Education Schools.***

**(a) Application for accreditation. A person desiring to offer educational programs or courses of study under approval of the commission pursuant to §1101.301 of the Act shall file an application on the appropriate form approved by the commission and submit the required fee.**

**(1) Standards for approval of application for accreditation. To be accredited by the commission to offer core courses in real estate, the applicant must satisfy the commission as to the applicant's ability to administer courses with competency, honesty trustworthiness and integrity. If the applicant proposes to employ another person such as an independent contractor to conduct or administer the courses, the other person must meet this standard as if the other person were the applicant. The applicant must also demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students attending the school and that the proposed facilities will be adequate and safe for conducting classes. An applicant that is currently accredited will be deemed to meet financial requirements imposed by this subsection once the applicant has provided the statutory bond or other security acceptable to the commission under §1101.301 of the Act if there are no unsatisfied final money judgments against the applicant; otherwise, the application will be subject to the financial review provisions of this section.**

**(2) Financial review. The commission shall review the financial condition of each applicant for accreditation to determine whether the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis. In making this determination, the commission shall be conservative in the financial assumptions it makes concerning the school's proposed operations and its future cash flows. The applicant shall provide the following information:**

**(A) business financial statements prepared in accordance with generally accepted accounting principles, which shall include a current statement of financial condition and a current statement of net worth;**

**(B) on an initial application, a proposed budget for the first year of operation; and**

**(C) on an initial application, a market survey indicating the anticipated enrollment for the first year of operation.**

**(3) Approval of application for accreditation. If it determines that the applicant meets the standards for accreditation and has furnished the bond or other acceptable security required by §1101.302 of the Act, the commission shall approve the application and provide a written notice of the accreditation to the applicant. Unless surrendered or revoked for cause, the accreditation will be valid for a period of four years.**

**(4) Disapproval of application for accreditation. If it determines that an applicant does not meet the standards for accreditation, the commission shall disapprove the application in writing. An applicant may request a hearing before the commission on the disapproval by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Following the hearing, the commission shall issue an order which, in the opinion of the commission, is appropriate in the matter concerned. Venue for any hearing conducted under this section shall be in Travis County. The disapproval and hearing are subject to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and to Chapter 533 of this title (relating to Practice and Procedure).**

(b) Renewal of accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another four year period. Approval or disapproval of an application shall be subject to the standards for initial applications for accreditation, as well as the requirement of §1101.301 of the Act.

(1) For purposes of calculating the exam passage rate of a commission-accredited school, each type of licensing examination that a student takes for the first time will have a school affiliation, unless the last core course taken for the purpose of meeting the education requirements for the type of license was taken at a school that is not accredited by the commission or the course was taken more than two years before the date the student submitted the course to the commission.

(2) The school a student is affiliated with for purposes of this subsection is the school where the student took his or her last core course. If the student's last core course was taken more than two years before that date, the commission will not count the student in calculating the school's exam pass rate.

(3) A school's passage rate will be calculated and published quarterly by dividing the number of students affiliated with that school, as defined in paragraph (2) of this subsection, who passed the examination on their first attempt in the four-year period ending on the last day of the previous quarter by the total number of the school's graduates who took the exam for the first time in the same period. If a school offers courses toward multiple license types, the exam results for that school will be calculated and posted by license type and aggregated into the school's overall passage rate for that period. The passage rate that will be used to determine whether the accreditation standard has been met is the most current aggregate rate published by the commission as of the date the commission receives the timely application for reaccreditation or, if the accreditation expired before being renewed, the most recent rate published by the commission as of the expiration date of the school's accreditation.

(4) In determining whether a school qualifies for reaccreditation based on its examination passage rate, the commission may consider a variety of factors, including the separate passage rates for sales, broker, and inspector applicants and trends within the school's passage rate over the four-year accreditation period.

(c) Payment of annual fee. A school shall pay the fee prescribed by §1101.152(a)(11) of the Act and by §535.101 of this title (relating to Fees) no later than the anniversary of the date of the school's accreditation. At least 30 days prior to the day the fee is due, the commission shall send a written notice to the school to pay the fee, but the school's obligation to pay the fee is not affected by any failure to receive the notice.

***§535.64. Obtaining Approval to Offer a Course.***

(a) An applicant shall submit a Course Application form and pay the fee required by §535.101 of this title (relating to Fees) to obtain approval to offer a course. Prior approval is required for another school to offer the same course.

(b) A school shall submit an instructor's manual for each proposed course. The commission may require a copy of the course materials and instructor's manual to be submitted for each previously approved course a school intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the commission and shall use all materials required in the original or revised course. Each manual must comply with Instructor Manual Guidelines approved by the commission.

(c) The commission is not required to approve a course sooner than 30 days after the filing of an application for course approval.

(d) For the purpose of approval of courses, a correspondence course offered by a school in association with an accredited college or university in

accordance with §535.62(g) of this title (relating to Acceptable Courses of Study), is equivalent to a correspondence course offered by an accredited college or university.

(e) Schools may offer a course using an alternative delivery method such as computers if the course satisfies the requirements for such a course contained in §535.62(g) of this title.

(f) A course approval expires four years from the date of approval. A course that has been approved by the commission may be offered by the original applicant until the expiration date, except that courses approved prior to the effective date of this section expire two years after the effective date. If any school other than the original applicant obtains approval from the commission to offer the same course, the expiration date remains unchanged.

(g) Course renewal. No more than six months prior to the expiration of a course approval, a school may obtain a course approval for another four year period. Approval or disapproval of a course shall be subject to the standards for initial course approval.

*§535.65. Operation of Core Education Schools.* The following provisions apply to schools accredited by the commission to offer core education programs.

(1) Responsibility of schools. A school is responsible to the commission for the conduct and administration of each course presentation, punctuality of classroom sessions, student attendance records, instructor performance and attendance, examination administration, proper student certification, and certification of records. A school shall establish business hours during which school staff are available for public inquiry and assistance. A school shall ensure that instructors or other persons do not recruit or solicit prospective salespersons or brokers in a classroom during class time.

(2) School facilities.

(A) A school shall ensure that its classroom facilities are adequate for the needs of the school and pose no threat to the health or safety of students.

(B) Except as provided by this section, every school shall be open to the public, and shall advertise all courses publicly so as to encourage reasonably an open enrollment. A school may obtain approval from the commission, however, to hold classes in facilities to which access has been limited by a governmental unit.

(C) If a school maintains an office in the State of Texas, the office must be large enough for maintenance of all records, office equipment, files, telephone equipment, and office space for customer service.

(D) If a school does not maintain a fixed office in this state for the duration of the school's approval to offer courses, the school shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas that the school is required to maintain by these sections. A power-of-attorney designating the resident must be filed with the commission in a form acceptable to the commission.

(3) Instructors.

(A) A school shall select each instructor on the basis of expertise in the subject area of instruction and ability as an instructor. Except as provided by this section, a school may not utilize an instructor unless the instructor has been approved by the commission. A school shall require specialized training or work experience for instructors for specialized subjects such as law, appraisal, investments, or taxation. A school may use as a guest speaker a person who has not been approved as an instructor, provided that no more than a total of three hours of instruction in a 30-hour course are taught by persons who are not approved instructors.

(B) An instructor shall teach a course in substantially the same manner represented to the commission in the instructor's manual or other documents

filed with the application for course approval.

(C) A school shall ensure that at the beginning of each examination preparation course, the instructor reads aloud to all students the provisions of §535.61(a) of this title (relating to Examinations).

(D) Schools may request MCE credit be given to instructors of real estate core courses subject to the following guidelines.

*(i)* The instructors may receive credit for only those portions of the course which they teach by filing a completed Instructor Credit Request.

*(ii)* The instructors may receive full course credit by attending all of the remainder of the course.

(4) Advertising. The following practices are prohibited:

(A) using any advertising which does not contain the school's name;

(B) representing that the school's program is the only vehicle by which a person may satisfy educational requirement for licensing;

(C) conveying a false impression of the school's size, importance, location, equipment or facilities;

(D) making unsubstantiated claims that the school's programs are superior to any other course of instruction, except that a school may use objective information published by the commission regarding pass rates;

(E) promoting the school directly or indirectly as a job placement agency, unless the school is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program; or

(F) making any statement which is misleading, likely to deceive the public, or which in any manner tends to create a misleading impression.

(5) Pre-enrollment agreements, tuition and fees.

(A) Prior to the start of a course, a school shall provide each student with a pre-enrollment agreement signed by a representative of the school and the student. The agreement must include all of the following information:

*(i)* the tuition for the course;

*(ii)* any fees charged by the school for supplies, materials, or books needed in course work, shown in an itemized fashion;

*(iii)* the school's policy regarding the refund of tuition and other fees, including a statement addressing refund policy when a student is dismissed or withdraws voluntarily;

*(iv)* attendance requirements;

*(v)* acceptable makeup procedures, including any applicable time limits and any fees that may be charged for makeup sessions; and

*(vi)* the procedure and fees for taking any permitted makeup final examination or any permitted re-examination, including any applicable time limits.

(B) If the school cancels a course, the school shall fully refund all fees collected from students or, at the student's option, the school may credit the student for another course. The school shall inform the commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(C) Any written advertisement by the school that includes a fee charged by the school must display all fees for the course in the same place in the advertisement and with the same degree of prominence.

(6) Course materials.

(A) A school shall update course materials to ensure that current and accurate information is provided to students. The school shall file updated course materials and revisions of the course outline with the commission prior to implementation, and the commission

may direct a school to revise the materials further or cease use of materials. The commission may direct that the school withdraw texts.

(B) A school shall provide each student with copies for the student's permanent use of any printed material which is the basis for a significant portion of the course. The school shall provide ample space on handouts for notetaking or completion of any written exercises.

(7) Presentation of courses.

(A) A school shall present core real estate courses prescribed by §1101.003 of the Act and real estate related courses accepted by the commission in no less than 30 classroom hours of instruction. The school shall advertise and schedule a course for the full clock hours of time for which credit is awarded.

(B) A school may give one hour of credit for a minimum of 50 clock minutes of actual classroom session time. A school shall provide a break of at least 20 minutes to be given at least every two hours. While a school is expected to ensure that each student is present in the classroom for the hours of time for which credit is awarded, this section is not intended to penalize students who must leave the classroom for brief periods of time for personal reasons.

(8) Course examinations.

(A) A school shall administer an examination approved by the commission in each course as a component of determining successful completion of a course of study. A school may not permit a student to take a final examination prior to the completion of any makeup required by this section. In the event of failure of a course final examination, a school may permit a student to retake a final examination once after at least a seven day waiting period and completion of additional course work prescribed by the school. A school shall require a student who fails the examination a second time to retake the course. A school shall require makeup final examinations to be completed within 90 days of the termination of the original class or report the students who do not timely complete the examination requirement as dropped from the class with no credit.

(B) Except in the case of math courses, which require a minimum of 20 questions, a school shall use final examinations consisting of at least 60 questions with an unweighted passing score of 70%. A school shall revise final course examinations for active courses at least annually and shall furnish the commission copies of all revisions. Each of the subjects required by the Act or Rules for a core course must be covered in the exam of that course. A school shall ensure that an examination proctor who is either a member of the school staff or faculty is present with the class during all regularly scheduled final course examinations.

(9) Course credit and records.

(A) Within ten days following the completion of other than an alternative delivery method course or correspondence course, a school shall provide the commission with a class roster in a format approved by the commission. For an alternative delivery method course or correspondence course, a school shall provide a roster of those students completing the course within 10 days after the end of the month in which the student completed the course. The listing of students must be numbered and in alphabetical order, with each student's last name shown first, and must show after each student's name the final grade of either passed, failed, incomplete, or dropped, in language or symbols that can be correlated with these categories. The school shall explain any other grade concisely but clearly. The school shall list all instructors used in the course on the roster.

*(i)* "Passed" must be limited to those students who attended all of the scheduled classes or completed acceptable makeup and who successfully passed the final course examination based on passing standards approved by the commission.

*(ii)* "Failed" must be limited to those students who had acceptable

**classroom attendance but failed the final course examination. If, however, the school permits the student to retake the examination in accordance with paragraph (8) of this section, the first failure must be reported as an incomplete grade.**

***(iii)*** **"Incomplete" must be limited to those students who met the attendance requirements, but did not take the final course examination; those who attended at least two-thirds of the scheduled course hours but did not complete acceptable makeup; or those who fail the final course examination but will be permitted to take a second examination. If a student is reported incomplete and later completes acceptable makeup and the final examination, the school shall file a supplemental report with the commission giving the student's name and final grade report and using the same format and course data as the original class report. The school shall file a separate supplemental report for each individual class but may include more than one student on the report if all students were in the same original class.**

***(iv)*** **"Dropped" must be limited to those students who missed more than one-third of the scheduled class in which they were originally enrolled; those who voluntarily terminated their enrollment; or those whose enrollment was terminated for cause by a school director.**

**(B) A school may permit a student who attends at least two-thirds of a scheduled course to complete makeup work to satisfy attendance requirements. Acceptable makeup procedures are the attendance in the corresponding class sessions in a subsequent offering of the same course or the supervised presentation by audio or video recording of the class sessions actually missed. A school shall require all class makeup sessions to be completed within 90 days of the completion of the original course, or the student must be considered dropped with no credit for the course. A member of the school's staff must approve the makeup procedure to be followed. A student attending less than two-thirds of the originally scheduled course must automatically be dropped from the course without credit and reported as dropped. Dropped status may not be changed by makeup sessions, and any hours accumulated may not be transferred to any other course.**

**(C) A school shall issue to the students successfully completing a course of instruction an official certificate which reflects the school's name, branch, course title, course numbers, and the number of classroom hours (or other recognized educational unit) involved in the course. All core course certificates must show the statutory core course title or other identification as prescribed by the commission. Certificates also must show the date of issuance and be signed by an official of the school, or if the certificate is computer printed, the school logo may be substituted for the signature. Letters or other official communications also may be provided to students for submission to the commission as evidence of satisfactory completion of the course. Such letters must fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school, or if the letter is computer printed, the school logo may be substituted for the signature. A school shall maintain adequate security for completion certificates and letters. Compliance with this requirement will be determined by the commission during all school audits. A school may withhold a student's certificate of completion of a course until the student has fulfilled the student's financial obligation to the school.**

**(D) A school shall maintain records of each student enrolled in any course for a minimum of four years. The full class file, including course and instructor evaluations and student enrollment agreements must be retained for at least 24 months following completion of the class. Records may be maintained electronically but must be in a common format, such as pdf or html, that may be legibly and easily printed or viewed without additional manipulation or unusual software.**

**(E) A school shall maintain financial records sufficient to reflect at any time the financial condition of the school. A school's financial statement and balance sheets must be available for audit by commission personnel, and the commission may require presentation of financial statements or other financial records.**

**(10) Instructor and Course Evaluations. A school shall provide instructor and course evaluation forms for completion by students in every course. A school shall, at a minimum, use evaluation criteria approved by the commission. The school shall file in the school records any comments by the school's management relevant to instructor or course evaluations. On demand by the commission the school shall produce instructor and course evaluation forms for inspection.**

**(11) Changes in Ownership or Operation. A school shall obtain the approval of the commission in advance of any material change in the operation of the school, including but not limited to, ownership, location of main office and any other locations where courses are offered, management, and course formats. A request for approval of a change of ownership will be considered as if each proposed new owner had applied for accreditation of the school, and each new owner must meet the standards imposed by §535.63 of this title (relating to Accreditation of Core Education Schools). A school requesting approval of a change in ownership shall provide all of the following information or documents to the commission:**

**(A) the proportion of ownership of each proposed new owner;**

**(B) a professional resume of each proposed new owner who would hold at least a 10% interest in the school;**

**(C) business financial statements of each proposed new owner who would hold at least a 10% interest in the school, which shall include the statement of financial condition and statement of net worth for the accounting period in which the application is made, prepared in accordance with generally accepted accounting principles;**

**(D) a statement of any proposed changes in the operation or location of the school;**

**(E) a new bond in the amount of $20,000 for the proposed new owner(s), a statement from the bonding company indicating that the former bond will transfer to the proposed new owner(s), or other security acceptable to the commission under §1101.302 of the Act;**

**(F) a completed Education Provider Application reflecting all required information for the proposed new owner(s); and**

**(G) a completed Principal Information Form for each proposed new owner who would hold at least a 10% interest in the school.**

***§535.66. Core Education Providers: Audits, Investigations, and Enforcement Actions.***

**(a) Audits. Schools are subject to audit by commission employees. Commission employees may conduct on-site audits without prior notice to the school, and may enroll and attend a course without identifying themselves as employees of the commission. An audit report indicating noncompliance with the Act or Rules will be treated as a written complaint against the school or instructor concerned and will be referred to the standards and enforcement services division of the commission for appropriate resolution.**

**(b) Complaints, investigations and hearings. The commission shall investigate complaints against schools or instructors which allege acts constituting violations of these sections. Complaints must be in writing, and the commission may not initiate an investigation or take action against a school or instructor based on an anonymous complaint. Complaints against a school or instructor received by any division of the commission will be referred to the enforcement division for appropriate resolution. Commission employees may file written complaints**

against a school or instructor if course completion rosters or other documents filed with the commission provide reasonable cause to believe a violation of these sections has occurred. The school or instructor named in the complaint will be provided with a copy of the complaint. Proceedings against schools and instructors will be conducted in the manner required by §1101.657 of the Act, the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section will be in Travis County.

(c) Grounds for disciplinary action against a school. The commission may issue a reprimand, place on probation, suspend or revoke accreditation of a school, or impose an administrative penalty when it has been determined that the school has been guilty of engaging in any of the following acts:

(1) procuring or attempting to procure approval for a school, course or instructor by fraud, misrepresentation or deceit, or by making a material misrepresentation of fact in an application filed with the commission;

(2) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(3) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(4) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(5) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against the school or instructor;

(6) disregarding or violating a provision of these sections or of the Act; or

(7) failing to maintain sufficient financial resources to continue operation of the school without placing students at risk of financial loss.

(d) The existence of any of the following conditions shall constitute prima facie evidence that a school's financial condition is insufficient for continuing operation:

(1) nonpayment of a liability when due, if the balance due is greater than 5% of the school's current assets in the current or prior accounting period;

(2) nonpayment of three or more liabilities when due, in the current or prior accounting period, regardless of the balance due for each liability;

(3) a pattern of nonpayment of liabilities when due, in two or more accounting periods, even if the liabilities ultimately are repaid;

(4) a current ratio of less than 1.75 for the current or prior accounting period, this ratio being total current assets divided by total current liabilities;

(5) a quick ratio of less than 1.60 for the current or prior accounting period, this ratio being the sum of all cash equivalents, marketable securities, and net receivables divided by total current liabilities;

(6) a cash ratio of less than 1.40 for the current or prior accounting period, this ratio being the sum of cash equivalents and marketable securities divided by total current liabilities;

(7) a debt ratio of more than .40 for the current or prior accounting period, this ratio being total liabilities divided by total assets;

(8) a debt-to-equity ratio of greater than .60 for the current or prior accounting period, this ratio being total liabilities divided by owners' or shareholders' equity;

(9) a final judgment obtained against the school for nonpayment of a liability which remains unpaid more than 30 days after becoming final; or

(10) execution of a writ of garnishment on any of the assets of the school.

(e) Grounds for disciplinary action against instructor. The commission may issue a reprimand, place on probation, suspend or revoke approval of an instructor, or impose an administrative penalty when it has been determined that the instructor has been guilty of engaging in any of the following acts:

(1) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(2) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(3) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(4) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against a school or instructor; or

(5) violating or disregarding any provision of the Act or a rule of the commission.

(f) Probation. An order of suspension or revocation issued under this section may be probated upon reasonable terms and conditions as determined by the commission.

*§535.67. Approval of Instructors.*

(a) Standards for instructor approval. The application for commission approval of an instructor must be filed on a form approved by the commission. To be approved as an instructor, a person must satisfy the commission as to the person's competency in the subject matter to be taught and ability to teach effectively. Each instructor must also possess one of the following qualifications:

(1) a college degree in the subject area or five years of professional experience in the subject area and three years experience in teaching or training; or

(2) the equivalent of paragraph (1) of this subsection as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(b) Approval of application. If the commission determines that the applicant meets the standards for instructor approval, the commission shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a period of two years.

(c) Disapproval of application. The commission may disapprove an application for approval of an instructor for failure to meet the standard imposed by subsection (a) of this section, failure to satisfy the commission as to the applicant's honesty, trustworthiness or integrity, or for any reason which would be a ground to suspend or revoke a real estate license. If an application is disapproved, the commission shall provide written notice to the applicant detailing the basis of the decision. An applicant may request a hearing before the commission by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Venue for any hearing conducted under this section is in Travis County. Appeals from application disapprovals will be conducted in the manner required by §1101.364 of the Act. Hearings are subject to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and to Chapter 533 of this title (relating to Practice and Procedures).

**(d) Subsequent application for instructor approval. No more than six months prior to the expiration of the current approval, an instructor may apply for approval for another two-year period.**

***§535.68. Additional Information Related to an Application.***

**(a) The commission may request an applicant for accreditation of a school, approval of a course, or approval as an instructor to provide additional information related to the application, and the commission may terminate the application without further notice if the applicant fails to provide the information within 60 days after the request was mailed.**

**(b) Delegation of authority. The commission may authorize its director of education and licensing services division or that person's designee to determine whether applications for schools, courses, and instructors should be approved.**

***[~~§535.63. Education and Experience Requirements for a License.~~]***

***[~~§535.64. Accreditation of Schools and Approval of Courses and Instructors.~~]***

***[~~§535.65. Changes in Ownership or Operation of School; Presentation of Courses, Advertising, and Records.~~]***

***[~~§535.66. Payment of Annual Fee, Audits, Investigations and Enforcement Actions.~~]***

**Agenda Item 7(g)**

Discussion and possible action to adopt amendments to:

g. Subchapter G. Mandatory Continuing Education

   i. Amend §535.71, concerning Mandatory Continuing Education; Approval of Providers, Courses, and Instructors

   ii. Amend §535.72, concerning Mandatory Continuing Education: Presentation of Courses, Advertising and Records

   iii. Amend §535.73, concerning Compliance and Enforcement.

   iv. New §535.74, concerning Additional Information related to an application

**SUMMARY**

The Texas Real Estate Commission (TREC or the commission) adopts amendments to §535.71, regarding Mandatory Continuing Education: Approval of Providers, Courses and Instructors; §535.72, regarding Mandatory Continuing Education: Presentation of Courses, Advertising and Records; §535.73, regarding Compliance and Enforcement; and new §535.74, regarding Additional Information Related to an Application with changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8257).

The differences between the rules as proposed and the rules as finally adopted are as follows: §535.72(i) is changed to require schools to use, at a minimum, course and instructor evaluation criteria established by the commission, rather than requiring schools to use evaluation forms approved by the commission.

TREC is simultaneously adopting the amendments and new rule as part of a comprehensive rule review of 22 TAC Chapter 535.

The amendments to §535.71(a) delete the definitions as they have been moved to Subchapter E. Subsection (b) is deleted because the requirements are referenced under §535.92; subsection (c) is deleted because the application forms will be approved by the commission but not promulgated by rule; all the subsections are relettered; the renewal term for instructor approval is changed from five to two years in subsections (i) and (j); alternative delivery method courses for required legal credit will need to be certified by a distance learning certification center that is acceptable to the commission under new subsection (z); some of the paragraphs of subsection (z) are deleted and renumbered because distance learning certification ensures the requirements of that subparagraph and it was therefore redundant. Currently, the only distance learning certification center deemed acceptable by the commission is the International Distance Education Certification Center approved by the commission as acceptable in 2007 based on the alternative delivery method course requirements in place at the time the rule was adopted.

The amendments to §535.72 delete the reference to specific form numbers as they will no longer be promulgated by rule. Subsection (i) is a new provision which requires a provider to make available to students and maintain for commission review instructor and course evaluation for each course. Schools are required to use, at a minimum, course and instructor evaluation criteria established by the commission.

Under relettered subsection (k), a provider is required to maintain the same types of records and for the same period of time as required of schools accredited under Subchapter F regarding core education providers.

The amendments to §535.73 delete the reference to evaluations as evaluations are now covered in the amendments to §535.72.

New §535.74(a) deals with additional information related to an application for an MCE provider, course or instructor; and subsection (b) which addresses the commission's delegation of authority to staff.

Generally speaking, the amendments and new rule correct typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws

and codes.

The reasoned justification for the amendments is more streamlined, consistent and readable rules, and more accountability for schools, instructors, and courses accredited by the commission.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules. The changes in the rules reflect a non-substantive variation from the proposed rules to make the affected rule consistent with other rules.

The Texas Association of Realtors and the Texas Apartment Association commented on the rules as proposed.

The commission received three comments on the rules as proposed.

Comment: Two commenters expressed concern about the criteria used by the commission to determine acceptability of distance education certification centers.

Response: The commission determined in 2007 that the ARELLO International Distance Education Certification Center or IDECC met the commission standards to approve distance education courses. While other entities may provide similar certification services, the commission would need to approve the entity before the commission would accept distance education certification from the entity for distance learning courses. The criteria used to approve IDECC were based on the commission rules in place at the time.

Comment: Three commenters suggested that the commission should not require that schools use a commission approved form for course and instructor evaluations. Instead, the commission should permit schools to use their own forms as long as they use commission approved criteria at a minimum.

Response: The commission agrees with the comments and has changed the rules accordingly.

Comment: Two commenters suggested that the commission should clarify records retention requirements for records held in an electronic format.

Response: The commission agrees with the comments and has revised subchapter F, §535.65(9)(D) and referenced such requirements in subchapter G, §535.72(k).

**STAFF RECOMMENDATION**

Adopt the amendments as presented

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.71, regarding Mandatory Continuing Education: Approval of Providers, Courses and Instructors; §535.72, regarding Mandatory Continuing Education: Presentation of Courses, Advertising and Records; §535.73, regarding Compliance and Enforcement; and new §535.74, regarding Additional Information Related to an Application with changes, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

***§535.71.[~~Mandatory Continuing Education:~~] Approval of Providers, Courses, and Instructors.***

~~[(a) The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.]~~

~~[(1) Act--The Real Estate License Act, Texas Occupations Code, Chapter 1101.]~~

~~[(2) Applicant--A person seeking approval to be a provider or instructor of a course for which mandatory continuing education credit is given.]~~

~~[(3) Hour--Fifty minutes of actual session time.]~~

~~[(4) Certified legal course instructor--An instructor approved by the Texas Real Estate Commission and certified to teach the required legal update course or the required ethics course.]~~

~~[(5) Commission--The Texas Real Estate Commission.]~~

~~[(6) Day--A calendar day.]~~

~~[(7) Distance learning course--A correspondence course, alternative delivery method course or course offered through video presentation.]~~

~~[(8) Elective credits--The nine hours of non-legal mandatory continuing education required by §1101.455 of the Act.]~~

~~[(9) Instructor--A person approved by the Texas Real Estate Commission to teach mandatory continuing education courses.]~~

~~[(10) MCE--Mandatory Continuing Education.]~~

~~[(11) Person--An individual, partnership, or a corporation, foreign or domestic.]~~

~~[(12) Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. 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.]~~

~~[(13) Provider--A person approved by the Texas Real Estate Commission to offer courses for which mandatory continuing education credit is given.]~~

~~[(14) Required legal ethics course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.]~~

~~[(15) Required legal update course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.]~~

~~[(16) Required legal course or legal credits--The required legal update or legal ethics courses or credits earned for attending such courses.]~~

~~[(17) Student--An individual taking an MCE course for credit.]~~

~~[(b) Mandatory Continuing Education Requirements. On or after January 1, 2005 and except as authorized by §535.92 of this chapter, for the next and all subsequent renewals of a license on active status that is not subject to the annual education requirements of §1101.454 of the Act, the license holder must attend during the term of the current license, two Commission-developed legal courses consisting of a three-hour required legal update course and a three-hour required legal ethics course to satisfy the six legal hours of mandatory continuing education required by §1101.455 of the Act. The remaining nine hours required by §1101.455 of the Act may consist of~~

~~elective credit courses registered with the commission under this section.]~~

~~[(c) Application. A person who wishes to offer courses accepted by the commission for MCE credit shall apply to the commission for approval to be an MCE provider and shall register each MCE course using application forms prepared by the commission. The commission may refuse to accept any application which is not complete or which is not accompanied by the appropriate filing fee. Each prospective provider shall submit a provider application and at least one principal information form.]~~

~~[(d) Forms. The commission adopts by reference the following forms published and available from the commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us:]~~

~~[(1) MCE Form 1A-2, MCE Provider Application;]~~

~~[(2) MCE Form 1B-2, MCE Provider Application Supplement;]~~

~~[(3) MCE Form 2-3, MCE Principal Information Form;]~~

~~[(4) MCE Form 3A-3, MCE Course Application;]~~

~~[(5) MCE Form 3B-3, MCE Course Application Supplement;]~~

~~[(6) MCE Form 8-4, MCE Course Completion Roster;]~~

~~[(7) MCE Form 9-8, Alternative Instructional Methods Reporting Form;]~~

~~[(8) MCE Form 10-2, MCE Credit Request for an Out of State Course;]~~

~~[(9) MCE Form 11-4, MCE Instructor Credit Request;]~~

~~[(10) MCE Form 12-2, Individual MCE Elective Credit Request for State Bar Course;]~~

~~[(11) MCE Form 14-1, Individual MCE Partial Credit Request Form]~~

~~[(12) MCE Form 15-0, Individual MCE Elective Credit Request for Professional Designation Course; and]~~

~~[(13) MCE Form 16-1, Instructor Application - MCE Elective.]~~

**(a)** [~~(e)~~] Provider application. To be approved as an MCE provider, a person must satisfy the commission as to the person's ability to administer with honesty, trustworthiness and integrity a course of continuing education in MCE subjects registered with the commission. If the person proposes to employ independent contractors to conduct or to administer the courses, any independent contractor named in the application must meet this standard as if the independent contractor were the applicant; however, the applicant is responsible for responding to communications from the commission relating to the application.

**(b)** [~~(f)~~] Additional information related to application. The commission may request that an applicant provide additional information, and the commission may terminate an application without further notice if the applicant fails to provide the additional information within 60 days of the mailing of a request by the commission.

**(c)** [~~(g)~~] Fees. The commission shall establish fees in accordance with the provisions of [~~the Act,~~] §1101.152 **of the Act** , at such times as the commission deems appropriate. Fees are not refundable and must be submitted in the form of a check or money order, or, in the case of state agencies, colleges or universities, in a form of payment acceptable to the commission.

**(d)** [~~(h)~~] Approval of applicants. The commission may authorize the manager or director of the education **and licensing services** division of the commission, or a designate, to determine whether applications for MCE providers or instructors should be approved or certified. The commission may disapprove an application for failure to satisfy the commission as to the applicant's honesty, trustworthiness or integrity, or for any reason which would be a ground to suspend or revoke a real estate license. If an application is disapproved, the commission shall provide written notice to the applicant detailing the basis of the decision.

**(e)** [~~(i)~~] Appeal. An applicant may appeal disapproval by filing with the commission a written request for a hearing within 10 days after the receipt of the notice of disapproval.

Following the hearing, the commission may sustain or withdraw the disapproval or establish conditions for the approval of a provider, course or instructor. Proceedings involving applications shall be conducted in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. Venue for any hearing conducted under this section shall be in Travis County.

**(f) [~~(j)~~]** Power of attorney. If a provider does not maintain a fixed office in this state for the duration of the provider's approval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the provider is required to maintain by these sections. A power-of-attorney designating the resident must be filed with the commission in a form acceptable to the commission.

**(g) [~~(k)~~]** Subsequent application for provider approval or course registration. Unless withdrawn earlier for cause as provided by these sections, a provider's authority to offer courses for which MCE credit is given expires two years from the date the provider is approved by the commission. Authority to offer any MCE courses ends with the expiration of the provider's approval, and the provider must pay current fees and reapply for approval as a provider in order to offer MCE courses again. An elective credit course registered with the commission may be offered by the provider for a period of two years after the course is registered or until the provider's authority to act as a provider finally expires or is withdrawn for cause, whichever first occurs. If a course was originally registered by another provider, the registration period is measured from the date of registration for the original provider. A provider may apply for approval to be a provider for another two years no sooner than six months prior to the expiration of existing provider approval.

**(h) [~~(l)~~]** Approval of instructor. A person who wishes to be an instructor of any MCE course shall apply to the commission for approval using an application form approved by the commission. To be approved as an instructor of any MCE course, an applicant must satisfy the commission as to the applicant's honesty, trustworthiness and integrity. Subsections **(b)-(e) [~~(f)-(i)~~]** of this section apply to an applicant for approval of an instructor.

**(i) [~~(m)~~]** Term of instructor approval. If the commission determines that the applicant meets the standards for instructor approval, the commission shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a period of **two [~~five~~]** years.

**(j) [~~(n)~~]** Subsequent application for instructor approval. No more than six months prior to the expiration of the current approval, an instructor may apply for approval for another **two [~~five~~]** year period.

**(k) [~~(o)~~]** Required legal update and ethics courses. The commission shall approve bi-annually a legal update course and a legal ethics course which shall be conducted through providers by instructors certified by the commission under this subchapter. The subject matter and course materials for the courses shall be created for and approved by the commission. The courses expire on December 31 of each odd-numbered year and shall be replaced with new courses approved by the commission. A provider may not offer a new course until an instructor of the course obtains recertification by attending a new instructor training program. Providers must acquire the commission-developed course materials and utilize such materials to conduct the required legal courses. The required legal courses must be conducted as prescribed by the rules in this subchapter and the course materials developed for the commission.

**(l) [~~(p)~~]** Modification of the required legal courses. Providers and instructors may modify a required legal course only to provide additional information on the same or similar topics covered in the course or to create distance learning courses that are substantially similar to the live courses developed for the commission. To the extent that a required legal course is modified or integrated into a longer course for which additional elective credit is requested, the commission shall grant elective and legal credit for the combined course.

**(m) [~~(q)~~]** Instructor certification. Only instructors certified by the commission may teach the required legal courses or develop distance learning courses for the presentation

of required legal courses. An instructor must obtain prior commission approval under subsection **(n) [~~(r)~~]** of this section prior to attending an instructor training program. The commission shall issue a written certification to an instructor to teach the applicable required legal course(s) upon the instructor's satisfactory completion of a training program to teach the required legal course(s) that is acceptable to the commission. An instructor may obtain certification to teach either one or both required legal courses. A certified legal course instructor may teach the required legal courses for any approved provider after the instructor has attended an instructor training program. A certified legal course instructor may not independently conduct a required legal course unless the instructor has also obtained approval as a provider. An instructor must obtain written certification from the commission prior to teaching the required legal courses and prior to representing to any provider or other party that he or she is certified or may be certified as a legal course instructor. An instructor's certification to teach a required legal course expires on December 31 of every odd-numbered year. An instructor may obtain recertification by attending a new instructor training program.

**(n) [~~(r)~~]** Standards for approval of instructors of required legal courses. Prior to attending an instructor training course, a person must obtain commission approval to be an instructor using **[~~Form ED-4-2,~~]** Instructor Application - Core, Legal Update, and Ethics, **approved [~~adopted~~]** by the commission. To be approved as an instructor of a required legal update or ethics course, a person must possess the following qualifications:

(1) a college degree in the subject area of Real Estate, or five years **of** professional experience in the subject areas of Principles of Real Estate, Law of Agency, and Law of Contracts; and

(2) three years experience in teaching or training; or

(3) the equivalent of paragraphs (1) and (2) of this subsection as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

**(o) [~~(s)~~]** Approval of instructor. If the commission determines that the applicant meets the standards for instructor approval, the commission shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a period of **two [~~five~~]** years.

**(p) [~~(t)~~]** Elective credit courses. To be approved to offer a course for MCE elective credit, the provider must demonstrate that the course subject matter is appropriate for a continuing education course for real estate licensees and that the information provided in the course will be current and accurate by submitting a brief statement that describes the objective of the course and explains how the subject matter is related to activities for which a real estate license is required, including but not limited to relevant issues in the real estate market or topics which increase or support the licensee's development of skill and competence.

**(q) [~~(u)~~]** Elective course application. A provider applicant must submit an **[~~MCE Form 3A-3,~~]** MCE Course Application and receive written acknowledgment from the commission prior to offering an MCE elective course. Prior to advertising or offering a course offered by another provider, the subsequent provider must submit **a [~~an MCE Form 3B-3,~~]** Course Application Supplement and receive written acknowledgment from the commission.

**(r) [~~(v)~~]** Legal update and legal ethics course application. A provider must submit **a [~~an~~]** MCE **[~~form 3B-3,~~]** Course Application Supplement and receive written acknowledgment from the commission prior to offering a required legal update or required legal ethics course.

**(s) [~~(w)~~]** Core courses for elective credit. Courses approved by the commission for core real estate course credit provided in **[~~the Act,~~]** §1101.356 and §1101.358 **of the Act [~~,~~]** may be accepted for satisfying MCE elective credit course requirements provided the student files a course completion certificate with the commission.

**(t) [~~(x)~~]** Acceptable combined courses. An elective credit course offered by a provider to satisfy all or part of the nine hours of other than legal topics required by **[~~the Act,~~]** §1101.455 **of the Act [~~,~~]** may be offered with

the required legal update course or required legal ethics course.

**(u) [~~(y)~~]** Required legal courses for real estate related courses. MCE legal update and legal ethics courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §1101.356 and §1101.358, of the Act.

**(v) [~~(z)~~]** Correspondence courses for elective credit. An MCE provider may register an MCE elective course by correspondence with the commission if the course is subject to the following conditions:

(1) the course must be offered by a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, which offers correspondence courses, whether credit or noncredit, in other disciplines;

(2) the content of the course must satisfy the requirements of **[~~the Act,~~]** §1101.**455 of the Act [~~,~~]** and **this section [~~these sections~~]**; and

(3) the course does not include a request for required legal course credit.

**(w) [~~(aa)~~]** Alternative delivery method courses for elective credit. An MCE provider may register an MCE elective course by alternative delivery method with the commission if the course is subject to the following conditions:

(1) the content of the course must satisfy the requirements of **[~~the Act,~~]** §1101.455 **of the Act [~~,~~]** and **this section [~~these sections~~]**;

(2) the course does not include a request for required legal course credit; and

(3) every provider offering a registered course under this subsection shall:

(A) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(B) provide that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and

(C) certify students as successfully completing the course only if the student:

(i) has completed all instructional modules; and

(ii) has attended any hours of live instruction and/or testing required for a given course.

**(x) [~~(bb)~~]** Correspondence courses for required legal credit. The commission may approve a provider to offer an MCE required legal ethics course by correspondence subject to the following conditions:

(1) the course must be offered by a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, which offers correspondence courses, whether credit or noncredit, in other disciplines;

(2) the content of the course must satisfy the requirements of **[~~the Act,~~]** §1101.455 **of the Act** and **this section [~~these sections,~~]** and must be substantially similar to the legal courses disseminated and updated by the Commission;

(3) students receiving MCE credit for the course must pass either:

(A) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(B) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks MCE credit; and

(4) written course work required of students must be graded by an approved instructor or the provider's coordinator or director, who is available to answer students' questions or provide assistance as necessary, using answer keys approved by the instructor or provider.

**(y) [~~(cc)~~]** Each required legal course offered by correspondence must contain the following:

(1) course description;

(2) learning objectives;

(3) evaluation techniques;

(4) lessons;

(5) learning activities;

(6) final examination;

(7) source materials disseminated by the Commission including all updates; and

(8) instructor grading guidelines, including acceptable answers for lessons, assessments and examinations.

**(z) [~~(dd)~~]** Alternative delivery method courses for required legal credit. The commission may accept required legal courses offered by alternative delivery method subject to the following conditions.

(1) The content of the course must satisfy the requirements of **[~~the Act,~~]** §1101.**455 of the Act** and **this section [~~these sections,~~]** and must be substantially similar to the legal courses disseminated and updated by the Commission.

**(2) The course was certified by a distance learning certification center that is acceptable to the commission.**

**(3) An approved instructor or the provider's coordinator/director graded the written course work.**

**(4) The provider:**

**(A) ensured that a qualified person was available to answer students' questions or provide assistance as necessary;**

**(B) certified students as successfully completing the course only if the student:**

**(i) completed all instructional modules required to demonstrate mastery of the material;**

**(ii) attended any hours of live instruction and/or testing required for a given course; and**

**(iii) passed either:**

**(I) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or**

**(II) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks credit; and**

**(III) provided the students with the same materials given to students who attend the same course by live instruction.**

**~~[(2) Every course accepted under this subsection shall teach to mastery. Teaching to mastery means that the course must, at a minimum:]~~**

**~~[(A) divide the material into major units of instruction that follows the outline of the applicable required legal course for delivery on a computer or other approved interactive audio or audiovisual programs;]~~**

**~~[(B) specify the learning objectives for each unit of instruction;]~~**

**~~[(C) specify an objective, quantitative criterion for mastery used for each learning objective;]~~**

**~~[(D) implement a structured learning method by which each student is able to attain each learning objective;]~~**

**~~[(E) provide a means of diagnostic assessment of each student's performance on an ongoing basis during each unit of instruction, measuring what each student has learned and not learned at regular intervals throughout each unit of instruction;]~~**

**~~[(F) provide a means of tailoring the instruction to the needs of each student as identified in subparagraph (D) of this paragraph. The process of tailoring the instruction shall ensure that each student receives adequate remediation for specific deficiencies identified by the diagnostic assessment;]~~**

**~~[(G) continue the appropriate remediation on an individualized basis until the student demonstrates achievement of mastery of each unit; and]~~**

~~[(II) require that the student demonstrate mastery of all material covered by the learning objectives for the module before the module is completed.]~~

~~[(3) The commission must approve the method by which each of the above elements of mastery in paragraph (2)(A) - (II) of this subsection is accomplished.]~~

~~[(4) The rationale for the education processes implemented in the course must be based on sound instructional strategies which have been systematically designed and proven effective through educational research and development. The basis and rationale for any proposed instructional approach must be specified in the application for approval. Programs which consist primarily of text material will not be approved.]~~

~~[(5) An approved instructor or the provider's coordinator/director shall grade the written course work.]~~

~~[(6) Every provider offering an approved course under this subsection shall:]~~

~~[(A) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;]~~

~~[(B) satisfy the commission that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course;]~~

~~[(C) certify students as successfully completing the course only if the student;]~~

~~[(i) has completed all instructional modules required to demonstrate mastery of the material;]~~

~~[(ii) has attended any hours of live instruction and/or testing required for a given course; and]~~

~~[(iii) has passed either:]~~

~~[(I) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or]~~

~~[(II) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks MCE credit; and]~~

~~[(D) provide the students with the same materials given to students who attend the same course by live instruction.]~~

**(aa)** **[~~(ee)~~]** Supervised Video Instruction for elective course credit. A provider may register a course under subsection **(g)** **[~~(u)~~]** of this section to be taught by supervised video instruction if:

(1) the provider complies with §535.72 of this chapter when offering and advertising the course and when completing rosters and retaining records;

(2) a proctor is present during the time the video is shown; and

(3) the provider discloses in any advertisement for the course that the instruction will be by supervised video instruction .

**(bb)** **[~~(ff)~~]** Supervised Video Instruction for required legal course credit. A provider may register a course under subsection **(l)** **[~~(o)~~]** of this section to be taught by supervised video instruction if the provider:

(1) complies with subsection **(aa)** **[~~(ee)~~]** (1) - (3) of this section;

(2) ensures that a certified instructor is available to answer students' questions or provide assistance as necessary; and

(3) ensures that students receiving MCE credit for the course passed a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider.

**(cc)** **[~~(gg)~~]** An applicant must submit an **[~~MCE Form 3B-3,~~]** MCE Course Application Supplement to seek approval to offer an MCE distance learning required legal course and

receive written acknowledgment from the commission prior to offering the course. **[~~Distance learning legal courses may be offered on or after July 1, 2005.~~]**

**(dd) [~~(hh)~~]** For a distance learning course, an online course will not be considered complete until credit is awarded by the provider. The provider shall award the student credit for the course no earlier than 24 hours after the student starts the course and after the student completes the course requirements for credit. The provider shall report the awarding of credit to the commission either by filing a completed **[~~MCE Form 9-8,~~]** Alternative Instructional Methods Reporting Form, signed by the student, or submitting the information contained in **the form [~~MCE Form 9-8~~]** by electronic means acceptable to the commission.

**(ee) [~~(ii)~~]** A provider may use as guest speakers persons who have not been approved as instructors, provided that no more than a total of 50% of the course is taught by the unapproved persons for a registered MCE elective credit course. The commission-registered instructor must remain in the classroom during the guest speaker's presentation.

**(ff) [~~(jj)~~]** A provider may use guest speakers who have not been approved as instructors to conduct a registered MCE elective credit course if:

(1) the provider is an accredited college or university or a professional trade association **[~~as defined by §535.62(b) of this chapter~~]**; and

(2) the course is supervised and coordinated by a commission-approved instructor who is responsible for verifying the attendance of all who request MCE credit.

***§535.72.[~~Mandatory Continuing Education:~~] Presentation of Courses, Advertising and Records.***

(a) Course completion roster. A provider offering each MCE course shall file an MCE Course Completion Roster**[~~, MCE Form 8-4~~]** with the commission within 10 days following completion of the course for licensees who have attended the entire course registered with the commission. Course completion rosters may be transmitted for filing by facsimile machine. **The roster [~~MCE Form 8-4~~]** shall be signed by an authorized representative of the provider who was in attendance and for whom an authorized signature exemplar is on file with the commission or the instructor for the course. Providers are responsible for the security of the course completion rosters. The commission may not accept signature stamps or unsigned forms. Providers must make every reasonable effort to ensure that no student is certified for full MCE credit who has not attended all class sessions.

(b) Partial credit.

(1) A provider may, but is not required, to permit a student to claim partial credit for a course if:

(A) - (C) (No change.)

(D) the student, by completing **an [~~MCE Form 14-0, Individual~~]** MCE Partial Credit Request Form, requests credit only for the hours the student completed and the student does not claim credit for an hour that the student did not attend in its entirety except as provided by subsection (c) of this section.

(E) - (F) (No change.)

(2) (No change.)

(c) (No change.)

(d) Proof of distance learning course completion. In a distance learning course, the provider shall award the student credit for the course no earlier than 24 hours after the student starts the course and after the student completes course requirements for credit. The provider shall report the awarding of credit to the commission. Course credit must be reported either by the provider filing a completed **Alternative Instructional Methods Reporting Form [~~MCE Form 9-8,~~]** signed by the student, or submitting the information contained in **the form [~~MCE Form 9-8~~]** by electronic means acceptable to the commission. If the provider chooses to use an electronic reporting process, the process must ensure that only students who complete the course are reported to the commission as receiving course credit and that the process does not compromise the security of commission records.

(e) - (h) (No change.)

**(i) Instructor and Course Evaluations. A provider shall make available instructor and course evaluation forms for completion by students in every course. The forms shall, at a minimum, contain evaluation criteria approved by the commission. The school shall file in the school records any comments by the school's management relevant to instructor or course evaluations. On demand by the commission the school shall produce instructor and course evaluation forms for inspection.**

**(j)** [~~(i)~~] Advertising. Advertising of MCE shall be subject to the following conditions.

(1) A provider applicant may not advertise a specific MCE course or represent in advertising that the applicant is a provider until the applicant has received written approval from the commission for the providership and registered at least one course. A provider applicant may advertise an intention to offer MCE courses if no specific course is described and the advertisement clearly indicates the applicant has not been approved as a provider.

(2) A provider may not advertise a course as acceptable for MCE credit until the provider has received written acknowledgment of registration of the course. A provider may advertise that approval of the course for MCE credit is pending provided that an application has been submitted to the commission and is awaiting approval.

(3) A provider may not offer a course until the provider has received written acknowledgment of registration of the course.

(4) Any advertisement or promotional material used by a provider must indicate the MCE provider's name or assumed business name as reflected in the commission's records and the MCE provider number assigned by the commission. The advertisement or promotional material also must include the specific MCE course numbers and course titles or a statement that MCE course numbers and titles are available from the provider; or, if approval of the course is pending, the course title and a statement that MCE approval is pending. When a provider offers a course that is hosted by another person or organization, the advertisement or promotional material must show clearly that the approved MCE provider is offering the course.

(5) A provider may not publish advertisements which are misleading or which are likely to deceive the public.

(6) Any name a provider uses in advertising must not be deceptively similar to the name of any other approved MCE provider or school accredited by the commission or falsely imply a governmental relationship.

(7) Any written advertisement which contains a fee charged by the provider shall display all fees for the course in the same place in the advertisement and with the same degree of prominence. If a provider requires students to purchase course materials which are not included in the tuition, any such fees must appear in the advertisement of the course.

**(k)** [~~(j)~~] Record retention. **A provider shall maintain the same types of records and for the same period of time as required of schools accredited under Subchapter F of this chapter (relating to Pre-License Education and Examination).** Providers shall **[**~~retain student attendance records for a period of three years following the completion of a course and shall~~**]** make copies of the records available to former students. A provider may charge a reasonable fee to defray the cost of copying student records. A provider's records must be kept at the location designated in the MCE Provider Application. Providers must obtain prior approval from the commission to change the location at which the provider's records are kept.

**(l)** [~~(k)~~] Course administration. Providers of MCE courses are responsible to the commission for the conduct and administration of each course presentation, the punctuality of classroom sessions, verification of student attendance, and instructor performance. Providers shall ensure that the required legal courses are administered by instructors in substantially the same manner as disseminated and updated by the commission. During the presentation of a course, providers may not promote the sale of goods or services.

**(m)** [~~(l)~~] Updates. If the commission determines that it is in the public interest to update the required legal courses about

changes in the law, the commission may require the provider to furnish each student with a copy of the information. The commission also may require the provider to ensure that the provider's instructors include the material in the presentation of the course. The commission shall furnish the provider with a copy of the information and notify the provider that the commission requires compliance with this subsection in a required legal course or any elective course combined with a legal course offered after the provider's receipt of the notice.

**(n) [~~(m)~~]** Change in ownership. In the event of a change of ownership, the provider must obtain approval from the commission prior to the change, and proposed new owners shall submit **a [~~an MCE Form 2-2,~~]** Principal Information Form. Providers shall report a change in business name, street or mailing address, **email address,** person responsible for records or day-to-day operations, or persons authorized to sign MCE forms at least 15 days prior to the desired date of change. Providers shall report any change in refund policy, attorney-in-fact, address of attorney-in-fact or business telephone number as the change occurs.

**(o) [~~(n)~~]** MCE credit for instructors. Providers may request MCE credit be given to instructors of MCE courses subject to the following guidelines.

(1) The instructors may receive credit for only those portions of the course that they teach by filing a completed **[~~MCE Form 11-4,~~]** Instructor Credit Request.

(2) The instructors may receive full course credit by attending all of the remainder of the course and signing the course completion roster.

**(p) [~~(o)~~]** Written policies. Each provider shall establish written policies governing refunds and contingency plans in the event of course cancellation. If the provider cancels a course, the provider shall fully refund all fees collected from students, or at the student's option, the provider may credit the student for another course of equal or greater credit hours.

***§535.73.Compliance and Enforcement.***

(a) - (b) (No change.)

(c) Audits **[~~and evaluations~~].** Commission employees may conduct on-site audits of any course offered by an approved MCE provider. Audits shall be conducted without prior notice to the MCE provider and commission employees may enroll and attend an MCE course without identifying themselves as employees of the commission. **[~~Commission employees also may evaluate the effectiveness of course materials or instructors through evaluations submitted by students to the commission.~~]** An audit report [~~or evaluations~~] indicating noncompliance with these sections will be treated as a written complaint against the provider or instructor concerned and will be referred to the enforcement division for appropriate resolution.

(d) - (g) (No change.)

***§535.74.Additional Information Related to an Application.***

**(a) The commission may request an applicant for MCE provider, approval of a course, or approval as an instructor to provide additional information related to the application, and the commission may terminate the application without further notice if the applicant fails to provide the information within 60 days after the request was mailed.**

**(b) Delegation of authority. The commission may authorize its director of education and licensing services division or that person's designee, to determine whether applications for schools, courses, and instructors should be approved.**

**Agenda Item 7(h)**

Discussion and possible action to adopt amendments to:

h. Subchapter I. Licenses

   i. Amend §535.91, concerning Renewal Notices

   ii. Amend §535.92, concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements

   iii. Amend §535.94, concerning Hearing on Application Disapproval: Probationary Licenses

   iv. New §535.96, concerning Permanent Mailing Address and other Contact Information

## SUMMARY

TREC adopts amendments to §535.91, regarding Renewal Notices; §535.92, regarding Renewal: Time for Filing; Satisfaction of Mandatory Continuing Requirements; §535.94, regarding Hearing on Application Disapproval: Probationary Licenses; and new §535.96, regarding Mailing Address and Other Contact Information without changes to the proposed text as published in the September 10, 2010 issue of the *Texas Register* (35 TexReg 8263).

TREC is simultaneously adopting the amendments and new rule as part of a comprehensive rule review of 22 TAC Chapter 535.

Section 535.91 is amended to make it consistent with other provisions; parts of subsection (c) are deleted and moved to new §535.96; new subsection (e) is moved from §535.92(m). Section 535.92 is amended to provide consistency with other provisions of the chapter; new subsection (e) is moved from §535.63(c). Section 535.94 is amended to provide consistency with other provisions of the chapter; new subsection (d) clarifies that if a person who has a probationary license renews the license within the one-year late renewal period, the new license is subject to the remaining probationary period from the previous probationary license. New §535.96 regarding Mailing Address and Other Contact Information is moved from §535.91; the new section requires licensees to notify the commission of the licensee's email address.

Generally speaking, the amendments and new rule correct typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

The reasoned justification for the amendments is more streamlined, consistent and readable rules.

No comments were received on the rules as proposed.

## STAFF RECOMMENDATION

Adopt the amendments as proposed

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.91, regarding Renewal Notices; §535.92, regarding Renewal: Time for Filing; Satisfaction of Mandatory Continuing Requirements; §535.94, regarding Hearing on Application Disapproval: Probationary Licenses; and new §535.96, regarding Mailing Address and Other Contact Information, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

**Agenda Item 7(h)**
**Subchapter I. Licenses**
**§535.91, §535.92, §535.94, and new §535.96**

***§535.91.Renewal Notices.***

(a) Each real estate license expires on the date shown on the face of the license certificate issued to the licensee. The licensee has the responsibility to apply for renewal of a license by making proper application, paying the fee set by the commission and completing **MCE [~~mandatory continuing education (MCE)~~]** courses within the time periods required by the Act, §1101.455 **, unless otherwise authorized by §1101.457 of the Act and §535.92 of this subchapter (relating to Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements)** .

(b) Except as authorized by §535.92 of this **subchapter [~~chapter~~]**, for the renewal of a license on active status that is not subject to the annual education requirements of §1101.454 of the Act, the license holder must attend during the term of the current license, at least two Commission developed legal courses consisting of a three-hour legal update course and a three-hour legal ethics course to comply with the six legal hours of mandatory continuing education required by §1101.455 of the Act. The remaining nine hours required by §1101.455 of the Act may consist of elective credit courses registered with the commission under **Subchapter [~~subchapter~~]** G of this chapter **(relating to Mandatory Continuing Education)** .

(c) **[~~The commission shall mail a renewal notice for an active broker or an inactive licensee to the last known permanent mailing address of the broker or licensee as shown in the commission's computerized records. The commission shall mail a renewal notice for an active salesperson to the permanent mailing address of the salesperson's sponsoring broker.~~]** The commission shall **mail a license renewal [~~the~~]** notice three months before the expiration of the current license. [~~Each licensee shall furnish a permanent mailing address to the commission and report all subsequent address changes within 10 days after a change of address. If a licensee fails to provide a permanent mailing address, the last known mailing address provided by the licensee will be deemed to be the licensee's permanent mailing address.~~] Failure to receive a license renewal notice does not relieve a licensee of the obligation to renew a license.

**(d)** A licensee shall provide information requested by the commission in connection with an application to renew a license within 30 days after the commission requests the information. Failure to provide information requested by the commission in connection with a renewal application within the required time is grounds for disciplinary action under **[~~the Act,~~]** §1101.656 **of the Act .**

**(e) If a licensee is unable to renew a license on the commission's Internet website, the licensee may renew an unexpired license by obtaining a renewal application form from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 and complying with the commission's requirements.**

***§535.92.Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.***

(a) - (b) (No change.)

(c) The commission shall advise each licensee of the time period for filing a renewal application and paying the renewal fee by mailing an appropriate notice to the licensee as prescribed by §535.91 of this **subchapter (relating [~~title (Relating~~]** to Renewal Notices). If the licensee is subject to **MCE [~~mandatory continuing education (MCE)~~]** requirements, the notice must also contain the number of MCE hours for which the licensee has been given credit and the number of additional MCE hours required for renewal of the license. The commission shall have no obligation to so notify an inactive licensee who has failed to furnish the commission with the person's **[~~permanent~~]** mailing address **and**

**email address** or a corporation, limited liability company or partnership that has failed to designate an officer, manager or partner who meets the requirements of the **[~~Real Estate License~~]** Act **[~~(the Act)~~]**.

(d) A licensee shall renew an unexpired license by accessing the commission's Internet **website [~~web site~~]**, entering the required information on the renewal application form, satisfying applicable education requirements and paying the appropriate fee in accordance with the instructions provided at the **website [~~site~~]** by the commission.

**(e) In order to maintain a license, a salesperson subject to annual education requirements shall furnish documentation to the commission of successful completion of appropriate courses no later than 10 business days prior to the day the salesperson files an application with the commission to renew the salesperson's license.**

**(f) [~~(e)~~]** The commission may not renew a license issued to a **business entity [~~corporation, limited liability company or partnership~~]** unless the **business entity [~~corporation, limited liability company or partnership~~]** has designated an officer, manager or partner who meets the requirements of the Act, including satisfaction of MCE requirements. No person may act as designated officer, manager or partner if the person has failed to meet MCE requirements. For the purpose of this section, MCE requirements for the designated officer, manager or partner must be satisfied during the term of any individual broker license held by the officer, manager or partner. A designated partner who is not licensed individually as a broker must complete MCE required for a two-year license within the term of the partnership's license in order to renew the license of the partnership. If the individual real estate broker license of a designated partner expires, the partnership may only renew its license if the designated partner has satisfied MCE requirements that would have been imposed if the license of the designated partner had not expired.

**(g) [~~(f)~~]** Notwithstanding any provisions of the Act to the contrary, when a licensee in an active status files a timely application to renew a current license and has satisfied all requirements other than the completion of applicable MCE requirements, the commission shall renew the current license in an active status.

(1) If the licensee has not completed MCE requirements prior to the expiration of the current license, the licensee must, within 60 days after the effective date of the new license, pay an additional MCE deferral fee of $200 AND complete the required number of MCE hours.

(2) If, within 15 days after the end of the 60 day period set out in paragraph (1) of this subsection, the commission has not been provided with evidence that the licensee has completed the required number of MCE hours and paid the MCE deferral fee of $200, the renewed license shall be placed on inactive status.

(3) In order to reactivate a license placed on inactive status under this subsection, the licensee must:

(A) provide the commission with evidence that the licensee has completed the required MCE hours;

(B) certify, on a form acceptable to the commission, that the licensee has not engaged in activity requiring a license at any time after the license became inactive;

(C) complete and submit a Request to Return to Active Status Form if a broker or a Salesperson Sponsorship Form if a salesperson and pay the appropriate fee;

(D) if the license was placed on inactive status because the licensee failed to timely pay the $200 MCE deferral fee required by paragraph (1) of this subsection, the licensee must, because the licensee received the benefits of the 60-day deferral, pay the $200 MCE deferral fee; and

(E) pay a late reporting fee of $250.

(4) For the purpose of this section, a renewed license is effective the day following the expiration of the current license. MCE courses completed after expiration of the current license under this provision may not be applied to the following renewal of the license.

**(h) [~~(g)~~]** Credit will not be given for attendance of the same course more than once

during the term of the current license or during the two-year period preceding the filing of an application for late renewal or return to active status. Each licensee attending all sessions of a course shall sign the course completion roster, **[~~MCE Form 8-4~~]** and provide the information required for each licensee on the form. A real estate licensee may receive partial credit for partial attendance at an MCE elective credit course if the provider permits partial credit and the provider and student verify attendance on **the [~~MCE Form 14-0,~~]** Individual MCE Partial Credit Request Form. A false statement to the commission concerning attendance at an MCE course will be deemed a violation of the Act and of this section.

**(i) [~~(h)~~]** A course taken by a Texas licensee to satisfy continuing education requirements of another state may be approved on an individual basis for MCE elective credit in this state upon the commission's determination that:

(1) the Texas licensee held an active real estate license in the other state at the time the course was taken;

(2) the course was approved for continuing education credit for a real estate license by the other state and, if a correspondence course, was offered by an accredited college or university;

(3) the Texas licensee's successful completion of the course has been evidenced by a course completion certificate, a letter from the provider or such other proof as is satisfactory to the commission;

(4) the subject matter of the course was predominately devoted to a subject acceptable for MCE credit in this state; and

(5) the Texas licensee has filed **a [~~MCE Form 10-2, MCE~~]** **Credit** Request for an Out of State Course Credit Request, with the commission.

**(j) [~~(i)~~]** To request MCE elective credit for real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit, a licensee shall file **an [~~MCE Form 12-2,~~]** Individual MCE Credit Request for State Bar Course.

**(k) [~~(j)~~]** Real estate licensees may receive MCE elective credit for core real estate courses or core real estate inspection courses that have been approved by TREC or that are accepted by TREC for satisfying educational requirements for obtaining or renewing a license. Core real estate courses must be at least 30 classroom hours in length to be accepted for MCE elective credit.

**(l) [~~(k)~~]** A course taken by a licensee to obtain any of the following professional designations, or any other real estate related professional designation course deemed worthy by the commission, may be approved on an individual basis for MCE elective credit if the licensee files for credit for the course using **[~~MCE Form 15-0~~]** Individual MCE Elective Credit Request for Professional Designation Course and provides the Commission with a copy of the course completion certificate.

(1) ABR--Accredited Buyer Representative

(2) CRE--Counselor in Real Estate

(3) CPM--Certified Property Manager

(4) CCIM--Certified Commercial-Investment Member

(5) CRB--Certified Residential Broker

(6) CRS--Certified Residential Specialist

(7) GRI--Graduate, Realtor Institute

(8) IREM--Institute of Real Estate Management

(9) SIOR--Society of Industrial and Office Realtors

**(m) [~~(l)~~] A [~~Effective September 1, 2007, a~~]** member of the Texas Legislature who is a licensee need only take three (3) hours in legal ethics to the satisfy the legal mandatory continuing education requirements. To obtain an exemption, the licensee must be a current member of the Legislature.

**[~~(m) If a licensee is unable to renew a license on the commission's Internet website, the licensee may renew an unexpired license by obtaining a renewal application form from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 and complying with the requirements of this section and §535.91 of this chapter.~~]**

***§535.94.Hearing on Application Disapproval: Probationary Licenses.***

(a) For the purposes of **§1101.364 and §1101.505 of the Act and §1102.114 of Chapter 1102 [~~the Real Estate License Act, Texas Government Code, Chapter 1101, (the Act), §§1101.364 and 1101.505~~],** "denial of a license" means to disapprove an applicant for a **[~~real estate~~]** license for failure to comply with the requirement of **[~~the Act,~~]** §1101.354(2) **of the Act,** to satisfy the commission as to the applicant's honesty, trustworthiness and integrity, or, if the applicant seeks registration as an easement or right-of-way agent, to disapprove an application for registration under §535.400 of this title (relating to Registration of Easement or Right-of-Way Agents).

(b) If the commission or a SOAH administrative law judge determines that issuance of a probationary license is appropriate, the order entered **by the commission** with regard to the application must set forth the terms and conditions for the probationary license. Terms and conditions for a probationary license may include any of the following:

(1) - (5) (No change.)

(6) that the probationary licensee comply with any other terms and conditions contained in the order which have been found to be reasonable and appropriate by the commission **[~~or commission employee rendering the final decision~~]** after due consideration of the circumstances involved in the particular application.

(c) (No change.)

**(d) If a license expires prior to the completion of a probationary term and the licensee files a late renewal application as authorized by §535.93 of this subchapter (relating to Late Renewal Applications), any remaining probationary period shall be reinstated effective as of the day following the renewal of the previous license.**

***§535.96.Mailing Address and other Contact Information.***

**(a) Each licensee shall furnish a mailing address, phone number, and email address to the commission and shall report all subsequent changes within 10 days after a change of any of the listed contact information. If a licensee fails to update the mailing address, the last known mailing address provided to the commission will be deemed to be the licensee's mailing address.**

**(b) The commission shall mail a notice or correspondence to an active broker or an inactive licensee to the mailing or email address of the broker or licensee as shown in the commission's records. The commission shall mail a notice or correspondence to an active salesperson to the mailing or email address of the salesperson's sponsoring broker as shown in the commission's records.**

**Agenda Item 7(i)**

Discussion and possible action to adopt amendments to:

i. Subchapter L. Termination of Salesperson's Association with Sponsoring Broker
   i. Amend §535.121, concerning Inactive License
   ii. Amend §535.122, concerning Reactivation of License
   iii. Amend §535.123, concerning Inactive Broker Status

## SUMMARY

TREC adopts amendments to §535.121, regarding Inactive License; §535.122, regarding Reactivation of License; and §535.123, regarding Inactive Broker Status without changes to the proposed text as published in the September 10, 2010 issue of the *Texas Register* (35 TexReg 8266).

TREC is simultaneously adopting the amendments as part of a comprehensive rule review of 22 TAC Chapter 535.

Section 535.121 is amended to clarify that a salesperson's license goes inactive if a broker notifies the commission in writing that the broker is terminating sponsorship of the broker. Subsections (b) and (c) are rewritten for clarity. Section 535.122 is changed to maintain consistency with statutory references and defined terms. Section 535.123 is changed to maintain consistency with statutory references and defined terms; an inactive broker is required to notify the commission if the broker wishes to go on inactive status and provide the commission with information including the broker's telephone number and email address.

Generally speaking, the amendments correct typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

The reasoned justification for the amendments is more streamlined, consistent and readable rules.

No comments were received on the rules as proposed.

## STAFF RECOMMENDATION

Adopt the amendments as proposed

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.121, regarding Inactive License; §535.122, regarding Reactivation of License; and §535.123, regarding Inactive Broker Status, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

**Agenda Item 7(i)**
**Subchapter L. Termination of Salesperson's Association with Sponsoring Broker**
**§535.121- §535.123**

***§535.121. Inactive License.***

(a) The license of a salesperson immediately becomes inactive upon each of the following circumstances:

(1) - (2) (No change.)

(3) if the sponsoring broker is a corporation, the dissolution of the corporation or the forfeiture of its charter, which also places the license of the entity on inactive status; **[~~or~~]**

(4) if the sponsoring broker is a corporation, limited liability company or partnership, the expiration, suspension, revocation or inactivation of the license of the person designated as broker, manager, or partner on the license certificate of the entity, which also places the license of the entity on inactive status **; or [~~.~~]**

**(5) if a broker notifies the commission in writing that the broker no longer sponsors the salesperson.**

(b) [**~~When the sponsorship of a salesperson ends, the broker shall immediately return the salesperson's license or copy thereof to the commission or otherwise notify the commission that the sponsorship has ended.~~]** The commission will no longer consider the broker to sponsor the salesperson upon receipt of the license or upon receipt of a written request from a new sponsoring broker to sponsor the salesperson, whichever first occurs. If the sponsorship has ended because the broker has terminated the sponsorship, the broker shall immediately **[~~so~~]** notify the salesperson in writing. If the sponsorship has ended because the salesperson has left the sponsorship, the salesperson shall immediately **[~~so~~]** notify the broker in writing. If the commission receives a request from a broker to sponsor a salesperson shown in the commission's records as sponsored by another broker, the commission shall notify the former broker of the change in sponsorship.

**(c) When the sponsorship of a salesperson ends, the broker shall immediately return the salesperson's license or copy thereof to the commission or otherwise notify the commission in writing that the sponsorship has ended. [~~A salesperson's license becomes inactive when a broker returns a salesperson's license to the commission until a new sponsorship form for the salesperson is mailed or delivered to the commission.~~]**

***§535.122. Reactivation of License.***

(a) (No change.)

(b) When a salesperson whose license status is inactive enters the sponsorship of a broker and the salesperson is subject to **MCE [~~mandatory continuing education (MCE)~~]** requirements, the salesperson is not returned to active status until MCE requirements are satisfied and the commission has received documentation of course completion in a form satisfactory to the commission. A salesperson whose original application or renewal application was subject to educational requirements imposed by the **[~~Real Estate License~~]** Act**[~~, Texas Occupations Code, Chapter 1101 (Act)~~],** §1101.358 and §1101.454, is not subject to MCE requirements as a condition of returning to active status during the term of the license issued from the original application or renewal application.

***§535.123. Inactive Broker Status.***

(a) (No change.)

(b) To be placed on inactive status, a broker must do the following:

(1) apply to the commission on a form approved by the commission for that purpose or by a letter providing the broker's name, license number and current mailing address **, telephone number and email address** ;

(2) - (3) (No change.)

(c) To return to active status a broker who has been placed on inactive status must apply to the commission for return to active status on a form approved by the commission, pay the appropriate fee and satisfy **MCE [~~mandatory continuing education (MCE)~~]** requirements specified in **[~~Texas Occupations Code, Chapter 1101, (the Act)~~]** §1101.455 **of the Act** and the Rules **[~~of the Texas Real Estate Commission~~]**.

(d) (No change.)

**Agenda Item 7(j)**

Discussion and possible action to adopt amendments to:

j. Subchapter M. Non-residents

i. Amend §535.131, concerning Unlawful Conduct; Splitting Fees

ii. Amend §535.132, concerning Eligibility of Licensure

**SUMMARY**

TREC adopts amendments to §535.131, regarding Unlawful Conduct; Splitting Fees and §535.132, regarding Eligibility of Licensure without changes to the proposed text as published in the September 10, 2010 issue of the *Texas Register* (352 TexReg 8267).

Section 535.131 is amended to delete subsections (b) - (d) as the subjects are otherwise covered in definitions under §535.1 or in new §535.4 regarding License Required. Section 535.132 is amended to delete the definition for "state" which was moved to §535.1. TREC is simultaneously proposing the amendments as part of a comprehensive rule review of 22 TAC Chapter 535.

Generally speaking, the amendments correct typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

The reasoned justification for the amendments is more streamlined, consistent and readable rules.

No comments were received on the rules as proposed. .

**STAFF RECOMMENDATION**

Adopt the amendments as proposed

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to to §535.131, regarding Unlawful Conduct; Splitting Fees and §535.132, regarding Eligibility of Licensure, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

**Agenda Item 7(j)**
**Subchapter M. Nonresidents**
**§535.131 and §535.132**

***§535.131.Unlawful Conduct; Splitting Fees.***

(a) The **[~~Real Estate License~~]** Act, **[~~Texas Occupations Code, Chapter 1101, (the Act)~~]** permits Texas-licensed brokers to cooperate with and share earned commissions with persons licensed as brokers in other states, but all negotiations physically conducted within Texas must be handled by Texas licensees.

**[~~(b) As used in §1101.651 of the Act, the word "state" refers to the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.~~]**

**[~~(c) An unlicensed person may share in the income earned by a real estate brokerage operation if the person engages in no acts for which a license is required and does not lead the public to believe that the person is in the real estate brokerage business.~~]**

**[~~(d) If a member of a partnership or an officer of a corporation does not engage in acts for which a license is required, the person is not required to be licensed and may share in the income earned by the partnership or corporation.~~]**

**(b)** **[~~(e)~~]** A resident of a foreign state that does not require a person to be licensed to act as a real estate broker is considered to be licensed as a broker for the purposes of **[~~the Act,~~]** §1101.651 **of the Act**, if the person complies with the law of the foreign state and practices there as a real estate broker.

***§535.132.Eligibility for Licensure.***

(a) A person residing in another state may apply for a license under the provisions of **[~~Texas Occupations Code, Chapter 1101, (the Act),~~]** Subchapter H **of the Act** and this section if the person:

(1) - (2) (No change.)

(b) - (c) (No change.)

**[~~(d) The word "state" refers to the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.~~]**

**(d)** **[~~(e)~~]** To be eligible to receive a license and maintain an active license, a limited liability company or corporation created or chartered in another state must designate a person to act for it who meets the requirements of **[~~the Act,~~]** §1101.453 **of the Act**, although the designated person is not required to be a resident of Texas. Foreign corporations and limited liability companies also must be permitted to engage in business in this state to receive a Texas real estate broker license.

**Agenda Item 7(k)**

Discussion and possible action to adopt amendments to or take other action on:

k. Subchapter N. Suspension and Revocation of Licensure

i. Amend §535.141, concerning Initiation of Investigation

ii. Amend §535.143, concerning Fraudulent Procurement of License

iii. Amend §535.144, concerning When Acquiring or Disposing of Own Property.

iv. Amend §535.145, concerning False Promise

v. Amend §535.146, concerning Failure to Properly Account for Money; Commingling

vi. Amend §535.147, concerning Splitting Fee with Unlicensed Person

vii. Amend §535.148, concerning Receiving an Undisclosed Commission or Rebate

viii. Amend §535.149, concerning Lottery or Deceptive Trade Practice

ix. Amend §535.153, concerning Violating an Exclusive Agency

x. Repeal §535.154, concerning Misleading Advertising

xi. New §535.154, concerning Advertising

xii. Amend §535.159, concerning Failing To Properly Deposit Escrow Monies

xiii. Amend §535.160, concerning Failing to Properly Disburse Escrow Money

xiv. Amend §535.161, concerning Failing to Provide Information

**SUMMARY**

The Texas Real Estate Commission (TREC or the commission) adopts amendments to §535.141, regarding Initiation of Investigation; §535.143, regarding Fraudulent Procurement of License; §535.144, regarding When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child; §535.145, regarding False Promise; §535.146, regarding Failure to Properly Account for Money; Commingling; §535.147, regarding Splitting Fee with Unlicensed Person; §535.148, regarding Receiving an Undisclosed Commission or Rebate; §535.149, regarding Lottery or Deceptive Trade Practice; §535.153, regarding Violating an Exclusive Agency; amendments to §535.159, regarding Failing to Properly Deposit Escrow Monies; §535.160, regarding Failing to Properly Disburse Escrow Money; and §535.161, regarding Failing to Provide Information with changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8268).

Staff recommends that the Commission postpone making any changes to §535.154 and that the Commission not take final action to repeal existing §535.154.

The amendments to §535.141 streamline the section, update the cites and clarify existing subsections; subsection (h) is amended to include advertising in the laundry list activities that a licensee may not engage in while the person's license is under suspension; subsection (i)(3) and (4) are added to include home inspectors; subsection (j) is added to address matters relating to automatic suspension of a license for violating a term or condition of an agreed probated revocation or suspension.

The amendments to §535.144 clarify that a licensee must disclose the information required by §1101.652(a)(3) in writing.

The amendments to §535.146 clarify existing requirements that apply to maintenance of trust accounts, including that a broker is ultimately responsible for compliance with the trust account requirements in the Act and Rules; subsection (h) is amended to require a broker to notify all parties in writing

when a broker makes a disbursement to which all parties have not expressly agreed to in writing; new subsection (k) clarifies that a broker may deposit and maintain additional amounts in a trust account to cover bank service fees.

Subsection (a) of §535.147 is deleted and moved to the definitions in §535.1; new subsection (a) clarifies that a licensee may not share a commission with an unlicensed person except as provided by the Act or Rules; new subsection (b) authorizes an unlicensed person to share in the income earned by a licensee as long as the person does not engage in real estate brokerage activity; new subsection (c) clarifies that a broker or salesperson may not share a commission with an unlicensed corporation or limited liability company created by a licensee for the purpose of collecting a commission or fees on behalf of the licensee.

New subsection (c) is added to §535.148 to prohibit a licensee from entering into contracts with service providers which prohibits a licensee from entering into or offering similar service on behalf of a competing service provider; new subsection (d) prohibits contingent fee arrangements where the licensee accepts a fee that is contingent upon a party purchasing a contract or services from a specific service provider; new subsection (e) adopts by a reference RSC-1, Disclosure of Relationship with Residential Service Company which licensees are required to use to disclose compensation for services provided to or on behalf of a residential service company.

The amendments to §535.149 clarify the definition of "lottery" and "deceptive practices."

Amendments to §§535.143, 535.145, 535.153, and 535.159 - 535.161 clarify and streamline existing provisions.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules. The changes in the rules reflect a non-substantive variation from the proposed rules to make the affected rule consistent with other rules.

The reasoned justification for the amendments is more streamlined, consistent and readable rules, and to ensure that licensees comply with statutory provisions regarding misleading advertising. Additional justification is provided below in response to the comments on the advertising rules as proposed.

The Texas Association of Realtors, the Texas Apartment Association, and the Metrotex Association of Realtors commented on the rules proposed under subchapter N.

The commission received 86 comments on the rules as proposed.

Comments: Two commenters commented in favor of §535.146 as proposed.

Comment: One commenter asked whether §535.147 as amended permits a licensee to pay a commission to unlicensed persons for referrals. Comments:

Comments: Approximately 82 comments expressed concerns about the costs and burden of complying with §535.154 as proposed.

Comment: One commenter noted that the requirements of subsection (d) of §535.154 are also overly burdensome because it places potential liability on a licensee for inadvertent advertising inaccuracies.

Comment: One commenter suggested that adding the broker's license number to advertisements and requiring the broker's name to be identified in a clear and conspicuous manner will potentially clutter advertisements making them harder to read by the general public.

## STAFF RECOMMENDATION

Adopt the amendments as recommended by staff, make no changes to §535.154 at the present time, and take no action to repeal existing §535.154.

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.141, regarding Initiation of Investigation; §535.143, regarding Fraudulent Procurement of License; §535.144, regarding When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child; §535.145, regarding False Promise; §535.146, regarding Failure to Properly Account for Money; Commingling; §535.147, regarding Splitting Fee with Unlicensed Person; §535.148, regarding Receiving an Undisclosed Commission or Rebate; §535.149, regarding Lottery or Deceptive Trade Practice; §535.153, regarding Violating an Exclusive Agency; §535.159, regarding Failing to Properly Deposit Escrow Monies; §535.160, regarding Failing to Properly Disburse Escrow Money; and §535.161, regarding Failing to Provide Information in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

**Agenda Item 7(k)**
**Subchapter N. Suspension and Revocation of Licensure**
**§§535.141, 535.143 - 535.149, 535.153, 535.154, 535.159 - 535.161**

***§535.141. Initiation of Investigation.***

(a) As used in this section, the term "licensee" includes a person licensed or registered under **the Act [~~Texas Occupations Code Chapters 1101]~~** and **Chapter** 1102 and the term "license" includes a registration issued by the commission.

(b) Except as authorized under Texas Government Code §402.031(b), the commission may not conduct an undercover or covert investigation of a person **[~~licensed]~~** under **the Act and Chapter [~~Texas Occupations Code Chapters 1101 or]~~** 1102. Notwithstanding §1101.204(d), the commission shall not disclose to any person who is the subject of an investigation **involving [~~of]~~** fraudulent activity, that the activity has been reported **to the proper authority pursuant to Texas Government Code** §402.031.

(c) [~~**A real estate broker is responsible for all acts and conduct performed by a real estate salesperson associated with or acting for the broker.]**~~ A complaint which names a licensed real estate salesperson as the subject of the complaint but does not specifically name the salesperson's sponsoring broker, is a complaint against the broker sponsoring the salesperson at the time of any alleged violation for the limited purposes of determining the broker's involvement in any alleged violation and whether the broker fulfilled his or her professional responsibilities **[~~to the commission, members of the public, and his or her clients,]~~** provided the complaint concerns the conduct of the salesperson as an agent for the broker.

(d) The **broker [~~person]~~** designated by a licensed **business entity [~~corporation, limited liability company or partnership]~~** to act as its officer, manager or partner is responsible for all **real estate brokerage activities [~~acts and conduct as a real estate broker]~~** performed by **, on behalf of,** or through the business entity. A complaint which names a **business entity [~~corporation, limited liability company or partnership]~~** licensed as a broker as the subject of the complaint but which does not specifically name the **broker** designated **as the** officer, manager or partner of the business entity, is a complaint against the broker acting as the designated officer, manager or partner at the time of any alleged violation for the limited purposes of determining the designated **broker's [~~person's]~~** involvement in any alleged violation and whether the designated **broker [~~person]~~** fulfilled his or her professional responsibilities **[~~to the commission, members of the public, and his or her clients]~~.** A complaint which names a salesperson sponsored by a licensed **business entity [~~corporation, limited liability company or partnership]~~** but which does not specifically name the designated **broker [~~person]~~** of the business entity is a complaint against the **designated** broker **[~~who was acting as designated person]~~** at the time of any alleged violation by the salesperson for the limited purposes of determining the designated **broker's [~~person's]~~** involvement in any alleged violation and whether the designated broker **[~~person]~~** fulfilled his or her professional responsibilities **[~~to the commission, members of the public, and his or her clients,]~~** provided the complaint concerns the conduct of the salesperson as an agent of the business entity.

(e) Once a **written and signed** complaint has been filed with the commission, the commission has jurisdiction to consider, investigate and take action based on the complaint. Complaints may be withdrawn only with the consent of the commission.

(f) If information obtained **during the course [~~by the commission in the course of the investigation of a complaint or as a result]~~** of an investigation **of a complaint reveals [~~authorized by the members of the commission constitutes]~~** reasonable cause to believe the respondents to the complaint may have committed other violations of the Act or a rule of the commission, no additional authorization shall be required **[~~for the~~**

~~commission]~~ to investigate and take **[~~appropriate]~~** action based **upon [~~on]~~** the information.

(g) (No change.)

(h) A person whose license has been suspended may not during the period of any suspension:

(1) perform **, [~~or]~~** attempt to perform **, or advertise to perform** any act for which a license is required by **the Act or Rules [~~law or commission rule]~~**; or

(2) unless instructed otherwise **in writing by both [~~the]~~** principals to the transaction, continue to hold any **trust** funds received in a real estate transaction in which the person acted as a **[~~real estate]~~** broker or salesperson.

(i) A person whose license is subject to an order suspending the license must prior to the suspension taking effect:

(1) if the person is a **[~~real estate]~~** salesperson, notify his or her sponsoring broker in writing that his or her license will be suspended;

(2) if the person is a **[~~real estate]~~** broker, notify in writing any salespersons he or she sponsors, or any corporation, limited liability company or partnership for which the person is designated as an officer, manager or partner that:

(A) his or her **[~~real estate]~~** broker license will be suspended; and**[~~,]~~**

(B) once the suspension is effective any salesperson he or she sponsors or who is sponsored by the corporation, limited liability company or partnership will not be authorized to engage in real estate brokerage unless the salespersons associate with another broker and file a change of sponsorship with the commission or the business entity designates a new **broker [~~person]~~** and files a change of designated officer, manager or partner with the commission;

**(3) If the person is an apprentice inspector or real estate inspector, notify his or her sponsoring professional inspector in writing that his or her license will be suspended;**

**(4) if the person is a professional inspector, notify in writing any apprentice or real estate inspectors he or she sponsors that:**

**(A) his or her professional inspector license will be suspended; and**

**(B) once the suspension is effective any apprentice or real estate inspectors he or she sponsors will not be authorized to inspect any real property unless the apprentice or real estate inspectors associate with another professional inspector and file a change of sponsorship with the commission.**

**(5) [~~(3)]~~** if the person has a contractual obligation to perform services for which a license is required by law or commission rule, notify in writing all other parties to the contract that the services cannot be performed **during [~~due to]~~** the suspension;

**(6) [~~(4)]~~** if the person is a **[~~real estate]~~** salesperson and is directly involved in any real estate transaction in which the salesperson acts as an agent, notify in writing all other parties, including principals and other **[~~real estate]~~** brokers, that the person cannot continue performing real estate brokerage services **during [~~due to]~~** the suspension; and

**(7) [~~(5)]~~** if the person holds money in trust in any transaction in which the person is acting as a **[~~real estate]~~** broker, remit such money in accordance with the instructions of the principals.

**(j) If, in conjunction with an application or disciplinary matter, an applicant or licensee agrees to automatic suspension or revocation of his or her license for failing to comply with an administrative term or requirement of an agreed order such as payment of a penalty or completion of coursework, the license may be automatically suspended or revoked with no further action by the commission.**

**(k) [~~(j)]~~** A **licensee [~~person]~~** may not assign to another licensee a **listing agreement, buyer's representation agreement or other** personal service contract to which the **licensee [~~person]~~** is a party and which obligates the **licensee [~~person]~~** to perform acts for which a license is required without first obtaining the written consent of the other parties to the contract.

***§535.143.Fraudulent Procurement of License.*** A violation of **[~~Texas Occupations Code~~]**, §1101.652(a)(2) **of the Act [~~,~~]** occurs if an applicant **, including a designated broker for any business entity eligible for licensure under this chapter, [~~for licensure for the applicant or a salesperson~~]** omits material information or makes material misstatements, written or oral, in connection with the filing of an application **or renewal application** to obtain licensure. This does not include an unintentional mistake of fact **the determination of which is within the discretion of the commission and subject to judicial review. [~~; however, a broker submitting an application as sponsor of a proposed salesperson shall has an affirmative duty to ascertain that all information called for in the application is given and is true, correct and complete, whether the application is filled out by the broker or the prospective salesperson.~~]**

***§535.144.When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child.***

(a) For purposes of §**1101.652(a)(3) of the Act [~~§1101.652(a)(3), Texas Occupations Code~~]** "a person related to the license holder within the first degree by consanguinity" means a license holder's parent or child.

(b) A licensee, when engaging in a real estate transaction on his or her own behalf, on behalf of a business entity in which the licensee is more than a 10% owner, or on behalf of the licensee's spouse, parent, or child, is obligated to **disclose in writing to [~~inform~~]** any person with whom the licensee deals that he or she is a licensed real estate broker or salesperson acting on his or her own behalf or on behalf of the licensee's spouse, parent[~~,~~] or child **[~~either by disclosure~~]** in any contract of sale or rental agreement**[~~,~~]** or **[~~by disclosure~~]** in any other writing given prior to entering into any contract of **sale [~~sales~~]** or rental agreement. A licensee shall not use the licensee's expertise to the disadvantage of a person with whom the licensee deals.

***§535.145.False Promise.*** **For purposes of §1101.652(a)(5) of the Act "false [~~"False~~]** promise" includes both oral and written promises. The fact that a written contract between the parties to a real estate transaction does not recite a promise made by a real estate licensee to one of the parties or that a person did not detrimentally rely on the false promise will not prevent the commission from determining that a false promise was made. **In determining [~~When deciding~~]** whether this section has been violated, neither a written contractual provision disclaiming oral representations nor the **Texas Rules of Evidence Rule 1004, the** parol evidence rule **,** shall prevent the commission from considering oral promises made by a licensee.

***§535.146.Failure to Properly Account for Money; Commingling.***

**(a) A broker who maintains trust funds shall either keep a separate trust account or use an escrow agent for all such trust funds. [~~For the purposes of this section, "trust account" includes any trust, escrow, custodial, property management account, or other account in which a licensee holds money on behalf of another person.~~]**

**(b) A broker may designate a salesperson as an authorized signatory on any trust account; however, the broker shall be solely responsible and accountable for all trust funds received by the broker and all deposits to or disbursements from the trust account.**

**(c) A salesperson shall immediately deliver to the sponsoring broker any trust funds received in connection with a real estate transaction not otherwise deposited with a title company.**

**(d) [~~(b)~~]** A licensee maintaining a trust account shall retain for a period of four years a documentary record of each deposit or withdrawal from the account.

**(e) A licensee shall not commingle trust funds with personal funds or other non-trust funds and shall not deposit or maintain trust funds in a personal account or any kind of business account except a specifically designated trust account in the name of the sponsoring broker.**

**(f) [~~(c)~~]** If a licensee accepts money belonging to others, the licensee holds such money in a fiduciary capacity.

**(g)** If any or all of the parties to a real estate transaction make demand for the money, the

licensee must, within a reasonable time, properly account for or remit the money. "Reasonable time" means within 30 days after demand is made for an accounting or for remittance of money belonging to others.

**[~~(d)~~]** "Properly account for or remit" **is defined as the licensee's obligation [~~means~~]** to pay the money to the party or parties entitled to the money if it can be reasonably determined to which party or parties the money should be paid. A licensee may pay the money into the registry of a court and interplead the parties if it cannot be reasonably determined to which party or parties the money should be paid.

**(h) [~~(e)~~]** If, by written agreement of the parties to the real estate transaction, the licensee holding money belonging to others has the right to require the receipt, release and authorization in writing from all parties before paying the money to any party or parties, and if the licensee chooses to exercise that right, "properly account for or remit" means to furnish every party with a written statement requesting such receipt, release and authorization and detailing the amount and place of custody of the money and to pay the money to the party or parties in accordance with the receipts, releases and authorizations, if obtained. **When a broker makes a disbursement to which all parties to the contract have not expressly agreed in writing, the broker must immediately notify all parties in writing of the disbursement.** A licensee may pay the money into the registry of a court and interplead the parties if the receipts, releases and authorizations that the licensee has the right to require cannot be obtained.

**(i) [~~(f)~~]** If **trust funds are [~~escrow or other money belonging to another is~~]** held by a licensee, they [~~it~~] must be maintained in **[~~a~~] the broker's** trust account. Placing such money in a licensee's operating account **is prima facie evidence of [~~constitutes~~]** commingling.

**(j) [~~(g)~~]** If a licensee acquires ownership of money **, including entitlement to a real estate commission for the real estate transaction, held** in the licensee's trust account that was originally held in trust for another **in connection with the real estate transaction** , such money must be removed from the trust account within a reasonable time. "Reasonable time" in this context means within 30 days after the licensee acquires ownership of the money.

**(k) [~~(h)~~] The balance of a broker's trust account shall at all times equal the total of the trust funds received for which the broker is accountable, provided, however, the broker may deposit and maintain a reasonable amount of funds in the trust account to cover bank service fees, including fees charged for insufficient funds. Detailed records must be kept for any funds deposited under this exception.** Paying operating expenses or making withdrawals from a broker's trust account for any purpose other than proper disbursement of money held in trust is prima facie evidence of commingling money held in trust with the broker's own funds.

***§535.147.Splitting Fee with Unlicensed Person.***

**(a) Except as otherwise provided by the Act or Rules, a broker or salesperson may not share a commission or fees with any person who engages in acts for which a license is required and is not actively licensed as a broker or salesperson.**

**(b) An unlicensed person may share in the income earned by a business entity licensed as a broker or exempted from the licensing requirements under the Act if the person engages in no acts for which a license is required and does not lead the public to believe that the person is in the real estate brokerage business.**

**(c) A broker or salesperson may not share a commission or fees with an unlicensed corporation or limited liability company created by a licensee for the purpose of collecting a commission or fees on behalf of the licensee.**

**~~[(a) "Any other state" means the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.]~~**

**~~[(b) "Commission or fees" includes any form of compensation received for engaging in an act for which a license is~~**

~~required by Texas Occupations Code, Chapter 1101.]~~

**(d)** [~~(c)~~] It is not a violation of this section for a licensee to **rebate or** pay a portion of the licensee's **commission or fees** [~~fee or commission~~] to a party in the transaction. **However, no commission or fees may be paid to any party to the transaction in a manner which would mislead a broker, lender, title company or governmental agency regarding the real estate transaction or the financial resources or obligations of the buyer.** A licensee who intends to pay a portion of the licensee's fee or commission to a party the licensee does not represent must obtain the consent of the party represented by the licensee prior to making the payment.

***§535.148.Receiving an Undisclosed Commission or Rebate.***

(a) (No change.)

(b) If a **party** [~~person~~] the licensee does not represent agrees to pay a service provider in the transaction, the licensee must also obtain the consent of that **party** [~~person~~] to accept a fee, commission or rebate from the service provider. As used in this **section** [~~subsection~~], the term "service provider" does not include a person acting in the capacity of a real estate broker or salesperson.

**(c) A licensee may not enter into a contract or agreement with a service provider to a real estate transaction in which the licensee represents one or both of the parties if, pursuant to the contract or agreement:**

**(1) the licensee provides services for or on behalf of the service provider; and**

**(2) the contract or agreement prohibits the licensee from offering similar services for or on behalf of a competing service provider.**

**(d) A licensee may not accept a fee or payment for services provided for or on behalf of a service provider to a real estate transaction the payment of which is contingent upon a party to the real estate transaction purchasing a contract or services from the service provider.**

**(e) A licensee must use TREC Form RSC-1, Disclosure of Relationship with Residential Service Company, to disclose to a party to a real estate transaction in which the licensee represents one or both of the parties any payments received for services provided for or on behalf of a residential service company licensed under Texas Occupations Code Chapter 1303.**

**(f) The Texas Real Estate Commission adopts by reference TREC Form No. RSC-1, Disclosure of Relationship with Residential Service Company, approved by the commission for use by licensees to disclose payments received from a resident service company. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.**

***§535.149.Lottery or Deceptive Trade Practice.***

**(a) For the purposes of §1101.652(b)(14) of the Act, the** [~~The~~] elements of a "lottery" are the award or distribution of a prize or prizes by chance and the payment of consideration for the opportunity to win the prize.

(b) The giving of gifts as an inducement for prospective clients **does not violate** [~~is not violative of~~] this **section or §1101.652(b)(14) of the Act, but licensees when procuring prospects must otherwise comply with the provisions of §535.20 of this chapter (relating to Referrals From Unlicensed Persons).**

**(c) "Deceptive practices" include, but are not limited to the acts described in the Texas Business and Commerce Code §17.46, done in a manner defined in that section.**

***§535.153.Violating an Exclusive Agency.*** Although a licensee, including one acting as agent for a prospective buyer or prospective tenant, may not attempt to negotiate a sale, exchange, lease, or rental of property under exclusive listing with another broker, [~~Texas Occupations Code,~~] §1101.652(b)(22) **of the Act** does not prohibit a licensee from soliciting a listing from the owner while the owner's

property is subject to an exclusive listing with another broker.

***§535.154.Misleading Advertising.***

**(a) For the purposes of this section, an "advertisement" is a written or oral statement which induces or attempts to induce a member of the public to use the services of a real estate licensee. The term "advertisement" includes, but is not limited to all publications, radio or television broadcasts, all electronic media including E-mail and the Internet, business stationary, business cards, signs and billboards. The provisions of this section apply to all advertisements by a real estate licensee unless the context of a particular provision indicates that it is intended to apply to a specific form of advertisement. Provided, however, a communication from a licensee to a member of the public after the member of the public agreed for the licensee to provide services is not an advertisement for the purposes of this section.**

**(b) A licensee may not utilize a copyrighted trade name unless the licensee has legal authority to use the name.**

**(c) A broker shall notify the commission in writing within 30 days after the broker, or a salesperson sponsored by the broker, starts or stops using a name in business other than the name in which the person is licensed. Licensees may not use the name of a salesperson, including an assumed name, in advertisements unless the sponsoring broker's name or assumed name also appears. If the commission is notified of a licensee's use of an assumed name which contains only the name of a salesperson, including an assumed name, the commission shall notify the licensee, and the licensee's sponsoring broker, if any, that use of the name alone in advertising is grounds for disciplinary action under this section.**

**(d) In an advertisement placed by a licensee that does not readily identify the licensee as a real estate agent, the advertisement must include an additional designation such as "agent," "broker" or a trade association name which serves clearly to identify the advertiser as a real estate agent.**

**(e) Because salespersons may lawfully engage in brokerage activity only when they are associated with, and acting for, a broker, a listing may be solicited and accepted only in a broker's name. Advertisements concerning a broker's listings must include information identifying the advertiser as a real estate broker or agent. The name of a salesperson sponsored by the broker may also be included in the advertisement, but in no case shall a broker or salesperson place an advertisement which in any way implies that the salesperson is the person responsible for the operation of a real estate brokerage.**

**(f) A corporation or limited liability company licensed as a real estate broker may do business in the name in which it was chartered or registered by the Secretary of State.**

**(g) A licensee's advertising must not cause a member of the public to believe that a person not authorized to conduct real estate brokerage is personally engaged in real estate brokerage, provided that an advertisement of a trade, business, or assumed name does not constitute a holding out that a specific person is engaged in real estate brokerage.**

**(h) An advertisement placed where it is likely to attract the attention of passing motorists or pedestrians must contain language that clearly and conspicuously identifies as a real estate broker or agent the person publishing the advertisement. Advertisements in which the required language is not clear and conspicuous shall be deemed by the commission to be deceptive and likely to mislead the public for the purposes of Texas Occupations Code, Chapter 1101 (the Act), §1101.652(b)(23). The commission shall consider language as clear and conspicuous if it is in at least the same size of type or print as the largest telephone number in the advertisement, or it otherwise clearly and conspicuously identifies as a real estate broker or agent**

**the person who published it. The commission shall consider advertisements not to be in compliance with this subsection if the required language is in print or type so small that it cannot be easily read from the street or sidewalk. This subsection does not apply to signs placed on real property listed for sale, rental or lease with the broker who has placed the sign, provided the signs otherwise comply with this section and the provisions of the Act regarding advertising.**

**(i) A real estate licensee placing an advertisement on the Internet, electronic bulletin board, or similar mechanism must include on each page on which the licensee's advertisement appears any information required by this section and the disclosure relating to the advertiser's status as a broker or agent required by §1101.652(b)(23) of the Act.**

**(j) A real estate licensee placing an advertisement by using any electronic communication, including but not limited to E-mail and E-mail discussion groups, must include in the communication and in any attachment which is an advertisement the information required by this section and the disclosure relating to the advertiser's status as a broker or agent required by §1101.652(b)(23) of the Act.**

**(k) An advertisement containing an offer to rebate to a principal a portion of a licensee's commission must disclose that payment of the rebate is subject to the consent of the party the licensee represents in the transaction. If payment of the rebate is contingent upon a party's use of a selected service provider, the advertisement also must contain a disclosure that payment of the rebate is subject to restrictions.**

**(l) If an advertisement offers, recommends or promotes the use of services of a real estate service provider other than the licensee and the licensee expects to receive compensation if a party uses those services, the advertisement must contain a disclosure that the licensee may receive compensation from the service provider.**

***§535.159.Failing to Properly Deposit Escrow Monies.***

(a) A broker is not required to maintain a trust account unless the broker undertakes to accept **trust funds [~~monies~~** belonging to others.

(b) When money is deposited with a broker to be held in escrow, the broker becomes the trustee accountable **[~~both~~** to the party making the deposit and to the party for whose benefit said **trust** funds are deposited.

(c) (No change.)

(d) Nonresident brokers acting as real estate agents in Texas who accept **trust funds [~~money~~** as escrow agents must deposit said funds in a **[~~custodial,~~** trust **[~~or escrow~~** account at a banking institution or title company authorized to do business in Texas.

(e) It is permissible for a broker to establish a savings account **as a trust [~~an escrow~~** account, provided said funds may be withdrawn at the appropriate time for disbursal. In the absence of an agreement to the contrary signed by the person depositing the funds with the broker, any interest earned on a savings account must be distributed to the person or persons who are the equitable owners of the funds during the time the interest is earned.

(f) A salesperson may not maintain **a trust [~~an escrow~~** account or act as an escrow agent. Any money received by a real estate salesperson **, [~~which is~~** to be held in trust pursuant to a real estate transaction, must be delivered to the salesperson's sponsoring broker to be deposited in accordance with the agreement of the principals in the transaction.

(g) **[~~A trust or escrow account may contain any money held by the real estate broker as a trustee for another pursuant to a real estate transaction in which the broker acted as agent, provided the principals have agreed that the broker is to act as trustee.~~** A broker may, but is not required to, maintain separate trust accounts for earnest money deposits, security deposits received for the management of rental property, and for other **trust funds [~~money received in trust~~**.

(h) If a broker maintains a trust **[~~or escrow~~** account, that account must be **clearly** identified as **a trust account [~~such~~**.

(i) (No change.)

(j) If **trust funds [~~money~~** held **[~~in trust~~** by a broker **are deposited [~~is held~~** in a noninterest bearing account, the broker is not liable for interest or for charges on the funds unless there is an agreement to the contrary.

(k) If a broker accepts a check as escrow agent and later finds that such check has been dishonored by the bank on which it was drawn, the broker shall immediately notify all parties to the transaction **in writing** .

***§535.160.Failing to Properly Disburse Escrow Money.***A broker shall make no disbursal from the broker's **trust [~~escrow~~** account except in accordance with the agreement under which the money was received.

***§535.161.Failing to Provide Information.*** **For the purposes of §1101.652(a)(5) of the Act, [~~As used in this section~~** "reasonable time" means 10 working days from receipt of a request made by the commission.

**Agenda Item 7(l)**

Discussion and possible action to adopt amendments to:

l. Subchapter O. Hearing on Suspension or Revocation of Licensure

i. Amend §535.171, concerning Hearing: Subpoenas and Fees

## SUMMARY

The Texas Real Estate Commission (TREC or the commission) adopts an amendment to §535.171, regarding Hearing: Subpoenas and Fees without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8273), and will not be republished.

New subsection (c) addresses cases in which a party requests issuance of a subpoena and requires the party to pay for the costs of issuing the subpoena.

Generally speaking, the amendment corrects typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

The reasoned justification for the amendments is more streamlined, consistent and readable rules.

No comments were received on the rule as proposed.

## STAFF RECOMMENDATION

Adopt the amendments as proposed

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.171, regarding Hearing: Subpoenas and Fees, regarding Eligibility of Licensure, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

***§535.171. Hearing: Subpoenas and Fees.***

**(a) In addition to the provisions of the Texas Government Code §2001.089, process [~~Process~~]** may be served by an employee of the Texas Real Estate Commission if that person is designated by the commission.

(b) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding is entitled to receive mileage of $.20 a mile for going to and returning from the place of the hearing or where the deposition is taken, if the place is more than 25 miles from the person's place of residence and a fee of $20 a day for each day or part of a day the person is necessarily present as a witness or deponent.

**(c) Pursuant to Texas Government Code §2001.089, a party who requests the issuance of a subpoena for a witness or deponent under subsection (b) of this section, must deposit an amount with the Texas Real Estate Commission that will reasonably ensure payment of the amounts estimated to accrue under subsection (b) of this section and Texas Government Code §2001.103.**

**(d) [~~(c)~~]** Pursuant to Texas Government Code §2001.177, a party seeking judicial review of a final decision of the Texas Real Estate Commission in a contested case shall pay all costs of preparing the original or certified copy of a record of the contested case proceedings.

**Agenda Item 7(m)**

Discussion and possible action to adopt amendments to:

m. Subchapter P. Penalty for Unlicensed Activities

i. Amend §535.181, concerning Penalty

## SUMMARY

TREC adopts an amendment to §535.181, regarding Penalty without changes to the proposed text as published in the September 10, 2010 issue of the *Texas Register* (35 TexReg 8274).

Section 535.181 is amended to clarify that the commission may, in addition to the existing powers, impose an administrative penalty and issue an order to cease and desist.

Generally speaking, the amendment corrects typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

The reasoned justification for the amendments is more streamlined, consistent and readable rules.

The Texas Association of Realtors commented on the rules as proposed.

The commission received 2 favorable comments on the §535.181 as proposed.

## STAFF RECOMMENDATION

Adopt the amendments as proposed

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.181, regarding Penalty, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

**Agenda Item 7(m)**
**Subchapter P. Penalty for Unlicensed Activity**
**§535.181**

***§535.181.Penalty.*** If the Texas Real Estate Commission receives information that indicates that a person has engaged in unlicensed activity, it shall conduct an investigation to determine if such information is accurate. If the information establishes evidence to indicate a probable violation of the Act, the commission may **impose an administrative penalty; issue an order to cease and desist;** file a complaint, alleging unlicensed activity, with the appropriate law enforcement official **;** or take such other action as may be necessary and proper.

**Agenda Item 7(n)**

Discussion and possible action to adopt amendments to:

n. Subchapter Q. Administrative Penalties

i. Amend §535.191, concerning Schedule of Administrative Penalties

**SUMMARY**

TREC adopts an amendment to §535.191, regarding Schedule of Administrative Penalties without changes to the proposed text as published in the September 10. 2010, issue of the *Texas Register* (35 TexReg 8274), and will not be republished.

Section 535.191 is amended to add additional provisions that apply to the schedule.

Generally speaking, the amendment corrects typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

The reasoned justification for the amendments is more streamlined, consistent and readable rules.

No comments were received on the rule as proposed.

**STAFF RECOMMENDATION**

Adopt the amendments as proposed

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.181, regarding Penalty, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

***§535.191.Schedule of Administrative Penalties.***

(a) The commission may suspend or revoke a license **or take other disciplinary action authorized by Chapter 1101 of the Act** in addition to assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1101.702(b) of the **Act** **[~~Texas Occupations Code~~]**.

(c) An administrative penalty range of $100 - $1,500 per violation per day may be assessed for violations of the following sections of the **Act and Rules [~~Texas Occupations and Administrative Codes~~]**:

**(1) §1101.552;**

**(2) [~~(1)~~]** §1101.652(a)(8);

**(3) [~~(2)~~]** §1101.652(b)(23);

**(4) [~~(3)~~]** §1101.652(b)(29);

**~~[(4) 22 TAC §535.92(f);]~~**

(5) 22 TAC §535.91(c); **[~~and~~]**

(6) 22 TAC §535.144 **; and [~~.~~]**

**(7) 22 TAC §535.154.**

(d) An administrative penalty range of $500 - $3,000 per violation per day may be assessed for violations of the following sections of the **Act and Rules [~~Texas Occupations Code~~]**:

(1) §1101.652(a) **(4) -** (7);

(2) §1101.652(b)(1);

(3) §1101.652(b)(7) **- (8)** ;

**~~[(4) §1101.652(b)(8);]~~**

**(4) [~~(5)~~]** §1101.652(b)**[~~(10) -~~]** (12);

**(5) [~~(6)~~]** §1101.652(b)(14);

**(6) [~~(7)~~]** §1101.652(b)(22);

**(7) [~~(8)~~]** §1101.652(b)**[~~(26) -~~]** (28);

**(8) [~~(9)~~]** §1101.652(b)(30) - (31); and

**(9) [~~(10)~~]** §1101.654(a).

(e) An administrative penalty range of $1,000 - $5,000 per violation per day may be assessed for violations of the following sections **of the Act and Rules :**

(1) §1101.351**[~~(a)~~]**;

**(2) §1101.366(d);**

**(3) §1101.557(b);**

**(4) §1101.558(b) - (c);**

**(5) §1101.559(a), (c);**

**(6) §1101.560;**

**(7) §1101.561(b);**

**(8) §1101.615;**

**(9) §1101.651;**

**(10) [~~(2)~~]** §1101.652(a) **(2) -** (3);

**(11) [~~(3)~~]** §1101.652(a)(9) **- (10)** ;

**(12) [~~(4)~~]** §1101.652(b)(2) - (6);

**(13) [~~(5)~~]** §1101.652(b)(9) **- (11)** ;

**(14) [~~(6)~~]** §1101.652(b)(13);

**(15) [~~(7)~~]** §1101.652(b)(15) - **(21) [~~(17)~~]**;

**~~[(8) §1101.652(b)(19) - (21);]~~**

**(16) [~~(9)~~]** §1101.652(b)(24) - **(27); [~~(25); and~~]**

**(17) [~~(10)~~]** §1101.652(b)(32) **- (33); [~~.~~]**

**(18) 22 TAC §§535.145 - 535.148;**

**(19) 22 TAC §535.156; and**

**(20) 22 TAC §§535.159 - 535.160.**

(f) (No change.)

**Agenda Item 7(o)**

Discussion and possible action to adopt amendments to:

o. Subchapter R. Real Estate Inspectors

i. New §535.201, concerning Definitions

ii. Amend §535.206, concerning The Texas Real Estate Inspector Committee

iii. New §535.209, concerning Examinations

iv. Repeal §535.212., concerning Education and Experience Requirements for an Inspector License

v. New Amend §535.212, concerning Education and Experience for an Inspector License

vi. Repeal §535.213, concerning Schools and Courses of Study in Real Estate Inspection

vii. New §535.213, concerning Approval of Courses in Real Estate Inspection

viii. Repeal §535.214, concerning Examinations

ix. New §535.214, concerning Providers of Real Estate Inspection Courses

x. Amend §535.215, concerning Inactive Inspector Status

xi. Amend §535.216, concerning Renewal of License or Registration.

xii. New §535.217, concerning Contact Information.

xiii. Amend §535.218, concerning Continuing Education

xiv. Amend §535.221, concerning Advertisements

xv. Amend §535.222, concerning Inspection Reports

xvi. Amend §535.226, concerning Sponsorship of Apprentice Inspectors and Real Estate Inspectors

**SUMMARY**

TREC adopts new §535.201, regarding Definitions; amendments to §535.206, regarding The Texas Real Estate Inspector Committee; new §535.209, regarding Examinations; new §535.212, regarding Education and Experience Requirements for a License; new §535.213, regarding Approval of Courses in Real Estate Inspection; new §535.214, regarding Providers of Real Estate Inspections Courses; amendments to §535.215, regarding Inactive Inspector Status; amendments to §535.216, regarding Renewal of License or Registration; new §535.217, regarding Contact Information; amendments to §535.218, regarding Continuing Education, amendments to §535.221, regarding Advertisements; amendments to §535.222, regarding Inspection Reports; and amendments to §535.226, regarding Sponsorship of Apprentice Inspectors and Real Estate Inspectors. The amendments and new rules are adopted with changes to the proposed text of §§535.212 and 535.218 as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8275). The changes to the proposed text of §535.212 establish an effective date of September 1, 2011, for the apportioning of pre-licensure hours, and the change to §535.218 establishes an effective date of September 1, 2011, for the 6-hour Standards of Practice/Legal/Ethics Update course. The revision to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed version and do not materially alter the issues raised in the proposed rules. Changes in the adopted rules will give applicants, licensees, and education providers additional time to accommodate these changes through modified course offerings.

§§535.201, 535.206, 535.213-.217, 535.221, 535.222, and 535.226 are amended without changes and will not be republished. The Texas Real Estate Commission (TREC or the commission) adopts the repeal of §535.212, regarding Education and Experience Requirements for an Inspector License, §535.213, regarding Schools and Courses of Study in Real Estate Inspection, and §535.214, regarding Examinations, Providers of Real Estate Inspections Courses, as proposed in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8283).

The new rules and amendments to these sections reflect a non-substantive reorganization of 22 TAC Chapter 535, Subchapter R, to improve readability of the rules based on changes identified through the agency's rule review process. Other provisions throughout the rules modify language to allow the agency and its licensees to better take advantage of opportunities for online license management, as well as electronic delivery of notices and license certificates. In addition to these non-substantive amendments, a number of substantive changes are being adopted.

TREC adopts the repeal of §535.212, regarding Education and Experience Requirements for an Inspector License, §535.213, regarding Schools and Courses of Study in Real Estate Inspection, and §535.214, regarding Examinations, Providers of Real Estate Inspections Courses, as proposed in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8283).

The repeal of these provisions reflects a non-substantive reorganization of 22 TAC Chapter 535, Subchapter R, to improve readability of the rules based on changes identified through the agency's rule review process. Other provisions throughout the rules modify language to allow the agency and its licensees to better take advantage of opportunities for online license management, as well as electronic delivery of notices and license certificates.

New §535.201, Definitions, consolidates definitions related to regulation of inspectors, including code organization and trade association, and introduces a Texas Standards of Practice/Legal/Ethics Update course.

Amendments to §535.206, The Texas Real Estate Inspector Committee, clarify that a member only serves until a successor has been appointed if the member completes his or her term and would make other non-substantive changes to the section.

New §535.209, Examinations, moves the examination provisions from §535.214 (proposed for repeal) and lowers the minimum passing score on the professional inspector examination from 80% to 75%.

Existing §535.212, Education and Experience Requirements for an Inspector License, is repealed and new §535.212, Education and Experience Requirements for an Inspector License, adopted elsewhere in this issue, reorganizes the provisions of the section and allocates the number of hours of education required by Chapter 1102 for licensure as a real estate inspector or professional inspector among the core subject matter areas.

New §535.212, Education and Experience Requirements for a License, allocates the numbers of hours of education required by Chapter 1102 for licensure as a real estate inspector or professional inspector among the core subject matter areas. This change addresses both the hours required under the traditional three-tier method of licensure, as well as the hours required for the education/experience substitute method.

Existing §535.213, Schools and Courses of Study in Real Estate Inspection, is repealed and new §535.213, Approval of Courses in Real Estate Inspection, adopted elsewhere in this issue, reorganizes the provisions of the section and increases the maximum amount of classroom course time that may be spent on field work from 10% to 50% and further defines a core course area of "legal/ethics."

New §535.213, Approval of Courses in Real Estate Inspection, increases the maximum amount of classroom course time that may be spent on field work from 10% to 50% and defines a core course area of "legal/ethics."

§535.214 is repealed as a part of a reorganization of the rules resulting from the

agency's rule review process. The Examinations section of the rules regarding inspectors is being adopted elsewhere in this issue as new §535.209.

New §535.214, Providers of Real Estate Inspection Courses, incorporates content from current §535.212 regarding the requirements for providers of courses in real estate inspection.

Amendments to §535.215, Inactive Inspector Status, reflect a change in requirements regarding inactive and active status to better take advantage of opportunities for online license management.

Amendments to §535.216 reflect the commission's move toward online filing of applications and related forms, as well as electronic delivery of notices. Section 535.216 changes the name from "Renewal of License or Registration" to "Renewal of License".

New §535.217, Contact Information, requires that licensees provide the commission with a phone number and email address in addition to the permanent mailing address that is currently required, and further requires licensees to keep the commission apprised of any changes to this contact information.

Amendments to §535.218, Continuing Education, require all real estate inspectors and professional inspectors to take a six-hour Texas Standards of Practice/Legal/Ethics Update course in order to renew a license. This requirement does not increase the total number of hours required to renew but will be counted toward the 32-hour requirement to renew a 2-year license. This requirement

Amendments to §535.221, Advertisements, explicitly brings electronic social media used for the purpose of gaining business into the definition of "advertisements" and clarifies how the rules relating to inspector advertising apply to these types of advertisements and how inspectors must identify themselves and provide their license numbers on such advertisements.

Amendments to §535.222, Inspection Reports, clarify that the names of each inspector who participated in performing an inspection, as well as all supervising real estate inspectors and/or sponsoring professional inspectors, must appear on inspection reports. The amendments also eliminate the signature requirement on inspection reports and require inspectors to deliver reports within three days unless otherwise agreed to in writing.

Amendments to §535.226, Sponsorship of Apprentice Inspectors and Real Estate Inspectors, reflect the move toward online license management and also eliminate language requiring signatures on inspection reports.

The reasoned justification for the amendments and new rules is greater availability of members willing to serve on the Inspector Committee; greater availability of inspectors with a broader base of understanding of inspection principles; increased clarity regarding the requirements for inspector advertising, report identification, and delivery of reports; and improved efficiency within the agency.

The Commission has received three comments regarding the amendments as proposed. Regarding §535.209, three commenters wrote in opposition to the reduction in the minimum passing score on the professional inspector examination, stating that reducing the minimum passing score from 80% to 75% constituted a "dumbing down" of the profession and that such a reduction would allow more inspectors and "incapable people" into the profession. The Commission respectfully disagrees, as the current passage rate of below 40% is substantially lower than passage rates on most other occupational licensing exams; lowering the minimum score to 75% is expected to bring the passage rate to approximately 60-65%, which is more consistent with passage rates of other occupational licensing examinations. One of the commenters also stated his opposition to the proposed requirement that all real estate inspectors and professional inspectors take six hours of Standards of Practice/Legal/Ethics Update, applicable toward the 32-hour continuing education requirement, for renewal. This commenter acknowledged the need for such education but objected to the six-hour requirement and suggested that the Commission (a) create a free course that inspectors would be required to

take in addition to the 32-hour requirement or (b) require licensees to sign a certification upon each renewal stating that they have read and are familiar with current Standards of Practice, laws, and rules. The Commission appreciates this commenter's position and suggestions but does not have authority to require continuing education beyond the 32 hours (16 per year) required for renewal and respectfully disagrees that signing a statement upon renewal is as effective as requiring coursework to ensure that inspectors are duly educated about the Standards of Practice and laws and rules applicable to them.

**STAFF RECOMMENDATION**

Adopt the amendments as presented.

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to new §535.201, regarding Definitions; amendments to §535.206, regarding The Texas Real Estate Inspector Committee; new §535.209, regarding Examinations; new §535.212, regarding Education and Experience Requirements for a License; new §535.213, regarding Approval of Courses in Real Estate Inspection; new §535.214, regarding Providers of Real Estate Inspections Courses; amendments to §535.215, regarding Inactive Inspector Status; amendments to §535.216, regarding Renewal of License or Registration; new §535.217, regarding Contact Information; amendments to §535.218, regarding Continuing Education, amendments to §535.221, regarding Advertisements; amendments to §535.222, regarding Inspection Reports; and amendments to §535.226, regarding Sponsorship of Apprentice Inspectors and Real Estate and repeal of §535.212-535.214, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

***§535.201.Definitions.*** **The following definitions shall apply to this subchapter.**

**(1) Code organization--A non-profit organization whose primary mission is to develop and advocate scientifically-based codes and standards relating to one or more of the systems found in an improvement to real estate.**

**(2) Texas Standards of Practice/Legal/Ethics Update--Course addressing developments related to the inspection field, including the requirements of Chapter 1102, Rules, case law, and agency enforcement actions.**

**(3) Trade association--A cooperative, voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.**

***§535.206.The Texas Real Estate Inspector Committee.***

(a) The functions of the committee are as prescribed by **[~~Texas Occupations Code,~~]** Chapter 1102.

(b) - (c) (No change.)

(d) Members of the committee serve staggered six-year terms, with the terms of two inspector members and one public member expiring on February 1 of each odd-numbered year. Initial appointments may be made for terms shorter than six years in order to establish staggered terms. A member **whose term has expired** holds office until the member's successor is appointed. If a vacancy occurs during a member's term, the commission shall appoint a person to fill the unexpired term.

(e) (No change.)

(f) The commission may remove a committee member if the member:

(1) - (2) (No change.)

(3) is absent from more than half of the regularly scheduled **committee** **[~~commission~~]** meetings that the member is eligible to attend during each calendar year, unless the absence is excused by majority vote of the committee; or

(4) violates **[~~Texas Occupations Code,~~]** Chapter 1102.

(g) - (n) (No change.)

***§535.209.Examinations.***

**(a) There shall be an examination for a real estate inspector license and for a professional inspector license. Questions shall be used which will measure competency in the subject areas required for a license by Chapter 1102, and which will demonstrate an awareness of its provisions relating to inspectors. Each real estate inspector applicant must achieve a score of at least 70% on the examination. Each professional inspector applicant must achieve a score of at least 75% on the examination.**

**(b) Except as otherwise required by Chapter 1102 or this section, examinations shall be conducted as provided by §535.61 of this title (relating to Examinations).**

***[~~§535.212.Education and Experience Requirements for an Inspector License~~.]***

***§535.212.Education and Experience Requirements for a License.***

**(a) To become licensed as a real estate inspector or professional inspector, a person must satisfy:**

**(1) the education and experience requirements outlined in §1102.108 and §1102.109 of Chapter 1102; or**

(2) the substitute education and experience requirements established by the commission pursuant to §1102.111.

(b) Effective September 1, 2011, a person may satisfy the 90-hour education requirement for licensure as a real estate inspector pursuant to subsection (a)(1) of this section by completing the following coursework:

(1) 10 hours in foundations;

(2) 8 hours in framing;

(3) 10 hours in building enclosure;

(4) 10 hours in roof systems;

(5) 8 hours in plumbing systems;

(6) 10 hours in electrical systems;

(7) 10 hours in heating, ventilation, and air conditioning systems;

(8) 8 hours in appliances;

(9) 4 hours in Texas Standards of Practice;

(10) 4 hours in Texas Standard Report Form/Report Writing; and

(11) 8 hours in Texas Legal/Ethics.

(c) Effective September 1, 2011, a person may satisfy the 128-hour education requirement for licensure as a professional inspector pursuant to subsection (a)(1) of this section by completing the following coursework:

(1) the courses required for licensure as a real estate inspector in subsection (b) of this section;

(2) 8 additional hours in Texas Standard Report Form/Report Writing;

(3) 6 hours in Texas Standards of Practice/Legal/Ethics Update; and

(4) 24 additional hours in any core inspection subject(s).

(d) For the purpose of measuring the number of inspections required to receive a license or to sponsor apprentice inspectors or real estate inspectors, the commission considers an improvement to real property to be any unit capable of being separately rented, leased or sold. Subject to the following restrictions, an inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

(1) Half credit will be given for an inspection limited to structural components only or to equipment/systems only.

(2) No more than 80% of the inspections for which experience credit is given may be limited to structural components only or to equipment/systems components only.

(3) A report addressing two or more improvements is considered a single inspection.

(4) The commission may not give experience credit to the same applicant or professional inspector for more than three complete or six partial inspections per day. No more than three applicants may receive credit for the inspection of the same unit within a 30 day period, and no more than three apprentice inspectors may receive credit for an inspection of the same unit on the same day.

(e) For the purpose of satisfying any requirement that an applicant hold a license for a period of time in order to be eligible for a license as a real estate inspector or professional inspector, the commission shall not give credit for periods in which a license was on inactive status. An applicant for a real estate inspector license must have been licensed on active status for a total of at least three months within the 12 month period prior to the filing of the application. An applicant for a professional inspector license must have been licensed on active status for a total of at least 12 months within the 24 month period prior to the filing of the application.

(f) Substitute requirements for a real estate inspector license. A person may satisfy the substitute education and experience requirements to become licensed as a real estate inspector as follows:

(1) A person who does not have two years of experience as an architect, engineer, or engineer-in-training must:

(A) complete a total of 120 hours of core inspection coursework. Effective September 1, 2011, these hours must include the following:

(i) 90 hours of coursework as outlined in subsection (b) of this section;

(ii) 8 additional hours in Texas Standard Report Form/Report Writing;

(iii) 6 hours in Texas Standards of Practice/Legal/Ethics Update; and

(iv) 16 additional hours in any core inspection subject(s); and

(B) satisfy the substitute experience requirement by:

(i) completing 60 hours of an approved interactive experience training module presented by a licensed professional inspector and submitting a certificate of completion;

(ii) accompanying a licensed professional inspector eligible to sponsor for 60 hours of inspections and submitting a letter from the professional inspector certifying that the applicant attended 60 hours of such training; or

(iii) having three years of personal experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property and providing two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

(2) A person who has at least two years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training must:

(A) complete a total of 104 hours of core inspection coursework. Effective September 1, 2011, these hours must include the following:

(i) 90 hours of coursework as outlined in subsection (b) of this section;

(ii) 8 additional hours in Texas Standard Report Form/Report Writing; and

(iii) 6 hours in Texas Standards of Practice/Legal/Ethics Update; and

(B) submit a license history from the regulatory agency that issued the license or registration documenting the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(g) Substitute requirements for a professional inspector license. A person may satisfy the substitute education and experience requirements to become licensed as a professional inspector as follows:

(1) A person who does not have three years of experience as an architect, engineer, or engineer-in-training must:

(A) complete a total of 328 hours of core inspection coursework. Effective September 1, 2011, these hours must include the following:

(i) 128 hours of coursework as outlined in subsection (c) of this section;

(ii) 30 additional hours in foundations;

(iii) 30 additional hours in framing;

(iv) 12 additional hours in building enclosure;

(v) 25 additional hours in roof systems;

(vi) 25 additional hours in plumbing systems;

(vii) 25 additional hours in electrical systems;

(viii) 25 additional hours in heating, ventilation, and air conditioning systems;

(ix) 6 additional hours in appliances;

(x) 8 additional hours in Standards of Practice/Legal/Ethics;

(xi) 8 additional hours in Standard Report Form/Report Writing; and

(xii) 6 additional hours in any core inspection subject(s); and

(B) satisfy the substitute experience requirement by:

(i) completing 120 hours of an approved interactive experience training module presented by a licensed professional inspector and submitting a certificate of completion;

(ii) accompanying a licensed professional inspector eligible to sponsor for 120 hours of inspections and submitting a letter from the professional inspector certifying that the applicant attended 120 hours of such training; or

(iii) having five years of personal experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property, and providing two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

(2) A person who has at least three years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training must:

(A) complete a total of 142 hours of core inspection coursework. Effective September 1, 2011, these hours must include the following:

(i) 128 hours of coursework as outlined in subsection (c) of this section;

(ii) 8 additional hours in Texas Standard Report Form/Report Writing; and

(iii) 6 hours in Texas Standards of Practice/Legal/Ethics Update; and

(B) submit a license history from the regulatory agency that issued the license or registration documenting the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(h) Not more than two persons may accompany a licensed professional inspector on any inspection used to meet the experience requirement of §1102.111(a) of Chapter 1102.

*[~~§535.213.Schools and Courses of Study in Real Estate Inspection~~.]*

*§535.213.Approval of Courses in Real Estate Inspection.*

(a) To be accepted for inspector licensing, a course must meet each of the following requirements.

(1) The course was devoted to a subject listed in §1102.001(5) of Chapter 1102 or this section; provided, however, that the commission will not accept more than 30 hours of course credit for inspection-related business, legal, report writing or ethics courses.

(2) The student was present in the classroom for the hours of credit granted by the course provider or completed makeup in accordance with the requirements of the provider or by applicable commission rule.

(3) Successful completion of a final examination or other form of final evaluation was a requirement for receiving credit from the provider.

(4) The daily course presentation did not exceed ten hours.

(5) The course was offered by a provider accredited by the commission to offer inspection courses or exempt from the requirement to be accredited by the commission.

(b) A classroom course may include up to 50% of total course time for appropriate field work relevant to the course topic. Field work may not be included as part of correspondence or alternative delivery courses.

(c) Except as provided to the contrary by this section, the review and acceptance of

correspondence courses or courses offered by alternative delivery systems such as computers will be conducted in the manner prescribed by §535.62 of this title (relating to Acceptable Courses of Study). Correspondence courses are acceptable only if offered by or in association with an accredited college or university.

(d) Providers wishing to obtain prior approval of a classroom course shall submit the following items to the commission:

(1) a course description, including the number of hours of credit to be awarded;

(2) a timed course outline;

(3) a copy of any textbook, course outline, syllabus or other written course material provided to students;

(4) a cross reference to the course material which demonstrates in a manner that is satisfactory to the commission where the required subject matter is covered in the course; and

(5) a copy of the written final examination which measures a student's mastery of the course.

(e) The following subjects shall be considered core real estate inspection courses:

(1) Foundations, which shall include the following topics:

(A) site analysis/location;

(B) grading;

(C) foundations;

(D) flat work;

(E) material;

(F) foundation walls;

(G) foundation drainage;

(H) foundation waterproofing and damp proofing;

(I) columns; and

(J) under floor space.

(2) Framing, which shall include the following topics:

(A) flashing;

(B) wood frame - stick/balloon;

(C) roof structure - rafters/trusses;

(D) floor structure;

(E) porches/decks/steps/landings/balconies;

(F) doors;

(G) ceilings;

(H) interior walls;

(I) stairways;

(J) guardrails/handrails/balusters;

(K) fireplace/chimney;

(L) sills/columns/beams/joist/sub-flooring;

(M) wall systems/structure - headers;

(N) rammed earth;

(O) straw bale;

(P) ICF;

(Q) panelized;

(R) masonry;

(S) wood I joist;

(T) roof sheathing;

(U) wood wall;

(V) steel wall;

(W) wood structural panel; and

(X) conventional concrete.

(3) Building Enclosure, which shall include the following topics:

(A) review of foundation and roofing relation;

(B) review of flashing;

(C) cladding;

(D) windows/glazing;

(E) weather barriers;

(F) vapor barriers;

(G) insulation;

(H) energy codes; and

(I) ingress/egress.

(4) Roof Systems, which shall include the following topics:

(A) review - rafters, roof joist, ceiling joist, collar ties, knee walls, purling, trusses, wood I joist, roof sheathing, steel framing;

(B) roof water control;

(C) skylights;

(D) flashing;

(E) ventilation/non-ventilation;

(F) attic access;

(G) re-roofing;

(H) slopes - step roof/low slope/near flat;

(I) materials - asphalt, fiberglass, wood shake, wood shingle, slate, clay tile, concrete tile, fiber cement (asbestos cement, mineral cement), metal, roll, build up, modified bitumen, synthetic rubber (EPDM), plastic (PVC); and

(J) valleys.

(5) Plumbing Systems, which shall include the following topics:

(A) water supply systems;

(B) fixtures;

(C) drains;

(D) vents;

(E) water heaters (gas and electric);

(F) gas lines; and

(G) hydro-therapy equipment.

(6) Electrical Systems, which shall include the following topics:

(A) general requirements, equipment location and clearances;

(B) electrical definitions;

(C) services;

(D) branch circuit and feeder requirements;

(E) wiring methods;

(F) power and lights distribution;

(G) devices and light fixtures; and

(H) swimming pool.

(7) HVAC Systems, which shall include the following topics:

(A) heating;

(B) ventilation;

(C) air conditioning; and

(D) evaporative coolers.

(8) Appliances, which shall include the following topics:

(A) dishwasher;

(B) food waste disposer;

(C) kitchen exhaust hood;

(D) range, cooktop, and ovens (electric and gas);

(E) microwave cooking equipment;

(F) trash compactor;

(G) bathroom exhaust fan and heater;

(H) whole house vacuum systems;

(I) garage door operator;

(J) doorbell and chimes; and

(K) dryer vents.

(9) Texas Standards of Practice, which shall include the following topics:

(A) review of general principles and specific Texas practice standards;

(B) inspection guidelines for structural systems;

(C) inspection guidelines for electrical systems;

(D) inspection guidelines for heating, ventilation, and air conditioning systems;

(E) inspection guidelines for plumbing systems;

(F) inspection guidelines for appliances; and

(G) inspection guidelines for optional systems.

(10) Legal/Ethics, which shall include the following topics:

(A) Chapter 1102;

(B) commission rules related to inspectors;

(C) agency enforcement action relating to inspectors; and

(D) related case law.

(11) Texas Standard Report Form/Report Writing, which shall include the following topics:

(A) use of the required inspection report form;

(B) allowed reproductions;

(C) allowed changes;

(D) exceptions from use of the form;

(E) review of typical comments for each heading in the report; and

(F) review of generally accepted technical writing techniques.

(12) Other approved courses as they relate to real estate inspections, which shall include one or more of the following topics:

(A) Environmental Protection Agency;

(B) Consumer Product Safety Commission; and

(C) general business practices.

(f) A course approved to satisfy a specific subject matter requirement must address each part of the subject as described by this subchapter.

(g) A course that combines more than one subject into a composite course may be approved by the commission to satisfy core course education requirements; however, composite courses will not satisfy the requirements for coursework in specific subject areas unless they are approved for a specific number of hours for each subject area.

(h) An applicant may not take the same course more than once for credit toward the education requirements for a license; however, a course for which credit was granted toward a lower license may be counted again toward the requirements for a higher license.

(i) An applicant will not receive credit for more than one course with substantially the same course content within a two year period.

*[~~§535.214.Examinations.~~]*

*§535.214.Providers of Real Estate Inspection Courses.*

(a) Except as provided by this section, the accreditation and regulation of schools and courses of study in real estate inspection and the approval of instructors will be conducted as required for real estate schools by §§535.63 - 535.67 of this title.

(b) A person applying for accreditation of a real estate inspection school shall use application forms approved by the commission. All courses must be approved by the commission prior to being offered for credit. A school accredited by the commission to offer real estate courses is not required to apply for accreditation under this section to offer real estate inspection courses, provided all courses offered by the school have been approved by the commission. The commission may submit proposed courses to the Texas Real Estate Inspector Committee for review and recommendation.

(c) An entity is not required to be accredited by the commission in order to offer inspection courses if it is:

(1) a school accredited by an inspector regulatory agency of another state;

(2) a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, or by a recognized national or international accrediting body;

(3) a unit of federal, state or local government;

(4) a nationally recognized building, electrical, plumbing, mechanical or fire code organization;

**(5) a professional trade association in the inspection field or in a related technical field; or**

**(6) an entity whose courses are approved and regulated by an agency of this state.**

**(d) Providers exempt from the requirement to be accredited by the commission may submit courses to the commission for preapproval. If a course is offered without first being submitted for preapproval, the commission will evaluate the course at such time as a student submits the course to the commission for credit and may determine that the course does not qualify for credit or qualifies for fewer than the full number of hours of credit.**

***§535.215.Inactive Inspector Status.***

(a) For the purposes of this section, an "inactive" inspector is a licensed professional inspector, real estate inspector, or apprentice inspector who is not authorized by law to engage in the business of performing real estate inspections as defined by **[~~Texas Occupations Code,~~]** Chapter 1102 **[~~(Chapter 1102)~~],** and who has been placed on inactive status by the commission for any of the following reasons:

(1) - (7) (No change.)

(b) To be placed on inactive status by request, an inspector must do the following:

(1) **file a request for inactive status or submit** **[~~apply to the commission on a form approved by the commission for that purpose, or by~~]** a letter containing the inspector's name, license number and current mailing address; **and**

(2) if the inspector is a licensed professional inspector, confirm in writing that the inspector has **, at least 30 days prior to filing the request for inactive status,** given any real estate inspectors or apprentice real estate inspectors sponsored by the inspector written notice that the inspector will no longer be their sponsor **.** **[~~at least 30 days prior to filing the request for inactive status ; and~~]**

**[~~(3) return the inspector's license certificate to the commission.~~]**

(c) A professional inspector who has been placed on inactive status may apply to the commission for return to active status **by filing a request online or** on a form approved by the commission **and submitting any required fee** . A professional inspector may apply on a form approved by the commission to sponsor an apprentice inspector or real estate inspector who has been on inactive status. The commission may not return an inspector to active status or issue a license certificate to the inspector unless the inspector has completed within one year prior to the filing the request for return to active status any applicable continuing education courses required for renewal of the type of license held by the inspector or satisfied the continuing education requirements in order to obtain the current license.

(d) - (f) (No change.)

***§535.216.Renewal of License [~~or Registration~~].***

(a) A person licensed by the commission under **[~~Texas Occupations Code,~~]** Chapter 1102 **[~~(Chapter 1102),~~]** may renew the license by timely filing the prescribed application for renewal, paying the appropriate fee to the commission and satisfying applicable continuing education requirements as required by Chapter 1102, and by §535.218 of this title (relating to Continuing Education), and providing to the commission proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, with a minimum limit of $100,000 per occurrence as required by §535.211 of this title (relating to Professional Liability Insurance) and §1102.203 **of Chapter 1102** **[~~, Texas Occupations Code~~]**.

**(b) A licensee also may renew an unexpired license by accessing the commission's Internet web site, entering the required information on the renewal application form, satisfying applicable education and professional liability insurance, or any other insurance that provides coverage for violations of**

**Subchapter G of Chapter 1102 requirements and paying the appropriate fee in accordance with the instructions provided at the site by the commission.**

**(c) [~~(b)~~]** The commission shall **send a renewal notice to each licensee [~~mail the prescribed renewal application form to the last known permanent mailing address of the licensee as shown in the commission's computerized records~~]** at least 90 days prior to the expiration of the license. **[~~Each licensee shall furnish a permanent mailing address to the commission and report all subsequent address changes within 10 days after a change of address. If a licensee fails to provide a permanent mailing address, the last known mailing address for the licensee will be deemed to be the licensee's permanent mailing address.~~]** An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license on an active status. It is the responsibility of the licensee to apply for renewal, and failure to receive a renewal **notice [~~application form~~]** does not relieve the licensee of the responsibility of applying for renewal.

**[~~(c) A licensee also may renew an unexpired license by accessing the commission's Internet web site, entering the required information on the renewal application form, satisfying applicable education and professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 requirements and paying the appropriate fee in accordance with the instructions provided at the site by the commission.~~]**

(d) A licensee shall provide information requested by the commission in connection with an application to renew a license within 30 days after the commission requests the information. Failure to provide information requested by the commission in connection with a renewal application within the required time is grounds for disciplinary action under **[~~Texas Occupations Code,~~]** §1101.656 **of the Act .**

**[~~(e) A renewal application is deemed filed when placed in the mail properly addressed to the commission with appropriate postage paid.~~]**

**(e) [~~(f)~~]** An inspector licensed on active status who timely files a renewal application together with the applicable fee, evidence of completion of any required continuing education courses, and proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, may continue to practice prior to receiving a new license certificate from the commission. If the license has expired and the licensee files an application to renew the license, the licensee may not practice until the new certificate is received.

***§535.217.Contact Information.*** **Each licensee shall furnish a permanent mailing address, phone number, and email address to the commission and shall report all subsequent changes within 10 days after a change of any of the listed contact information. If a licensee fails to update a permanent mailing address, the last known mailing address for the licensee will be deemed to be the licensee's permanent mailing address.**

***§535.218.Continuing Education.***

**(a) Effective September 1, 2011, continuing education for renewal of a real estate inspector or professional inspector license must include six hours of Texas Standards of Practice/Legal/Ethics Update.**

**(b) [~~(a)~~]** Except as provided by this section, **[~~core~~]** real estate inspection courses submitted by professional inspectors or real estate inspectors to satisfy the requirements of **[~~Texas Occupations Code~~]** §1102.205 **of Chapter 1102** for continuing education must **qualify for core inspection credit under [~~comply with~~]** §535.212 of this title (relating to Education and Experience Requirements for a License).

**(c) In addition to the core real estate inspection courses defined in §1102.001(5) of Chapter 1102 and §535.212 of this title, the commission also will accept a course related to wood-destroying insects, radon, asbestos, lead,**

**or other hazardous substances to satisfy continuing education requirements.**

**(d) [~~(b)~~]** Courses submitted for continuing education credit must be successfully completed during the term of the current license. The commission may not grant continuing education credit twice for the same course taken by a licensee within a 2-year period.

**(e) [~~(c)~~]** Other than for correspondence courses or courses offered by alternative delivery methods, such as by computer, completion of a final examination is not required for a licensee to obtain continuing education credit for a course.

**(f) [~~(d)~~]** A professional inspector or real estate inspector who fails to renew a license **that is [~~which was~~]** subject to continuing education requirements and who files an application for renewal within one year after the previous license has expired must provide evidence satisfactory to the commission that the applicant has completed any continuing education that would have been required for **timely** renewal of the previous license. Continuing education courses submitted **toward renewal of a license [~~as part of the application~~]** must have been completed **during the license period. [~~within a 24-month period prior to the filing of the application.~~]**

**~~[(e) In addition to the core real estate inspection courses defined in Texas Occupations Code, §1102.001(5) and §535.212 of this title, the commission also will accept a course related to wood-destroying insects, radon, asbestos, lead, or other hazardous substances to satisfy continuing education requirements.]~~**

**(g) [~~(f)~~]** Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status. **Inspectors [~~Professional inspectors and real estate inspectors~~]** are not required to complete continuing education courses as a condition of renewing a license on inactive status **but must satisfy continuing education requirements before returning to active status. [~~Continuing education requirements for return to active status must be satisfied as provided by §535.215 of this title (relating to Inactive Inspector Status).~~]**

**(h) [~~(g)~~]** Providers may request continuing education credit be given to instructors of core real estate inspection courses subject to the following guidelines.

(1) The instructors may receive credit for only those portions of the course which they teach.

(2) The instructors may receive full course credit by attending all of the remainder of the course.

**(i) [~~(h)~~]** The **commission will not grant partial credit to an inspector who attends a portion of a course. [~~will accept a course approved to satisfy the additional education hours required by §535.212(b)(1)(B) of this title to satisfy continuing education requirements, provided that the licensee attends the entire course.~~]**

***§535.221.Advertisements.***

(a) For the purposes of this section, advertisements **are all communications created or caused to be created by a licensed inspector for the purpose of inducing or attempting to induce a member of the public to use the services of the inspector, including [~~include,~~]** but **[~~are~~]** not limited to **the following types of communications when disseminated for this purpose: [~~,~~]** inspection reports, business cards, invoices, signs, **brochures, email [~~all electronic media including E-mail and~~],** the Internet, **electronic transmissions, text messages, and** purchased telephone directory displays and advertising by newspaper, radio and television.

(b) - (c) (No change.)

**(d) Websites containing advertising by one or more inspectors must include the license number of each licensed person whose name or assumed business name appears on the website. For the purposes of an inspector's or inspection company's own website, it is sufficient for the license number(s) to appear on a single prominent page of the website, such as the main page or the "About Us" page. For the purposes of social networking**

**websites, including websites through which licensees may transmit electronic messages to other members of the same site, it is sufficient for license number(s) to appear on the inspector's main or profile page.**

**(e)** [~~(d)~~] The commission may reprimand or suspend or revoke the license of a person who is found to have engaged in false or misleading advertising or to have failed to comply with provisions of this section.

***§535.222.Inspection Reports.***

(a) For each inspection, the inspector shall:

(1) (No change.)

(2) deliver the report [~~within a reasonable period of time~~] to the person for whom the inspection was performed **within three days unless otherwise agreed in writing by the client**.

(b) The inspection report shall include:

(1) the name and license number of **each inspector who participated in performing the inspection, as well as the name(s) and license number(s) of any supervising real estate inspector(s) and sponsoring professional inspector(s), if applicable** [~~the responsible inspector~~];

~~[(2) the name and license number of the apprentice or real estate inspector, and the signature of the inspector's sponsoring professional inspector, if applicable;]~~

**(2)** [~~(3)~~] the address or other unique description of the property on each page of the report; and

**(3)** [~~(4)~~] the client's name.

***§535.226.Sponsorship of Apprentice Inspectors and Real Estate Inspectors.***

(a) An apprentice inspector **or real estate inspector** may be sponsored by only one licensed professional inspector. [~~A real estate inspector may be sponsored by only one licensed professional inspector.~~]

(b) (No change.)

(c) An apprentice inspector or real estate inspector who is on active status may act for the new sponsoring professional inspector once the **commission has been notified of the change and any required fee has been submitted** [~~written notice has been placed in the mail to the commission along with the fee for reporting any change of address~~]. If the apprentice or real estate inspector is on inactive status, the return to active status shall be subject to the requirements of §535.215 of this title (relating to Inactive Inspector Status).

~~[(d) Written inspection reports must be signed by the apprentice inspector who performed the inspection and by the real estate inspector or professional inspector who directly supervised the inspection.]~~

**(d)** [~~(e)~~] A licensed professional inspector is responsible for the conduct of a **sponsored** [~~licensed~~] apprentice inspector [~~sponsored by the professional inspector~~]. At a minimum, a licensed professional inspector shall provide direct supervision of the apprentice inspector by [~~the following means~~]:

(1) accompanying the apprentice inspector during the performance of all inspections performed by the apprentice or arranging for a real estate inspector to accompany the apprentice; and

(2) reviewing any written inspection report prepared by the apprentice inspector for compliance with the provisions of the standards of practice adopted by the commission.

**(e)** [~~(f)~~] A licensed professional inspector is responsible for the conduct of a **sponsored** [~~licensed~~] real estate inspector [~~sponsored by the professional inspector~~]. A licensed professional inspector shall provide indirect supervision in a manner which protects the public when dealing with the real estate inspector [~~and any licensed apprentice inspectors directly supervised by the real estate inspector~~]. At a minimum a professional inspector shall provide indirect supervision of the real estate inspector by [~~doing the following~~]:

(1) communicating with the real estate inspector on a regular basis about the inspections being performed by the real estate inspector ; and

(2) reviewing on a regular basis written inspection reports prepared by the real estate inspector for compliance with the provisions of the standards of practice adopted by the commission.

**Agenda Item 7(p)**

Discussion and possible action to adopt amendments to:

p. Subchapter S. Residential Rental Locators

i. Amend §535.300, concerning Advertising by Residential Rental Locators.

## SUMMARY

TREC adopts an amendment to §535.300, regarding Advertising by Residential Rental Locators without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8284), and will not be republished.

Section 535.300 is amended to clarify that the definition of "advertisement in §535.154 applies to rental locators.

Generally speaking, the amendment corrects typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

The reasoned justification for the amendments is more streamlined, consistent and readable rules.

No comments were received on the rule as proposed.

## STAFF RECOMMENDATION

Adopt the amendments as presented.

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.300, regarding Advertising by Residential Rental Locators, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

***§535.300.Advertising by Residential Rental Locators.***

(a) This section is intended to establish standards relating to permissible forms of advertising by a person licensed as a real estate broker or salesperson and functioning as a residential rental locator ("locator"). For the purposes of this section, the term "residential rental locator" shall have the meaning provided by **[~~Texas Occupations Code, Chapter 1101 (the Act),~~]** §1101.002(6) **of the Act .** For the purposes of this section, the term "advertisement" **shall have the same meaning provided by §535.154(a) of this chapter (relating to Advertising) [~~includes, but is not limited to advertising in printed form, signs, or advertising using radio, television or personal computers~~]**.

(b) - (d) (No change.)

(e) Advertising by locators must also comply with the provisions of **[~~the Act,~~]** §1101.652(b)(23) **of the Act** and §535.154 of this **chapter [~~title (relating to Misleading Advertising)~~]**.

(f) Failure to comply with this section is grounds for the commission to reprimand a licensee, to suspend or revoke a license, **to take other disciplinary action, and/** or to impose an administrative penalty in accordance with **§1101.701 of** the Act **[~~, §1101.757~~]**.

# 535.2 comment

## TREC Comment Period on Rule proposals

**From :** Kathy Cloud <kmoorecloud@msn.com>
**Subject :** TREC Comment Period on Rule proposals
**To :** general counsel <general.counsel@trec.state.tx.us>
Tue Sep 21 2010 6:31:54 PM

COMMENTS/CONCERNS FOR TREC proposed rules:

I. Broker Responsibility

D. Salesperson earned commissions.

I've not personally seen this but it came up in a discussion about the changes you are proposing. We are thinking in terms of "what are the concerns of TREC" where:

a) some sales agent is rcvng advances on their future commissions from a third party company by agreeing to "assign" their portion of earned commissions back to that third party? (with broker's approval) It could allow the salesperson to continue sales activities without disruption to the consumer.

b) the sales agents broker has set commission structure for residential, lots, commercial etc. The salesperson must adhere to that commission structure to ensure the broker rcvs the correct commission and applies that commission rate to the contract, however the salesperson wishes to assign a portion of his/her own earned commission to the buyer or seller's benefit at closing... for whatever reason at closing; ie provide the fee for the home warranty, or an amount that would allow the sale to proceed to fruition if the salesperson desired to and had the permission of the broker.

II. Education

E. salesperson and broker education requirements, **regardless of degree** held, should also at least **require specific REAL ESTATE CORE COURSES** completion prior to licensure. We already have too many inexperienced salespersons giving Real Estate a bad name.....there should be more educational accountability/training...raising of the bar in order to provide real esate services to a consumer. Too many degrees that have nothing to do with real estate.

A side note: A BROKER's license should require a certain number of "transactions" completed prior to licensure....as well not total concentration on the number of years licensed. That **experience** level is what creates the higher level of accountability needed to oversee licensed salespersons..which increases the confidence level of the consumer.

Kathy Moore Cloud,ABR,ALC,ALHS,CRS,GRI
Broker Associate, CEO
Texas Hill Country Realty Co.
Wiley Cloud, Broker of Record
830-755-8693 Office 210-710-6601 Kathy cell
210-568-6000 Fax
www.texashillcountryrealtyco.com

---

## Public coment on 535.2 Broker Responsibility Rule change

**From :** RECLASSES@aol.com
**Subject :** Public coment on 535.2 Broker Responsibility Rule change
**To :** loretta dehay <loretta.dehay@trec.state.tx.us>
Fri Aug 20 2010 11:54:03 AM
1 attachment

This is my comment on the proposed rule change for Rule **§ 535.2 Broker** Responsibility.

Attached are ads for brokers who are advertising that if you go to work for them they have a method where you can complete the required 210 hours of pre-licensing is as little as 6 hours 35 minutes. I believe this is not a school problem but a broker problem. These brokers have found a way to get around the school rules and do this. The best way to stop from happening is to cut off the supply at the broker level. This just common sense that brokers should not be advertising to the public how to "Game" the system.

This is my proposed addition to the Broker responsibility rule.

Thank you.
Rick Knowles
Docendo discimus

**Broker's Responsibility**

(a) A broker is responsible for the authorized acts of the broker's salespersons, but the broker is not required to supervise the salespersons directly.

(b) A real estate broker acting as an agent owes the very highest fiduciary obligation to the agent's principal and is obliged to convey to the principal all information of which the agent has knowledge and which may affect the principal's decision. A broker is obligated under a listing contract to negotiate the best possible transaction for the principal, the person the broker has agreed to represent.

(c) A broker is responsible for the proper handling of escrow monies placed with the broker, although the broker may authorize other persons to sign checks for the broker.

(d) A broker may not participate in a licensee recruiting program that compromises the integrity of a course or education program that states or implies that a potential licensee can complete a program of study in less time than the number of credit hours awarded.

houston craigslist > real estate jobs
**Avoid scams and fraud by dealing locally!** Beware any deal involving Western Union, Moneygram, wire transfer, cashier check, money order, shipping, escrow, or any promise of transaction protection/certification/guarantee. *More info*

# ONE HOT CAREER Opportunity!!!*Century 21*We Want YOU! 512-421-1661 (Midtown)

Reply to: job-838011105@craigslist.org [?]
Date: 2008-09-12, 12:27PM CDT
It's time to get serious about your life!
Saturday Seminar-10am-Limited Seating!
The Real Estate School will help you FAST TRACK Your Real Estate License Classes! (2 Days or less if you like!) Endorsed by Century 21, ERA, Remax and MORE!!!
Hear how you can complete courses quickly and get the world's TOP Training for Complete Success!
Call JAY! 512-421-1661 Calls Answered 24/7!

- Location: Midtown
- Compensation: Commission
- Principals only. Recruiters, please don't contact this job poster.
- Phone calls about this job are ok.
- Please do not contact job poster about other services, products or commercial interests.

PostingID: 838011105
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please flag with care:
miscategorized
prohibited
spam/overpost
best of craigslist
ONE HOT CAREER Opportunity!!!*Century 21*We Want YOU! 512-421-1661 Page 1 of 1
http://houston.craigslist.org/rej/838011105.html 9/15/2008

san antonio craigslist > real estate jobs
**Avoid scams and fraud by dealing locally!** Beware any deal involving Western Union, Moneygram, wire transfer, cashier check, money order, shipping, escrow, or any promise of transaction protection/certification/guarantee. *More info*

# Learn How to Complete Real Estate School in 4 Days or Less !!!

Reply to: job-86ntw-1117074118@craigslist.org [Errors when replying to ads?]
Date: 2009-04-10, 11:44PM CDT
* Complete all required courses in 4 Days or less (our current record is 6hrs & 35 minsutes) Completion time may vary for each student
* Have someone else help pay for your school
* Have a full or Part time job waiting for you - guaranted !
* Have 100's of company leads furnished for you !!
* Have your own personal sales coach.
* Discover how agents are earning 6 figure income in today economy !!
* Call to attend our Career Night @ Century 21 (866) 4*5*8-4*9*9*3
The World's largest Real Estate Organization ! We are OPEN until 7:00pm 7 Days A Week so call anytime after 9:00 am at 866-458-4993
.. Compensation: commission + draw plan
.. Principals only. Recruiters, please don't contact this job poster.
.. Phone calls about this job are ok.
.. Please do not contact job poster about other services, products or commercial interests.
PostingID: 1117074118
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email this posting to a friend
please flag with care:
miscategorized
prohibited
spam/overpost
best of craigslist
Learn How to Complete Real Estate School in 4 Days or Less !!! Page 1 of 1
http://sanantonio.craigslist.org/rej/1117074118.html 4/13/2009

austin craigslist > real estate jobs
**Avoid scams and fraud by dealing locally!** Beware any deal involving Western Union, Moneygram, wire transfer, cashier check, money order, shipping, escrow, or any promise of transaction protection/certification/guarantee. *More info*

# FASTEST WAY TO REAL ESTATE CAREER! (Austin)

Reply to: job-1046877260@craigslist.org [Errors when replying to ads?]
Date: 2009-02-23, 11:11AM CST
Have you ever thought of selling real estate but did not want to spend the time or money? Let us show the fastest, cheapest & easiest way to get started in Real Estate, guaranteed.

Call 512-421-1698 for reservation to attend the next real estate education and Job Fair.
No sales experience needed.
Training and high end leads provided!!!
* Complete all required classes in 4 days or less! (the record is LESS THAN 10 hours!)
Begin training
immediately.
* Have a f/t or p/t job waiting for you!
ALSO:
* Training to earn 100k your first year selling real estate!
* Ask about our 'Earn while you learn' program!
CALL FOR A RESERVATION TO ATTEND THE NEXT JOB FAIR AND REAL ESTATE
EDUCATION SEMINAR 512-421-1698
.. Location: Austin
.. Compensation: Commission
.. Principals only. Recruiters, please don't contact this job poster.
.. Please, no phone calls about this job!
.. Please do not contact job poster about other services, products or commercial interests.
PostingID: 1046877260
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email this posting to a friend
please flag with care:
miscategorized
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spam/overpost
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FASTEST WAY TO REAL ESTATE CAREER! Page 1 of 1
http://austin.craigslist.org/rej/1046877260.html 2/23/2009

austin craigslist > real estate jobs
**Avoid scams and fraud by dealing locally!** Beware any deal involving Western Union, Moneygram, wire transfer, cashier check, money order, shipping, escrow, or any promise of transaction protection/certification/guarantee. *More info*

# Complete Real Estate School in 4 Days! (Austin area)

Reply to: job-845558204@craigslist.org [?]
Date: 2008-09-18, 11:22AM CDT
We will show you how to finish your classes in hours versus months!
*Completion times vary with each student. One student finsihed 7 courses in 18 hours.
We will also show you how to get someone else to pay for it and how to have a job waiting for you when you finish!
Sponsored by top real estate companies.
Call Sara for more information: 512-421-1693
ph
- Location: Austin area
- Compensation: Commission + Draw Plan
- Principals only. Recruiters, please don't contact this job poster.
- Please, no phone calls about this job!
- Please do not contact job poster about other services, products or commercial interests.

PostingID: 845558204
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email this posting to a friend
please flag with care:
miscategorized
prohibited
spam/overpost
best of craigslist
Complete Real Estate School in 4 Days! Page 1 of 1
http://austin.craigslist.org/rej/845558204.html 9/17/2008

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TEXAS APARTMENT ASSOCIATION
1011 San Jacinto Blvd., Ste. 600 • AUSTIN, TEXAS 78701-1951
TELEPHONE 512/479-6252 • FAX 512/479-6291
http:\\www.taa.org

October 15, 2010

Via Email: general.counsel@trec.state.tx.us

Ms. Loretta DeHay
General Counsel
Texas Real Estate Commission
P. O. Box 12188
Austin, TX 78711-2188

RE: Comments to TREC Proposed Rules

Dear Ms. DeHay:

On behalf of the Texas Apartment Association, I am writing this letter to comment on the proposed rules published in the September 10, 2010 Texas Register. First, we believe the staff is to be commended on the considerable work done in this comprehensive rule project.

However, TAA has a couple of concerns about the proposed rules, and we believe that our concerns are shared by other real estate professionals. Our comments are as follows:

1. Advertising. TAA opposes this new proposed Section 535.154. First, the definition in subsection (a) broadly defines the term "advertisement" to include, but not limited to, "all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards." Coupled with the new requirements under subsection (c), the new requirement that any advertisement "must contain language that clearly and conspicuously identifies the name and license number of the salesperson's sponsoring broker" will be extremely burdensome and costly to licensees. The burden is magnified since "clearly and conspicuously" has the meaning that print in the advertisement must be at least the same size as the largest telephone number or contact information or be able to be read from the street or sidewalk, and if it does not comport with these requirements, the licensee will be in violation of the rule.

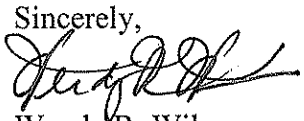
In addition, the new subsection (d) which provides a laundry list of potential deceptive or misleading advertising is also objectionable because it places a significant liability on a licensee for potential advertising inaccuracies that may in fact be inadvertent.

2. Instructor and Course Evaluations. TAA is unclear if the only course evaluation form that can be used by approved continuing education courses must be one promulgated by the commission. TAA suggests that the rule allow a course provider to use a survey form that contains similar information as the one approved by the commission.

3. Licenses. TAA supports the proposed rules in Sections 535.4 and 535.5 as it is our understanding that these rules are a complication of the current rules and that there have been no substantive changes regarding when a licensed is required and is not required, other than in subsection (f) where a corporation or limited liability company owned by a broker or salesperson, which receives compensation on behalf of a licensee is now required to be licensed under the proposed rule.

We sincerely hope that the proposed rules will be modified in accordance with the requests and objections contained in this letter. Thank you for your time and consideration.

Sincerely,



Wendy R. Wilson
General Counsel
Texas Apartment Association

TEXAS ASSOCIATION OF REALTORS®

October 12, 2010

Ms. Loretta DeHay
Texas Real Estate Commission
P. O. Box 12188
Austin, TX 78711-2188

Dear Ms. DeHay:

On behalf of the 85,000 members of the Texas Association of REALTORS®, I am pleased to provide the following comments regarding the Texas Real Estate Commission's proposed rules regarding Chapters 535 and 537 of the Texas Administrative Code, as published in the Texas Register on September 10, 2010 and September 24, 2010.

**Support**
22 TAC §535.2 – The Texas Association of REALTORS® supports adoption of the proposed changes that will articulate brokers' responsibilities to their sponsored salespersons, the public, and other brokers.

22 TAC §535.4 – The Texas Association of REALTORS® supports adoption of the proposed changes that clarify that a corporation or limited liability company owned by a broker or salesperson that receives compensation on behalf of the licensee must be licensed as a broker.

22 TAC §535.146 – The Texas Association of REALTORS® supports adoption of the proposed changes that clarify requirements that apply to maintenance of trust accounts.

22 TAC §535.181 – The Texas Association of REALTORS® supports adoption of the proposed changes that would allow the Texas Real Estate Commission to impose an administrative penalty and issue an order to cease and desist with respect to unlicensed activity.

**Oppose**
22 TAC §535.54 – The Texas Association of REALTORS® opposes the adoption of new subsection (b). This proposal should be forwarded to the Education Curriculum Standards Committee, if established by law, for consideration and recommendation. The proposal appears to lower the bar for licensing of salespersons and brokers in Texas. Current rules and other rules proposed at this time identify related courses as those determined to be acceptable by the commission. It would seem to follow that only certain degree fields would satisfy the requirements of related course work. As drafted, the rule allows for any associate or bachelor degree to count. If a new rule is drafted to specify degree fields, we would request that the rule be clarified to ensure that a bachelor's degree also counts

toward related hours needed for a salesperson license and not just a broker license. Additionally, the use of the term *related hours* is confusing as that term is not defined in 535.50. We recommend clarifying the use of the terms *related hours*, *related course* and *related credit* in the definitions section.

22 TAC §535.65 – The Texas Association of REALTORS® opposes adoption of proposed subsections (4) and (10) as follows:

- Subsection (4) prohibits schools from making unsubstantiated claims that the school's programs are superior to any other course of instruction. It would be helpful for this subsection to clarify that substantiated statements of information—such as pass rates—are permissible.
- While we support a requirement for course and instructor evaluations in subsection (10), we oppose any requirement that education providers be required to use evaluation forms created and approved by the commission. The commission should promulgate an evaluation form for use and allow education providers to use that form or any form that is substantially similar to that form. This would be akin to use of a seller's disclosure notice as required by Texas Property Code §5.008. This subsection also requires that a school provide course and instructor evaluation forms for inspection by the commission on demand. The proposed rule should be clarified to list a period of time for which schools are required to maintain evaluation forms and specify what types, if any, of electronic maintenance of the forms satisfies the requirement.

22 TAC §535.71 – The Texas Association of REALTORS® opposes adoption of proposed changes to subsection (z)(2) that require alternative delivery method courses for required legal credit to be certified by a distance learning certification center that is acceptable to the commission. We support the concept of additional certification for courses offered through alternative delivery methods, but have concerns regarding the language of the proposed rule. The preamble as published in the Texas Register on September 10, 2010, identifies IDCC as a distance learning certification center, but the rule itself simply requires certification by "a distance learning certification center that is acceptable to the commission." We would like to know the basis the commission used to accept IDECC as a distance learning certification center, if that has been done, or what basis will be used to deem other distance learning certification centers as acceptable in the future. Further clarification of how certification of alternative delivery method courses by distance learning certification centers will work under an Education Curriculum Standards Committee, if established by law, is necessary.

22 TAC §535.72 – The Texas Association of REALTORS® opposes adoption of proposed subsection (i) regarding instructor and course evaluations. While we support a requirement for course and instructor evaluations, we oppose any requirement that education providers be required to use evaluation forms created and approved by the commission. The commission should promulgate an evaluation form for use and allow education providers to use that form or any form that is substantially similar to that form. This would be akin to use of a seller's disclosure notice as required by Texas Property

Code §5.008. This subsection requires that a school provide course and instructor evaluation forms for inspection by the commission on demand. The proposed rule should be clarified to list a period of time for which schools are required to maintain evaluation forms and specify what types, if any, of electronic maintenance of the forms satisfies the requirement.

22 TAC §535.154 – The Texas Association of REALTORS® opposes adoption of proposed changes that would require salespersons and brokers to clearly and conspicuously include the broker's name and license number in all advertising placed by or on behalf of the licensee. This measure is overly burdensome and would have a negative financial impact to all licensees. The commission should look for other ways to ensure consumers are able to identify responsible brokers. Toward that end, the association supports the proposals requiring all entities to be licensed as well as the changes proposed to many of the standard contract forms that will add broker identification and contact information. We recommend the commission take necessary steps to ensure search capabilities on its Web site provide tools to allow consumers to easily determine the party responsible for a particular brokerage.

The Texas Association of REALTORS® appreciates this opportunity to comment on the proposed rules. If we can provide any further information, please do not hesitate to contact Lori Levy, Associate Counsel, at 512-480-8200 or llevy@texasrealtors.com.

Sincerely,

Bill Jones
2010 Chairman
Texas Association of REALTORS®

# Comments on Proposed TREC Rules and Legislative Agenda

**From :** Rich Thomas <richt@dfwre.com>
**Subject :** Comments on Proposed TREC Rules and Legislative Agenda
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
**Cc :** Douglas Oldmixon <Douglas.Oldmixon@TREC.state.tx.us>
Tue Oct 5 2010 5:46:55 PM
1 attachment

Dear Loretta:

We have circulated the bullet points and registry materials among several of our MetroTex Association of REALTORS Committees and numerous members. We wanted to get a wide cross section of comments and concerns from our members about the ideas that TREC was proposing for rules changes and possible changes through the legislative process. This has been a good activity for us because more of our members are aware of issues that TREC faces and the need for solutions to several problems. We appreciate the opportunity to send you these comments for your consideration.

We have only commented on items that we received specific feedback on from our members. Many items were most welcome by our members and they appreciate TREC's efforts in these areas, however we did not comment on these. Attached you will find several items where we either express concern or indicate that the proposed rule is unclear. We have also sent this document to Lori Levi at TAR to combine with comments from other Associations.

Please let us know if you need further clarification of our comments. Once again, we appreciate the opportunity to give input on these issues and wish you the best in your efforts to improve the Commission and especially its oversight of licensees.

Sincerely,
Rich

Rich Thomas, RCE
Chief Executive Officer
MetroTex Association of REALTORS, Inc
8201 N. Stemmons Freeway
Dallas, Texas 75247
214-637-6660
Direct & Fax 214-540-2701
richt@dfwre.com

TREC Proposed Rules

Proposed New Rule 535.154: Advertising - Require name and license number of sponsoring broker; clarify clear and conspicuous requirements to apply to all advertising – **Concerns Expressed: Costs to reformat and purchase new signs, disagreement with the size required for the license number (would cause confusion). Not good explanation on what constitutes the sponsoring broker name (dba, corporate license, personal name, etc). TREC should fix the sponsoring broker display and search capability on their website to link to and include dba's.**

Proposed New Rule 535.4: No longer allow salesperson to maintain an unlicensed company to receive their portion of the commission. Any entity receiving commission must be licensed. **We are in favor of the intent behind this, but we think TREC needs to do a better job being more clear on this item and especially how this applies to dba's filed by salespersons vs. dba's filed by corporations and/or brokers.**

Proposed New Rule 535.2: Brokers must maintain written policies – **In favor of brokers having written policies but the policy on insuring minimum requirements for competency is unclear**.

Proposed New Rule 535.67: Two year approval for MCE classes and instructors **– Concerns Expressed: Until we change criteria for instructors why change the approval process for instructors from 5 years.**

Proposed New Rule 535.54: Allow associates degree to satisfy salesperson license and a bachelor's degree to satisfy broker education requirements – **Concerns Expressed: We are trying to raise the bar of professionalism end education in our industry. We believe a Bachelors degree recipient has broad enough experience to satisfy the salesperson requirements. We feel the person with an Associate's degree should not automatically qualify, but should have their transcript evaluated. Examples of the type of course work they should have studied would be in the fields of real estate, business, economics, math, architecture, interior design, education, psychology, English or writing.**

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## COMMENTS REGARDING PROPOSED LEGISLATION - FROM THE REAL MCCOYS

**From :** Ronald McCoy <ronmccoy@kw.com>
**Subject :** COMMENTS REGARDING PROPOSED LEGISLATION - FROM THE REAL MCCOYS
**To :** general counsel <general.counsel@trec.state.tx.us>
**Cc :** tmccoy@kw.com
Wed Oct 13 2010 5:26:35 PM

Dear State General Counsel

As an active agent and broker in the state of Texas want to provide the following comments regarding the Texas Real Estate Commission's proposed rules regarding Chapters 535 and 537 of the Texas Administrative Code, as published in the Texas Register on September 10, 2010 and September 24, 2010.

Support

22 TAC §535.2 – We support adoption of the proposed changes that will articulate brokers' responsibilities to their sponsored salespersons, the public, and other brokers.

22 TAC §535.4 – We support adoption of the proposed changes that clarify that a corporation or limited liability company owned by a broker or salesperson that receives compensation on behalf of the licensee must be licensed as a broker.

22 TAC §535.146 – We support adoption of the proposed changes that clarify requirements that apply to maintenance of trust accounts.

22 TAC §535.181 – We support adoption of the proposed changes that would allow the Texas Real Estate Commission to impose an administrative penalty and issue an order to cease and desist with respect to unlicensed activity.

Oppose

22 TAC §535.54 – We oppose the adoption of new subsection (b). This proposal should be forwarded to the Education Curriculum Standards Committee, if established by law, for consideration and recommendation. The proposal appears to lower the bar for licensing of salespersons and brokers in Texas. Current rules and other rules proposed at this time identify related courses as those determined to be acceptable by the commission. It would seem to follow that only certain degree fields would satisfy the requirements of related course work. As drafted,

the rule allows for any associate or bachelor degree to count. If a new rule is drafted to specify degree fields, we would request that the rule be clarified to ensure that a bachelor's degree also counts toward related hours needed for a salesperson license and not just a broker license.

Additionally, the use of the term related hours is confusing as that term is not defined in 535.50. We recommend clarifying the use of the terms related hours, related course and related credit in the definitions section.

22 TAC §535.65 – We oppose adoption of proposed subsections (4) and (10) as follows:

• Subsection (4) prohibits schools from making unsubstantiated claims that the school's programs are superior to any other course of instruction. It would be helpful for this subsection to clarify that substantiated statements of information—such as pass rates—are permissible.

• While we support a requirement for course and instructor evaluations in subsection (10), we oppose any requirement that education providers be required to use evaluation forms created and approved by the commission. The commission should promulgate an evaluation form for use and allow education providers to use that form or any form that is substantially similar to that form. This would be akin to use of a seller's disclosure notice as required by Texas Property Code §5.008. This subsection also requires that a school provide course and instructor evaluation forms for inspection by the commission on demand. The proposed rule should be clarified to list a period of time for which schools are required to maintain evaluation forms and specify what types, if any, of electronic maintenance of the forms satisfies the requirement.

22 TAC §535.71 – We oppose adoption of proposed changes to subsection (z)(2) that require alternative delivery method courses for required legal credit to be certified by a distance learning certification center that is acceptable to the commission. We support the concept of additional certification for courses offered through alternative delivery methods, but have concerns regarding the language of the proposed rule. The preamble as published in the Texas Register on September 10, 2010, identifies IDCC as a distance learning certification center, but the rule itself simply requires certification by "a distance learning certification center that is acceptable to the commission." We would like to know the basis the commission used to accept IDECC as a distance learning certification center, if that has been done, or what basis will be used to deem other distance learning certification centers as acceptable in the future. Further clarification of how certification of alternative delivery method courses by distance learning certification centers will work under an Education Curriculum Standards Committee, if established by law, is necessary.

22 TAC §535.72 – We oppose adoption of proposed subsection (i) regarding instructor and course evaluations. While we support a requirement for course and instructor evaluations, we oppose any requirement that education providers be required to use evaluation forms created and approved by the commission. The commission should promulgate an evaluation form for use and allow education providers to use that form or any form that is substantially similar to that form.

This would be akin to use of a seller's disclosure notice as required by Texas Property Code §5.008. This subsection requires that a school provide course and instructor evaluation forms for inspection by the commission on demand. The proposed rule should be clarified to list a period of time for which schools are required to maintain evaluation forms and specify what types, if any, of electronic maintenance of the forms satisfies the requirement.

22 TAC §535.154 – We oppose adoption of proposed changes that would require salespersons and brokers to clearly and conspicuously include the broker's name and license number in all advertising placed by or on behalf of the licensee. This measure is overly burdensome and would have a negative financial impact to all licensees. The commission should look for other ways to ensure consumers are able to identify responsible brokers. Toward that end, the association supports the proposals requiring all entities to be licensed as well as the changes proposed to

many of the standard contract forms that will add broker identification and contact information. We recommend the commission take necessary steps to ensure search capabilities on its Web site provide tools to allow consumers to easily determine the party responsible for a particular brokerage.

Additionally, Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."

To: ". Buyer declines, .Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".

This buyer selection needs to be offered to every buyer. It currently it is being left to the Title Companies to explain to the buyer and is being done inconsistently. I feel that the buyer should have the option to select this action in the same manner as other selections are made in the contract. By simply adding selection "boxes" and slightly revising the language this can be done. This will mean Realtors have one more item to explain to a buyer but perhaps that will be better than leaving it to a third party that is not a party to the contract. This action should benefit the consumer.

Thank you for your consideration to these comments.
Terri and Ronald McCoy
# 0496385 and #0511109

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## PROPOSED CHANGES 01-01-11

**From :** Candy Cargill <candy@hcrealestate.com>
**Subject :** PROPOSED CHANGES 01-01-11
**To :** general counsel <general.counsel@trec.state.tx.us>
Tue Oct 12 2010 9:20:10 AM

Dear Sirs and Madams,

I first find it very regretful that all the proposed changes to the current real estate laws are provided to licensees in the "legal ease" in which they are written and not plain old English that we all can understand. I waded through them, almost falling asleep due to the language. I'm still not sure exactly what you are doing, but I do have some issues.

1. As I stated, I would love to see them broken down into everyday English. I understand you have your special way you have to do it, okay, great, write it that way then provide an explanation that the rest of Texas can understand.
2. Rule 1101.364 changing the years from 6 to 4. No, no, no…if someone wants to make real estate his profession, he stays in. In it for the long haul, not coming and going with market fluctuations. I don't think waivers of any kind should be allowed. You are in or you are out. If you want to go In-active, you are inactive, but must take MCE, Legal and Ethics for the amount of time you were out. I'm tired of inexperienced brokers getting in or staying in when they have no business even being a broker. The "grandfather" clause should be addressed also.

   I was recently in a class with a broker that got that fell under the clause and the way I understand it they don't have to be updated on legal and ethics. That doesn't make sense…EVERYONE should have to be up to date on those. That's pretty important and one of the reasons we have been working to be above other

professions that are less ethical. If they don't want to keep up those classes, it is time to retire.

3. 541.1 The clause about Criminal Offenses…If you have been convicted of ANY kind of felony…you should not be able to get a real estate license. ANY…that is absolutely the craziest thing I've ever heard. Again, we are trying to make this a more legal and ethical profession and you want to allow felons to have a license. I thought it was pretty crazy…but I do know a convicted felon…did time in a federal prison for bank fraud, mail fraud and something else…he should have a real estate license…DON'T THINK SO. It's time to clean house!

*Candy Cargill*, Broker
Trec#0369752
Hill Country Real Estate
*"Your Hometown Connection"*
830-833-4591
830-833-4592 Fax
210-885-3090 Cell
MailTo:candy@hcrealestate.com
http://www.hcrealestate.com

---

## Re: Rule proposals

**From :** Douglas Oldmixon <douglas.oldmixon@trec.state.tx.us>
**Subject :** Re: Rule proposals
**To :** Avis Wukasch <avis@aviswukasch.com>
**Cc :** Loretta DeHay <loretta.dehay@trec.state.tx.us>
Tue Oct 12 2010 8:52:57 AM
1 attachment

Agreed, and a modified approach might work - a disclosure of "chain of command" delivered at the same time as IABS? Several brokers I have talked to like this better, and some sales agents as well. Let's discuss at your earliest convenience. See attached for an idea of an example.

Douglas E. Oldmixon
Administrator, Texas Real Estate Commission
Commissioner, Texas Appraiser Licensing and Certification Board
Phone: 512-465-3909
E-Mail: douglas.oldmixon@trec.state.tx.us

----- Original Message -----
From: "Loretta DeHay" <loretta.dehay@trec.state.tx.us>
To: "Avis Wukasch" <avis@aviswukasch.com>
Cc: "Douglas Oldmixon" <douglas.oldmixon@trec.state.tx.us>
Sent: Friday, October 8, 2010 12:09:29 PM
Subject: Re: Rule proposals

I agree there is a lot of confusion, and this is a good idea to try to make it clearer. I'll use this idea in addressing the comments and coming up with a final staff recommendation. Regarding the associate/bachelors degree, you are right, they would only count for non real estate credit. So degrees count only for related not core credit. The only way they could count for core is if they were a real estate degree program and even then, each core course requirement in our law would need to be met with an equivalent course in the degree program.

Loretta DeHay

Deputy Administrator and General Counsel
Texas Real Estate Commission
512.465.3900

----- Original Message -----
From: Avis Wukasch <avis@aviswukasch.com>
To: 'Douglas Oldmixon' <douglas.oldmixon@trec.state.tx.us>,
'Loretta DeHay' <loretta.dehay@trec.state.tx.us>
Sent: Fri, 08 Oct 2010 07:44:53 -0500 (CDT)
Subject: Rule proposals

Hi guys;

I hesitate to communicate with you with all the nightmarish life you have had a work lately, however, this firestorm over "broker name and license number" has driven me almost over the wall. People simply do not understand broker's name on advertising is current law. Even TAR attorneys are saying this means my agents signs/ads would have Keller Williams Realty Avis Wukasch license # XXXXX.

I am preparing my comments on the rule proposals considering suggesting "brokerage name" instead of broker's name, then decided to look at current law for advertising (what a concept!). Is it possible that if we pulled this highlighted portion and dropped it into the proposal we could put this(example above Avis Wukach) thing to rest? So I looked up current statute: §§535.147-.154(c) 46

(c) A broker shall notify the commission in writing within 30 days after the broker, or a salesperson sponsored by the broker, starts or stops using a name in business other than the name in which the person is licensed. Licensees may not use the name of a salesperson, including an assumed name, in advertisements unless the sponsoring broker's name or assumed name also appears. If the commission is notified of a licensee's use of an assumed name which contains only the name of a salesperson, including an assumed name, the commission shall notify the licensee, and the licensee's sponsoring broker, if any, that use of the name alone in advertising is grounds for disciplinary action under this section.

Please let me know what I am specifically missing here.
Avis
Also, re-read the rule proposals from the Register last night....the proposal
for a bachelor's degree...and such to count, does not replace real estate
specific courses as required, does it? That was my understanding orally
represented but it did not feel that way when re-read last night
...maybe bad wine last night.
Avis

**DISCLOSURE OF BROKERAGE AGENCY RELATIONSHIPS**

Broker or Agent will complete this disclosure form and deliver a copy to each potential or actual customer or client along with the "Information About Brokerage Services" disclosure at the first substantive discussion of professional brokerage services.

REAL ESTATE AGENT:

Name: _____ TREC License # _____

Address: _____

City/State/Zip Code: _____

Office Phone: _____ Mobile Phone: _____

Email Address: _____

AGENT REPORTS TO: __ BROKER __ OFFICE MANAGER __ TEAM LEADER

AGENT'S SUPERVISOR:

Name: _____ TREC License # _____

Address: _____

City/State/Zip Code: _____

Office Phone: _____ Mobile Phone: _____

Email Address: _____

AGENT IS ASSOCIATED WITH THIS BROKER or BROKERAGE COMPANY:

Legal Name: _____ TREC License # _____

Main Office Address: _____

City/State/Zip Code: _____

DBA Name(s): _____

DESIGNATED OFFICER/BROKER FOR THIS BROKERAGE COMPANY IS:

Name: _____ TREC License # _____

Address: _____

City/State/Zip Code: _____

Office Phone: _____ Mobile Phone: _____

Email Address: _____

Acknowledged: _____ _____

---

## §535.56

**From :** Bob McCranie <Bob@BobMcCranie.com>
**Subject :** §535.56
**To :** general counsel <general.counsel@trec.state.tx.us>
Fri Sep 3 2010 8:26:13 PM

May I ask the intent behind changing this rule to allow for an easier path for brokerage? I would think TREC would be interested in strengthening the requirements for brokerage instead of watering it down. Maybe I'm misunderstanding the intent.

Under current §535.56, the commission has waived the education and experience required for a broker license for a broker who was licensed in the preceding six years (the maximum authorized

under the Act) and otherwise meets the requirements of the section. The proposed rule would change the period from six years to four years so that a person who was licensed in the preceding four years and otherwise meets the requirements of the section (experience) could apply for a broker license. Under §535.57, the applicant would be required to take the examination if the applicant was licensed more than two years prior to the filing of the application.

Bob McCranie
Texas Pride Realty - Broker / Owner
972-754-0582 cell 469-574-5108 fax
Bob@BobMcCranie.com

---

## Proposed TREC rules

**From :** Warren R Jesser <warrenj.broker@gmail.com>
**Subject :** Proposed TREC rules
**To :** general counsel <general.counsel@trec.state.tx.us>
Tue Sep 21 2010 5:24:27 PM

Dear Sir

All of the proposed rules make sense to me except one:

>>>That an Associate degree = sales license and a Bachelors degree = broker's license.
I hold a BBA degree from Pace University in New York and have been a Broker since the 80s until this year, and want to testify to you that there is almost no relationship between a BBA degree and a Broker's license. The only way this should be considered is if there is a specific college offering a BBA degree with a major in real estate . And even then the core courses of the degree should equal our current licensing core courses, plus the two years of active duty as a licensed sales person should still be required.. Otherwise you would be licensing many Brokers with no concept of the knowledge it requires to become a licensed Broker, thereby decreasing the professionalism of real estate and customer service in TX

I'm surprised that this would even be considered since Texas has been in the forefront of tough but important licensing requirements.

And please remember that you're dealing with generation X, who are expecting to start at the top.. Don't give them a Broker's license for 4 years of college - it would water down the value of those who have studied & worked at their profession for 2-5 years to become a Broker.
My recommendation to you is to completely eliminate this proposal.

Regards,
Warren Jesser, 0237970
Warren R. Jesser, e-PRO
Northwest Real Estate
Direct: 210-723-9222
Office: 210-521-7900
Fax: 210-521-8539
e-mail: WarrenJ.Broker@gmail.com

---

## Proposed TREC Rules

**From :** Lynn Knapik <lknapik@satx.rr.com>

**Subject :** Proposed TREC Rules
**To :** general counsel <general.counsel@trec.state.tx.us>
Tue Sep 21 2010 4:50:00 PM

New subsection (b) in §535.54 would provide that an associate's degree counts towards all the related education requirements (60 hours) for a salesperson license, and a bachelor's degree counts towards all the related education requirements (630 hours) for a broker license.

Is that really all that will be required? There be no real estate courses required? That just doesn't make any sense whatsoever. I guess they'll have a hard time passing the test and will have to take some classes to pass. Or will the test be done away with too for those with these degrees? In my opinion, this is entirely ludicrous.

Lynn Knapik, Broker Owner
CRS, GRI, e-Pro Certified, CNE, SFR, Historic Home Specialist,
Texas REALTORS® Leadership Program, 2009 Graduate
Lynn Knapik Real Estate LLC
19230 Stonehue #4100, San Antonio, TX 78258
Direct: 210-884-5774 Fax: 1-866-729-1067
Visit my Blog - **SanAntonioism.com** or Website - **www.LynnKnapik.com**
**MailTo: Lynn@LynnKnapik.com**

---

## Proposed changes to rule 535

**From :** SMyers1222@aol.com
**Subject :** Proposed changes to rule 535
**To :** general counsel <general.counsel@trec.state.tx.us>
Tue Sep 21 2010 4:28:48 PM

I whole heartedly concur and endorse the rule changes being considered. I assume the change in Core courses needed is 210 plus some electives. is that correct or is the suggestion to do away with the electives and simply require 210 core hours?

In my opinion, it should be 210 core hours minimum ( I would prefer even more be required such as 240), and no credit given for college hours.

Scott Myers
Broker-Owner
Century 21 Scott Myers, Realtors
11830 Wurzbach Rd. (The Elms)
San Antonio, Tx. 78230
Phone # 210-479-1222
Fax # 210-479-1981
Toll free Phone # 1-888-868-1222
WWW.Century21ScottMyers.com

## Fwd: Broker Education Evaluation

**From :** Loretta DeHay <loretta.dehay@trec.state.tx.us>
**Subject :** Fwd: Broker Education Evaluation
**To :** pat holder <pat.holder@trec.state.tx.us>
Wed Nov 3 2010 5:02:18 PM

Please add this to the comments. Thanks.

**From:** RECLASSES@aol.com

**To:** "loretta dehay" <loretta.dehay@trec.state.tx.us>, "douglas oldmixon" <douglas.oldmixon@trec.state.tx.us>

**Sent:** Monday, November 1, 2010 4:03:42 PM

**Subject:** Broker Education Evaluation

Dear commissioners.

There has been a recent change in education evaluation that has just taken place. I believe this is something that looked good on paper but does not work well in the real world.

At this time if a person wants to get a Texas brokers license they cannot get their education evaluated before filing an expensive and time conditioned broker application.

At the local real estate trade show I had several people come to my booth expressing frustration with this rule. I would propose the following that would address the problem.

1. People with a 4 year or advanced degree from an accredited college or university would have deemed to have met the 630 required related hours.

2. People with a 2 year (Academic) degree from accredited college or university would have deemed to have met the 630 required related hours.

3. People without either a 2 year or 4 year degree from an accredited college or university would be allowed to have their education evaluated by TREC for a fee prior to filing the broker application.

Thanks for your time and consideration.

Rick Knowles
Docendo discimus

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## §535.147

**From :** Bob McCranie <Bob@BobMcCranie.com>
**Subject :** §535.147
**To :** general counsel <general.counsel@trec.state.tx.us>
Fri Sep 3 2010 9:13:08 PM
Does this remove the $50 referral rule? Is the purpose of this rule to allow brokerages to pay larger referral fees to the public as long as they don't perform real estate functions? I am very much opposed to this change if I'm understanding it correctly.

Subsection (a) of §535.147 would be deleted and moved to the definitions in §535.1; new subsection (a) clarifies that a licensee may not share a commission with an unlicensed person except as provided by the Act or Rules; new subsection (b) would authorize an unlicensed person to share in the income earned by a licensee as long as the person does not engage in real estate brokerage activity; new subsection (c) would clarify that a broker or salesperson may not share a commission with an unlicensed corporation or limited liability company created by a licensee for the purpose of collecting a commission or fees on behalf of the licensee.

Bob McCranie
Texas Pride Realty - Broker / Owner
972-754-0582 cell 469-574-5108 fax
Bob@BobMcCranie.com

## New Proposed TREC rules

**From :** Joyce E Bauert <jbauert@airmail.net>
**Subject :** New Proposed TREC rules
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
Sat Sep 18 2010 3:11:54 PM

Loretta,

Several comments concerning the proposed changes to TREC Advertising and Licensing requirements.

1. It seems that since we already are required to put our brokerage company name on advertisements, additional information is unnecessary, very costly, there is not always enough space and has no merit whatsoever.

2. Re the education for Salesperson and Broker for licensing requirements. There are many degrees that would in no way prepare an individual to adequately represent a buyer or seller in a real estate transaction nor help a Broker to oversee or manage a sales person. If more education is deemed necessary, it should be relavent to Real Estate, not accept just any degree.

Sincerely,
Joyce Bauert, License 0296509
Joyce Bauert, ABR,CIPS,CRS,e-PRO,PMN,SRES
Keller Williams Elite, Dallas-Park Cities
8201 Preston Rd., Ste. 265
Dallas, TX 75225
972-571-2474
JBauert@Airmail.net

## Re: Proposed TREC changes to advertising

From: "Paul and Patty Smith" <pandpsmith@gmail.com>
To: information@trec.state.tx.us
Sent: Friday, October 15, 2010 9:55:11 AM
Subject: Fwd: Proposed TREC changes to advertising
---------- Forwarded message ----------
From: Paul and Patty Smith < pandpsmith@gmail.com >
Date: Fri, Oct 15, 2010 at 9:49 AM
Subject: Proposed TREC changes to advertising
To: iformation@trec.state.tx.us

Dear TREC:
Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.
Recommended changes:
On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as

the largest phone number). Specification of ‘agent’, ‘broker’, or trade association member on advertising should be omitted, while the broker name should still be included. Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Thank you for your consideration of the above.

-- Patty Smith
Keller Williams Realty

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## Re:

From: "Terri Work" <terrimacaluso@ebby.com>
To: information@trec.state.tx.us
Sent: Friday, October 15, 2010 10:43:50 AM

I object to putting license on signs. This will cost the broker lots of money! Put main office phone number instead for consumer to contact broker. Ebby is Already doing this.

Terri Macaluso. Manger Ebby Frisco.

---

## Re: Recommended changes

From: gbrar@kw.com
To: information@trec.state.tx.us
Sent: Friday, October 15, 2010 3:15:58 PM
Subject: Recommended changes

Recommended changes:

On yard signs of property for sale, the broker’s name must be in a font size of at least 1 inch (rather than the broker’s name and license number being required to be at least the same size as the largest phone number).

Specification of ‘agent’, ‘broker’, or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Gurdarshan Brar, Ph.D.
Director KW Commercial
972-740-6551 (C)
972-755-7023 (eFax)
972-468-5023 (O)
gbrar@KWcommercial.com www.brarbrokerage.com
18383 Preston Road, Suite 150
Dallas, TX 75252

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## Re: 535.154

**From:** "Eryn Parker" <erynparker@kw.com>
**To:** information@trec.state.tx.us
**Sent:** Friday, October 15, 2010 4:52:40 PM
**Subject:** 535.154

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:
On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

**Eryn Parker**
REALTOR®
Keller Williams Realty
214.864.9842 m | 972.468.7552 f
erynparker@kw.com | TheMcCordRealEst

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## Public Comment

**From :** Steve Stovall <steve@stovallrealtors.com>
**Subject :** Public Comment
**To :** general counsel <general.counsel@trec.state.tx.us>
Fri Oct 15 2010 2:13:36 PM

Ms DeHay,

Thank you for the job that you are doing for the citizens of Texas. We owe a debt of gratitude to all of the staff and the volunteers who serve on the Texas Real Estate Commission.

In regard to the proposed rule changes, I would like to comment on §535.154 . It is my understanding that the purpose of the new rule is to help the public identify responsible brokers. I suggest that we already have rules to this affect, as quoted from this month's TREC newsletter, " §1101.652(b)(23) and Rule 535.154. At minimum, subsection (e) of this rule requires an advertisement placed by a licensee to "include information identifying the advertiser as a real estate broker or agent. The name of a salesperson sponsored by the broker may also be included in the advertisement, but in no case shall a broker or salesperson place an advertisement which in any way implies that the salesperson is the person responsible for the operation of a real estate brokerage."

If we already have a rule that requires clear and conspicuous truth in advertising, and some agents are not in compliance, why do we believe that a new set of regulations will cause compliance? If the point is to reduce complaints, I would suggest that the consequences will be the opposite. I realize that half of the licensees are not members of our trade association, however the examples given were from members. Our membership has a new avenue for policing itself which goes into effect at the first of the year. Let's see how that goes before we change the law.

Another suggestion I have is to change the TREC web site to make it easier for the public to find the responsible broker with a search for the name or license number of the licensee.

Lastly, I would suggest that TREC change the poster that is required to be posted in each real estate office. I don't know when this poster originated, but apparently it was prior to the invention of the internet because it does not direct the consumer to the TREC web site.

Thank You for the opportunity to comment on these important issues.

## Fwd: Comments on suggested changes

**From:** "Priscilla & Joseph Pilliod" <pilliod@pilliod.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 13, 2010 3:15:43 PM
**Subject:** Comments on suggested changes

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Joseph Pilliod
Keller Williams Realty
Dallas

## Fwd: Response

**From:** "Josh DeShong" <josh@joshdeshong.com>
**To:** information@trec.state.tx.us
**Cc:** Shannon@joshdeshong.com
**Sent:** Wednesday, October 13, 2010 2:39:30 PM
**Subject:** Response

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Thanks,
*Josh DeShong*
**The Josh DeShong**
**Home Selling Team**
18383 Preston Rd. Ste 150
Dallas, TX 75252
Phone: 972.GET.SOLD (438.7653)
Fax: 972.755.7013
Website: www.joshdeshong.com

## Fwd: Proposed advertising changes

From: "Debra Chiarello" <debra@debrachiarello.com>
To: information@trec.state.tx.us
Sent: Thursday, October 7, 2010 8:22:48 AM
Subject: Proposed advertising changes

It has been brought to my attention that there are some significant proposals for changes in rules for real estate advertising. Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable monetary burden on the part of the licensee to change all existing advertising materials. I believe TREC has a very effective and easy system in place for the public to search for personal names, corporate names, or names used by a licensee.

My suggestion would be that yard signs of property for sale include the broker's name in a font size of at least 1 inch, rather than the broker's name and license number be required to be at least the same size as the largest phone number. Specification of "agent", "broker", or trade association member on advertising should be omitted, while the broker name should still be included. Broker license number should be removed from the advertising requirements, allowing the member of the public to access the TREC website for such information.

I appreciate your consideration of my request.

Sincerely,
Debra Chiarello, Realtor
Direct: 214-641-9970
Fax: 972-852-1866
"Service, Integrity, Experience"
Keller Williams Realty
MaryPat's Team
www.debrachiarello.com

## Re: TREC Rule 535.154

**From:** "Bob & Barbara Baesmann" <bb@dfwteamrealty.com>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 14, 2010 6:28:21 PM
**Subject:** TREC Rule 535.154
Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an

effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Thank you
Bob & Barbara Baesmann
Keller Williams Realty
972-978-8800

## Re: Changes in advertising proposal by TREC.

**From:** "Loretta Littlejohn" <loretta@lorettalittlejohn.com>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 14, 2010 5:00:51 PM
**Subject:** RE: Changes in advertising proposal by TREC.

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

*Loretta Littlejohn*
**ABR, CRS, BROKER**
**Keller Williams Realty**
Office - 972-732-6000
Cell - 214-354-0035
Fax - 972-468-7451
www.lorettalittlejohn.com
loretta@lorettalittlejohn.com

## Re: Proposed changes to 535.154 Advertising - IT'S TOO MUCH

From: "Steve Speer" <sspeer@kw.com>
To: information@trec.state.tx.us
Sent: Wednesday, October 13, 2010 5:36:23 PM
Subject: Proposed changes to 535.154 Advertising - IT'S TOO MUCH

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee.

TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

§535.154.Advertising.
. . . all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards . . must contain . . .the name and license number of the salesperson's sponsoring broker. . .at least the same size of type or print as the largest telephone number or contact information in the advertisement (yard sign, email, etc).

Recommended changes:

1) On yard signs of property for sale, the broker's name in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

2) Specification of 'agent', 'broker', or trade association member on advertising should be omitted . B roker name should still be included.

3) Broker license number should not be required for advertising - the public has access to the TREC website for this information.

Steve Speer
Keller Williams Realty Dallas Preston
469.585.5019 (Mobile), 972.468.7429 (Fax)

## Re: Rule Changes

From: "Sharon Dolan" <sharondolan@kw.com>
To: "'information@trec.state.tx.'"@mx2.lsn.net
Cc: information@trec.state.tx.us
Sent: Wednesday, October 13, 2010 5:48:12 PM
Subject: FW: Rule Changes

From: Sharon Dolan [mailto:sharondolan@kw.com]
Sent: Wednesday, October 13, 2010 5:47 PM
To: 'information@trec.state.tx.'; Stoney Grimes (stoneylg@earthlink.net)
Subject: FW: Rule Changes
Importance: High

From: Sharon Dolan [mailto:sharondolan@kw.com]
Sent: Wednesday, October 13, 2010 5:46 PM
To: 'information@trec.state.tx.'
Cc: 'sharondolan@kw.com'
Subject: Rule Changes
Importance: High

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Thank you,
Sharon Dolan RN,LNC,
Real Estate Consultant,
Keller Williams Realty,
ABR, GRI, SRES, PSC, TAHS, SFR,
Short Sale Specialist, CDRS,
Mediator, Property Tax Arbitrator.
214-789-8533 cell
972-468-7090 efax
sharondolan@kw.com
www.dallashomestoday.com

## Re: changes to 535.154 are wrong

----- Original Message -----

From: "Chuck-KW Realtor" <hastedt@kw.com>
To: "TREC" <information@trec.state.tx.us>
Cc: "Chuck-KW Realtor" <hastedt@kw.com>
Sent: Thursday, October 14, 2010 11:24:34 AM
Subject: RE: changes to 535.154 are wrong

Your proposed changes are just wrong. More so than your previous plan for allowing anonymous complaints! MOST of us are doing the right thing already and it is quite easy for John Q to look us up and look our brokers up.

We do have MANY bad elements out there however. Specifically the "Brokers" YOU allow to be discounters! THOSE are the ones you should be targeting as those "brokers" attract individual agents and FSBO Discount and Flat Fee MLS folks that are holding themselves out as their own groups and brokers with NO identification on their signs, websites, or emails or business cards as to who their actual brokers are. For the 0most part, you will never have this problem with Keller, Century, Coldwell, and Re/max and you know it.

True, it's easier for an establishment or agency to impose these restrictions on everyone rather than targeting the violators,...but that doesn't make it right....it is still wrong! If the rules are not already in place for the minimum of broker names, then make that your rule.

Those of us working for the big agencies are required by internal policies at the least to display our affiliations. Adding a license number and your size restrictions are an unnecessary burden and would require complete redesign and purchase of materials.

In a down economy with sales at rock bottom and agents barely getting by is not the time to put additional expenses on individuals to redo their entire marketing, signs, cards, etc. Enforce what you already have or legislate to bring independents up to major brand standards. I am sure you could enlist the rest of us to help you police what is out there. I would personally be happy to snap a pic and forward to you when I see cheaters and violators! This is already a silly profession that you have to pay others thousands for the privilege of working,...it aggravates me to see

other “colleagues” circumventing the system and even more to have additional regulations piled on an already complex business because of them.

Thanks,
Chuck

Here is my brokers suggested canned response below:

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker’s name must be in a font size of at least 1 inch (rather than the broker’s name and license number being required to be at least the same size as the largest phone number).

Specification of ‘agent’, ‘broker’, or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Chuck and Sylvia Hastedt
The Hastedt Team
Specializing in Residential, Acreage,
and Senior Living Properties
Keller Williams Realty Phone: (469)323-1308
18383 Preston Rd, Ste 150 Fax: (972)468-7156
Dallas , TX 75252 Email: hastedt@kw.com
www.HomesAndLandInTexas.com

## Re: TREC rules proposal

From: "MegTitus" <meg@teamtitus.net>
To: information@trec.state.tx.us
Sent: Wednesday, October 13, 2010 1:54:54 PM
Subject: TREC rules proposal

As a broker in Texas since the 90’s I feel strongly that the proposal for changing sign requirements is onerous and far too expensive for the agents and their brokers. There is no doubt a better way to avoid the out-of-state brokers accepting agent’s licenses.

Meg Titus ALC,CRS,GRI,SFR
Broker Associate
Team Titus
214-336-1909 cell
972-468-7093 e fax
meg@teamtitus.net
www.countryplaces.com
Keller Williams Realty
18383 Preston Road, Ste 150
Dallas , TX 75252

## Re: §535.154.Advertising.

From: "Brance Poempipatana" <brance.ray@gmail.com>

To: information@trec.state.tx.us
Sent: Wednesday, October 13, 2010 1:56:28 PM
Subject: §535.154.Advertising.

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number). Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included. Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

-- Best regards,
Brance Ray Poempipatana
The Josh DeShong
Home Selling Team
18383 Preston Rd. Ste 150
Dallas, TX 75252
Cell: 469.569.7529
Phone: 972.GET.SOLD (438.7653)
Fax: 469-519-8856
Website: www.joshdeshong.com

## Re: new rules

From: "Daniele Alexander" <daniele@danielealexander.com>
To: information@trec.state.tx.us
Sent: Wednesday, October 13, 2010 2:16:05 PM
Subject: new rules

All my signs have my name and number and KW. It is hard enough to make a living and I totally disagree with any changes-can you loan me money?

Daniele Alexander
Keller Williams Realty
469-682-8862
daniele@danielealexander.com
www.DanieleAlexander.com

## Re: New TREC Guidelines

From: "Rhodes Team Closing Dept." <closing@rhodesteam.com>
To: information@trec.state.tx.us
Sent: Wednesday, October 13, 2010 2:22:35 PM
Subject: New TREC Guidelines

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Sincerely,
Shellie Becker

## Re: response to changes

From: "colleen hemphill" <colleenhemphill@kw.com>
To: information@trec.state.tx.us
Cc: colleenhemphill@kw.com
Sent: Wednesday, October 13, 2010 2:18:35 PM
Subject: response to changes

Agent # 0489757

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Colleen Hemphill
Keller Williams Realty
18383 Preston Road, Ste 150
Dallas, TX 75252
Texas Realtor
Colleen's cell: 214-718-9762
Colleen's fax: 972-808-0370

## Re: Proposed advertising changes

From: mike@teamtitus.net
To: information@trec.state.tx.us
Sent: Wednesday, October 13, 2010 2:19:14 PM
Subject: Proposed advertising changes

I am opposed to the proposed changes for real estate advertising (535.154).

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information . Too much required information on web sites, fliers and especially on signs can be hard to fit in the limited spaces available and can make the advertising confusing and hard to read.

Sincerely,
Mike Miller
Sales Associate
Keller Williams Realty
License # 0397789

## Re: Proposed TREC Rule Changes

From: "Nancy Brenner" <nancybrenner@kw.com>
To: information@trec.state.tx.us
Sent: Wednesday, October 13, 2010 2:35:09 PM
Subject: Proposed TREC Rule Changes

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Nancy Brenner
Keller Williams Realty Preston
972-816-5711

## Re: Proposed changes

**From :** information@trec.state.tx.us
**Sender :** Lorie Deanda <lorie.deanda@trec.state.tx.us>
**From:** "Priscilla & Joseph Pilliod" <pilliod@pilliod.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 13, 2010 3:16:30 PM
**Subject:** Re: Proposed changes

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Priscilla Pilliod
Keller Williams Realty
Dallas

## Re: Changes to 535.154

**From:** "Kymberly Harrison" <kymberly@kw.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 13, 2010 3:28:02 PM
**Subject:** Changes to 535.154

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Kymberly Harrison Primm
"Doing A Common Thing, Uncommonly!"
**Cell/Text - 972.754.4551** E-Fax - 972.468.7427

## Re: Proposed Updates

**From:** "Carl Mason" <cdm.mason@gmail.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 13, 2010 3:43:31 PM
**Subject:** Proposed Updates

TREC:

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Thank you,

--
Carl Mason
The Mason Team
Keller Williams Realty
18383 Preston Rd, Ste 150
Dallas, TX 75252
ph: 214-505-4746
fax: 972-468-7215
#1 Producing Office In North Texas!!

## Re: proposed changes to TREC rules

**From:** "Mysti O'Dell" <mysti@kw.com>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 14, 2010 10:36:48 AM
**Subject:** proposed changes to TREC rules

*Please see my concerns below for your review in making changes to our current rules concerning advertising:*

**EXCERPTS FROM TREC PROPOSED UPDATES, 2010:**

***§535.154.Advertising.***

. . . all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards . . must contain . . .the name and license number of the salesperson's sponsoring broker. . .at least the same size of type or print as the largest telephone number or contact information in the advertisement (yard sign, email, etc).

* * * * * *

**Recommended response:**

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

*Sincerely,*

*Mysti*

## Fwd: Concerns about proposed changes

**From:** "Brad Moon" <brad@bradmoon.com>
**To:** information@trec.state.tx.us
**Sent:** Tuesday, October 12, 2010 9:48:38 AM
**Subject:** Concerns about proposed changes

To whom it may concern,

As a Realtor, I am very concerned about the proposed changes regarding Advertising. I feel that some of the proposed changes to 535.154 are unnecessary and would cause Realtors to have to invest a significant amount of money that we frankly do not have in this already difficult market. I feel the changes are unreasonable. There are already systems in place for the public to look up personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Again, please consider the excessive expense this would put on agents if they had to implement these changes to all their marketing material and yard signs.

Thank You,

*Brad Moon*
Keller Williams Realty
214-912-7841

## Re: Proposed Changes to 535.154

**From:** "Kelly Moon" <kelly@kellymoon.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 13, 2010 1:41:51 PM
**Subject:** Proposed Changes to 535.154

To Whom it May Concern:

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

*Kelly Moon*

*Realtor, CHMS*

## Re: 535.154 changes

**From:** "TiffanyT33" <tiffanyt33@me.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 13, 2010 1:44:37 PM
**Subject:** 535.154 changes

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Tiffany Touchstone
Touchstone Properties
Keller Williams Realty
Tiffany@TouchstoneTeam.com

## Re: 535.154

**From:** "Barbara Tidwell" <tidwellr@swbell.net>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 13, 2010 1:48:24 PM
**Subject:** 535.154

To who it may concern, Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Barbara Tidwell/ LIC: 0472327
Keller Williams Realty (Preston Rd Office - Dallas)
Business 972 230-0265
Cell 972 841-2706
Fax 972 230-0354
www.realtorindallas.com

## Fwd: TREC proposed rule changes

**From:** "Dennis Hogg" <dhogg@verizon.net>
**To:** information@trec.state.tx.us
**Sent:** Monday, October 11, 2010 10:49:04 AM
**Subject:** TREC proposed rule changes

***§535.154.Advertising.***

. .

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Regards,
Dennis Hogg 0590135

## Re: Proposed TREC Rule Changes §535.154.Advertising.

**From:** "Nick Good" <NickGood@kw.com>
**To:** information@trec.state.tx.us
**Sent:** Friday, October 8, 2010 5:08:57 PM
**Subject:** Proposed TREC Rule Changes §535.154.Advertising.

***§535.154.Advertising.***

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee. Especially with the new upgraded online system that has recently been launched. This seems like we are taking a step backwards instead of embracing technology.

Please take this into consideration before making the decision final.

Thanks,

Nick Good
Broker Associate
The Good Home Team with Keller Williams
18383 Preston Rd #150
Dallas, Tx 75252
972-468-5499 Direct
972-468-7499 Fax
www.TheGoodHomeTeam.com
"Your Home Sold Guaranteed or We'll Buy It!"

## Re: Proposed Updates 535.154 Advertising

**From:** jaynarey@swbell.net
**To:** information@trec.state.tx.us
**Sent:** Friday, October 8, 2010 4:44:11 PM
**Subject:** Proposed Updates 535.154 Advertising

I am writing in response to the proposed changes in Advertising rules which I believe would present a serious increase in outlay for agents and brokers alike - particularly for large brokerage offices with hundreds of agents.

TREC already has a simple and easy way to look up Agent/Broker License numbers on the TREC website (at no cost).

While I agree the Brokerage Name should be the largest item on Yard Signs - specification of 'Agent' or 'Broker' should be omitted - it's simply unnecessary.

The Broker's License number requirement should also be removed from advertising requirements.

The reason being is that many if not all publishers charge by the number of characters or by "line" in printing advertising materials - which would result in hundreds of thousands of business cards, print ads, yard signs, etc all to be altered - and at great expense in the middle of the biggest recession to hit the real estate industry in 50 years.

Again - the information contained in these proposals is readily available already absolutely "free of charge" to the general public by simply visiting the TREC website.

I urge you to reconsider and rescind these proposals for the reasons mentioned above.

Thank you !

**JAY NAREY** ABR, ALHS
**Keller Williams Realty**
18383 Preston Rd. Suite 150
Dallas, Texas 75252
Cell: 972.468.5462
Office: 972.732.6000
Fax: 972.468.7462
jaynarey@kw.com
www.JayNarey.com

## Fwd: proposed trec changes

**From:** "brent conrad" <brentconrad123@gmail.com>
**To:** "TREC Mailer" <information@trec.state.tx.us>
**Sent:** Friday, October 8, 2010 10:28:48 AM
**Subject:** proposed trec changes

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information

-

Brent Conrad
Keller Williams, Preston Rd
214-912-5539 Cell
972-468-7233 Fax
www.TheConradTeam.com

## Fwd: Absolutely unnecessary

**From:** "Brenda Kinsey" <brendakinsey@kw.com>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 7, 2010 3:01:29 PM
**Subject:** Absolutely unnecessary

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee. I urge you not to pass this rule. Thank you.

Brenda Kinsey
The Kinsey Group
Keller Williams
18383 Preston Road #100
Dallas, Texas 75252
(940)736-6599

## Fwd: Proposed changes for Broker's name

**From:** "Susan Withrow" <swithrow@flash.net>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 6, 2010 7:25:53 PM
**Subject:** Proposed changes for Broker's name

I think that some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Here are the changes I recommend:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

***Susan Withrow***
***Keller Williams Realty***
***214-577-7772***
***susanwithrow@kw.com***
***www.susanwithrow.com***

## Fwd:

**From:** "cindy baglietto" <cindybaglietto@kw.com>
**To:** information@trec.state.tx.us
**Cc:** "cindy baglietto" <cindybaglietto@kw.com>, "mark baglietto" <markbaglietto@kw.com>
**Sent:** Wednesday, October 6, 2010 4:22:45 PM

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Mark and I are both in agreement of this.

Cindy & Mark Baglietto
CRS, GRI, ABR, CNHS, CLHMS
Keller Williams Realty
18383 Preston Road, Suite 150
Dallas, Texas 75252
972-747-SOLD (7653) office
972-468-7229 fax

## Re: changes to 535.154 are ridiculous

**From:** "Kyle Frederick" <kyle@houseindfw.com>
**To:** information@trec.state.tx.us
**Sent:** Monday, October 11, 2010 4:44:12 PM
**Subject:** changes to 535.154 are ridiculous

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

## Proposed Rule Changes

**From :** Bob Greer <bobgreer@abilene.com>
**Subject :** Proposed Rule Changes
**To :** general counsel <general.counsel@trec.state.tx.us>
Fri Oct 8 2010 9:03:10 AM

A comment on the proposed rule change to require the Broker's license number to be place on all printed advertisements:

This appears to be a knee-jerk reaction to an isolated event in which the Realtor and Broker involved were not following the rules of identification that are already in place. If the Broker's company name and office phone number were not correctly displayed, as required, then the Broker's license number also may not be correctly displayed by the same individuals. Requiring all of the Realtors and Brokers that have been following the rules to now have to add the Broker's license number will require a significant expenditure of cash to replace yard signs, printed materials, and business cards. This would be a punishment of those that are and have been in compliance. I think a little more thought and practical consideration should occur before such a knee-jerk response is put in place.

I have a novel suggestion: How about TREC just enforce the rules that are already in place and use the teeth, for failure to comply, at its disposal. If the punishments that are already in place for violation of TREC rules were actually enforced….imagine what a deterrent that would be.

Very sincerely,

**Bob Greer**
**RE/MAX of Abilene**
**Service YOU Deserve!**
**325-690-7936/800-234-8021**
bobgreer@abilene.com

## Re: New proposed signage laws

**From:** "Lisa Williams" <89aggie@verizon.net>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 7, 2010 6:46:52 PM
**Subject:** New proposed signage laws

Dear TREC, As a licensed agent and broker this new law will put a huge financial strain on myself to have to change all my websites, business cards, and yard signs. This could cost in the thousands of dollars. With the market at it's lowest in years most agents can barely stay afloat right now and these added costs would put a lot of agents out of business.

*Lisa Williams*

Broker
Keller Williams Realty
89aggie@verizon.net
cell: 972-816-9070
fax: 972-468-7448

## Re: Proposed Marketing/Advertising Changes

**From:** "BILLY SCOGGINS" <billy_scoggins@yahoo.com>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 7, 2010 5:39:51 PM
**Subject:** Proposed Marketing/Advertising Changes

To whom it may concern, I'm new in this business, and have already spent a significant amount to get my business started. These changes will put a larger financial burden on me while trying to develop and market my services.

The information you're proposing is readily available to the public currently. Why would you put an undue burden on the ones that are already struggling due to things beyond our control?

Regards,

Billy Scoggins
0606937

## Re: 535.154

**From:** "Brad Blackstone" <bblackstone@kw.com>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 7, 2010 4:19:15 PM
**Subject:** 535.154

Real Estate professionals are quite concerned and perplexed over the proposed changes to 535.154.

Some of the proposed changes are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in

place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Sincerely,

Brad Blackstone

## Advertising

**From :** Judy Stutts <judystutts@nortexrealty.com>
**Subject :** Advertising
**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Oct 7 2010 12:05:30 PM

As a Texas Realtor, I feel that I need to voice my opinion regarding the changes to advertising that will be effective July 1, 2011 for agents. I have business cards and hand out such as cups, pens, etc. that do not have brokers name and license number on. In the economy and the real estate market I do not feel this is the time for me or any other Realtor to have to put these things in the trash and buy more. This is not cost effective or even feasible in this market. Please give this some more thought. Have we had that many problems with the way it is done now! Why do many changes.

Thank you very much for your consideration in this matter.

Sincerely,

Judy Stutts
*Judy Stutts, Realtor* Nortex Realty Cell: 940-781-3752 Office: 940-723-8203 Fax: 940-767-4953 judystutts@nortexrealty.com

## Fwd: Proposed Changes to 535.154

**From:** "DeAnna Gibson" <dgibson1955@att.net>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 7, 2010 9:16:47 AM
**Subject:** RE: Proposed Changes to 535.154

I was simply stating that I am not in agreement with the proposed changes to 535.154...thank you!

**From:** "DeAnna Gibson" <dgibson1955@att.net>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 6, 2010 5:49:12 PM
**Subject:** Proposed Changes to 535.154

**TREC,**

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Thank you,

DeAnna Gibson
Office Manager
Team Baglietto
Keller Williams Realty
972-747-7653 Direct Line
972-468-7265 Efax

## Re: Proposed TREC Rule Changes

**From:** "Joe Moline" <mojoproperty@tx.rr.com>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 7, 2010 9:33:28 AM
**Subject:** Proposed TREC Rule Changes

Dear TREC,

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Thank you for my considerations in this matter.

**I came into work today for you.**

**Let me know what I can do and I'll get started right away!**

*Joseph A. Moline*
*Keller Williams*
Broker Associate/REALTOR
Accredited Luxury Home Specialist, GRI, ABR, SRES.
Direct 214-207-1077
Fax 972-468-7491
www.**DallasRealEstatebyJoe**.com
mojoproperty@tx.rr.com
FEATURED LISTINGS

## Re: proposed changes to 535.154.Advertising

**From:** "Gina Westerfield" <ginaw@kw.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 6, 2010 9:16:19 PM
**Subject:** proposed changes to 535.154.Advertising

I have some concerns over the proposed changes to the advertising guidelines. Here is what I propose instead of the proposed changes:

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Thank you for considering this.

Sincerely,

Gina Westerfield

## Re: Please do not take the action being considered in §535.154.Advertising

**From:** "Mark Phillips" <Mark@MarkPhillipsRealtor.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 6, 2010 10:05:42 PM
**Subject:** Please do not take the action being considered in §535.154.Advertising

**It is my understanding that TREC is considering some changes. One is noted below:**

**§535.154.Advertising.**

. . . all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards . . must contain . . .the name and license number of

the salesperson's sponsoring broker. . .at least the same size of type or print as the largest telephone number or contact information in the advertisement (yard sign, email, etc).

**Frankly I think the only result will be a negative impact on the bottom lines of agents. Believe me, agents have been experiencing enough negative impact without TREC coming up with new and creative options to make it worse. I am a fan of TREC; but not of this plan. It seems ludicrous to me. Phone numbers are often very large on cards, signs, and other advertising – and you would want the broker's name and license number to be as large as the largest telephone number. Who is responsible for this thinking? Don't you know that every marketing item that we have would need to be replaced? Please, do not do this. You do a lot of good – and this is not good; it is not friendly; it will not foster goodwill or a good response from Realtors; and it provides consumers little benefit.**

**We need to work hand-in-hand for the good of consumers and I find no benefit in this action for anyone. Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee. The pubic does not need for you to do this, they are well educated, and are a Google away from finding any information about anyone or anything that they want to find. The information highway is open and the public does not need this change to be able to make contact; Realtors do not need the added expense.**

**Recommended changes:**

**On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch rather than the broker's name and license number being required to be at least the same size as the largest phone number. On cards it needs to readable.**

**Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.**

**Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information. Again, any information that the public seeks is a Google away, or any of the growing number of search engines; this is the current path to information.**

**Very sincerely,**

**Mark Phillips**
**0521250**
**Mark Phillips, Broker Associate**
**Graduate Realtor Institute (GRI), e-PRO, Accredited Buyer Representative (ABR)**
**(214)336-9287 cell**
**Mark@MarkPhillipsRealtor.com**
Keller Williams Realty Preston

## Re: TREC Proposed Changes to Advertising

**From:** "Chris Meyer" <cbmeyer@verizon.net>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 7, 2010 9:02:56 AM
**Subject:** TREC Proposed Changes to Advertising

Dear TREC,

I am not in agreement with some of the proposed changes to 535.154. I believe are unnecessary, extreme and would cost agents a significant and unreasonable amount of money, time and effort. I believe there is already an efficient and effective process in place for the public to gather information on names of licensees, personal names and corporate names.

I believe a more reasonable change would be that on yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of "agent', "broker", or trade association member on advertising should be omitted, while the broker name should still be included. The Broker license number should be removed from advertising requirements, allowing the public to access the TREC website for such information.

Thank you,

Chris
Chris Meyer
Keller Williams Realty
972-896-6885 Cell
972-346-6615 Fax
CBMeyer@Verizon.net

## Re: PROPOSED UPDATES, 2010: 535.154.Advertising

**From:** "Greg Jubenville" <gjubenville@verizon.net>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 7, 2010 8:55:08 AM
**Subject:** PROPOSED UPDATES, 2010: 535.154.Advertising

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Respectfully,

Greg Jubenville
520 Central Parkway East
Ste 107
Plano TX 75074

PH 972-467-9412
Fax 972-432-4392

## Re: PRoposed changes

**From:** "Norma Harrell" <NormaHarrell@hotmail.com>
**To:** information@trec.state.tx.us
**Sent:** Thursday, October 7, 2010 8:57:01 AM
**Subject:** PRoposed changes

**Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.**

Recommended changes:

**On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).**

**Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.**

**Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.**

**Thanks,**

**Norma Harrell**
**Broker #0231925**

## Fwd: Upcoming advertising changes

From: "cynthia kenner" <cynthiakenner@kw.com>
To: information@trec.state.tx.us
Sent: Wednesday, October 6, 2010 4:09:27 PM
Subject: Upcoming advertising changes

I am very concerned about the proposed changes to the advertising rules. Changes need to be approached from both a pragmatic and helpful point. I would suggest the following changes be considered instead.

On yard signs of property for sale, the broker’s name must be in a font size of at least 1 inch (rather than the broker’s name and license number being required to be at least the same size as the largest phone number).

Specification of ‘agent’, ‘broker’, or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Cynthia Kenner

Keller Williams Realty
602-553-4444
602-553-4401 Fax
602-717-5220 Cell #
2920 E. Camelback Rd. #100
Phoenix AZ 85016
cynthiakenner@kw.com

## Re: Proposed Changes to 535.154

**From:** "DeAnna Gibson" <dgibson1955@att.net>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 6, 2010 5:49:12 PM
**Subject:** Proposed Changes to 535.154

**TREC,**

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Thank you,

DeAnna Gibson
Office Manager
Team Baglietto
Keller Williams Realty
972-747-7653 Direct Line
972-468-7265 Efax

## Re: TREC Rule Changes

**From:** "Raymond Liu" <RaymondLiu@kw.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 6, 2010 5:09:27 PM
**Subject:** TREC Rule Changes

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

--Best regards,

Raymond Liu
Realtor - Keller Williams Realty
18383 Preston Road, Suite #150
Dallas, TX 75252
972-468-5524 (Office)
214-277-2586 (Mobile)
972-468-7524 (Fax)
RaymondLiu@kw.com (Email)
http://RaymondLiu.yourKWagent.com (Website)

## Fwd: no changes needed for 535.154

**From:** "marypat" <marypat-homes@tx.rr.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 6, 2010 4:30:27 PM
**Subject:** no changes needed for 535.154

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee. Thank you for your consideration, Mary Pat Elledge

*Mary Pat Elledge, G.R.I.*

*"Mary Pat's Team"*
*214-923-3114*
**www.marypat-homes.com**
*"Practicing the Golden Rule"*

## Fwd: TREC 535.154

**From:** "Sherri Burlison" <sherri@sherriburlison.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 6, 2010 4:15:43 PM
**Subject:** TREC 535.154

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Sincerely,

Sherri Burlison
Keller Williams Realty
469-233-2741 mobile
866-284-5010 fax
Sherri@SherriBurlison.com
www.SherriBurlison.com

## Fwd: Proposed Changes to TREC 535.154.Advertising

**From:** information@trec.state.tx.us
**From:** "Derrick L. Houston" <derrickh@kw.com>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 6, 2010 4:43:29 PM
**Subject:** Proposed Changes to TREC 535.154.Advertising

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number). Specification of 'agent', 'broker', or trade association member on advertising should be omitted while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Regards,

Derrick L. Houston, SFR
Real Estate Consultant
Keller Williams Dallas Preston Rd #1 Producing Office in DFW 2005-2009!
972.468.5349 (o)

## Fwd: New TREC Rules

**From:** "Betsy" <prospergold@att.net>
**To:** information@trec.state.tx.us
**Sent:** Wednesday, October 6, 2010 5:00:02 PM
**Subject:** New TREC Rules

Some of the proposed changes to 535.154 are excessive, unnecessary, and would require significant and unreasonable investment on the part of the licensee. TREC already has an effective system in place for members of the public to search personal names, corporate names, or names used by a licensee.

Recommended changes:

On yard signs of property for sale, the broker's name must be in a font size of at least 1 inch (rather than the broker's name and license number being required to be at least the same size as the largest phone number).

Specification of 'agent', 'broker', or trade association member on advertising should be omitted, while the broker name should still be included.

Broker license number should be removed from advertising requirements, allowing the member of the public to access the TREC website for such information.

Sincerely,

Betsy Goldman

## Advertising Change

**From :** Jim Kulyas <Jim@JimkSellsAbilene.com>
**Subject :** Advertising Change
**To :** general counsel <general.counsel@trec.state.tx.us>

Wed Oct 6 2010 4:42:01 PM

I appreciate all the hard work done on this. I would think that the brokers license number size in the advertising should not need to be as big as the largest phone number. I would propose to amend the size to be at least 1/2 the font size of the largest phone number. I believe it would be readable to anybody if it was that size.

Thanks for your consideration
Jim Kulyas
Realtor-Associate
RE/MAX of Abilene

## Proposed Rule Changes

**From :** Leigh York <leigh@leighyork.com>
**Subject :** Proposed Rule Changes
**To :** loretta dehay <loretta.dehay@trec.state.tx.us>
Mon Oct 4 2010 2:16:51 PM

Hello Ms. DeHay,

It seems that the proposed rule to add the broker's license number on all advertising is confusing in itself. I think that if the consumer sees a license number they will expect that it belongs to the agent. I do appreciate that there are many 'absentee' brokers sponsoring agents in our markets. A less expensive solution might be to change the way our TREC website works. If a consumer could search a licensee and see a link that provides the broker's contact information, would that not solve the problem?

I think that it is reasonable to expect that there are many brokerages out there that cannot afford, in this challenging time, to make changes to all of their signs. In addition, when running

an ad in the local paper, just the name of the broker adds two full lines of copy. We're adding expense in a time that many of our licensees are struggling. I like the competition and would like to see us retain as many licensees as possible.

Thank you for considering my comments.

**Leigh York,** Assistant Regional Manager
CENTURY 21 Judge Fite Company
ABR, GRI, CRS, CREI, TAHS, RSPS, SFR, AHWD, NHS
Licensed Broker
**817-613-6420**

## Required notice

**From :** Pamela <pamelacone@gvtc.com>
**Subject :** Required notice
**To :** LLevy@TexasRealtors.com
**Cc :** general counsel <general.counsel@trec.state.tx.us>

Tue Sep 28 2010 1:04:53 PM

If the intent is to have buyers/sellers know who is the responsible party, make the Information About Brokerage Service a required form. On that form, have a place for all the broker info, business name, broker's name, address, phone no, and license no. ; and a place for "client" to sign and date, and agent to sign and date. Make it mandatory that the form be signed at the first meeting. Purpose served.

Pamela

Pamela Cone
Mickey Ferrell Realtors
2014 FM 2673
Canyon Lake, Texas 78133
Office: 830-905-7100
Cell: 830-660-3209
Fax: 830-964-5677
www.canyonlakeandriver.com

## Proposed TREC rule

**From :** Jim Mitchell <jimatremax@yahoo.com>
**Subject :** Proposed TREC rule
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
Fri Sep 24 2010 3:07:51 PM

Loretta,

I would like to request that the proposed rule requiring the Broker lic# on agents' signs not be passed.

Jim Mitchell
0532888
From Jim Mitchell's iPhone
214-957-6340 jimatremax@yahoo.com

## Fwd: CHANGES - Broker responsibility

From: "Jennifer Stroh" <jstroh21@sbcglobal.net>
To: information@trec.state.tx.us
Sent: Wednesday, September 22, 2010 1:04:39 PM
Subject: CHANGES - Broker responsibility

PLEASE PLEASE PLEASE do not make us put the broker license number on our signs, riders, ad space, etc. Instead could you consider that all brokers, teams, LLC's etc., must be responsible to TREC to register each office, team, or branch office separately with each individual working under them.

Also, just a suggestion, make it mandatory that the managing Broker sign each salespersons application and/or license renewal. Authorizing a manager, DR, entity owner, etc. does not make the Broker responsible.

The Broker should be the only one to sign the applications and/or license renewals. That way the Broker is truly showing responsibility.

JENNIFER STROH,
REALTOR with Century 21 The Edge
1201 Airway Blvd., Suite C-3, El Paso, TX 79925
*cell (915) 588-2338 toll free (800)346-4234 fax (915) 779-5250
* www.ahome4u2day.com

## Prposed TREC Advertising Changes

**From :** Johnny Boyd <johnny.boyd@gmail.com>
**Subject :** Prposed TREC Advertising Changes
**To :** Loretta DeHay <Loretta.DeHay@trec.state.tx.us>
Thu Sep 23 2010 12:16:03 AM

To Whom It May Concern,

This is to formally notify you of my objection and opposition to the proposed TREC changes to the advertising rules for brokers and salespersons.

This rule change will cost Texas real estate licensee's millions of dollars to solve a problem that is already solved. Any consumer can find ALL the pertenant information concerning a Broker and a Salesperson on the TREC website which clearly identifies the Salesperson and the Broker.

Sincerely,
Johnny Boyd
Salesperson License #0520147
Austin, Texas

## Proposed TREC rule change about advertising

**From :** David Richard <DavidR@The2Davids.com>
**Subject :** Proposed TREC rule change about advertising
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
Wed Sep 22 2010 8:09:19 PM

Even the public does not want to see our license numbers the same size as our phone numbers. Not on yard signs and not on business cards. Readable yes but a better rule needs to be established.

Best Regards,

David Richard
TREC license #345153

## Proposed changes in advertising

**From :** achristy1 <achristy1@juno.com>
**Subject :** Proposed changes in advertising
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
Wed Sep 22 2010 12:47:20 PM

Loretta,

I am a broker of a real estate company, Diane Christy, Realtors, and I do not have agents working under my license. I am totally against the proposed changes in advertising. Alll my signs, stationery, business cards etc are printed and I do not wish to incur further expense in having to have my license printed on same. If anyone wants to file a complaint against me or my company I can easily be found in the TREC files. I understand that because some of the agents in large companies have customized their signs so that they are not all uniform, the small office brokers should not have to be penalized. The public can easily identify my company and I see no purpose for my license to be displayed.

I hope that you will refrain from making this change mandatory especially since we are struggling to stay afloat in this real estate market.

Thank you in advance for your consideration in this matter.

Sincerely,

Diane
Diane Christy, CRS, GRI
Diane Chrsity, Realtors
(512) 258-5319
achristy1@juno.com

## TREC Rule Change Proposal comments

**From :** Stacey Hurley-Rider <sarider@sbcglobal.net>
**Subject :** TREC Rule Change Proposal comments
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
Wed Sep 22 2010 1:08:08 PM

Ms. De Hay,

My name is Stacey Rider and I understand that as a Texas Realtor, we are allowed to comment on proposed TREC changes. I must vehemently state that I am **not** in favor of the advertising changes that have been proposed where it states that in §535.154 Advertising, section c that I must include my Broker's name and license number in a size and type as the LARGEST telephone number. Those changes would cost me a great deal of money to modify all of my advertising media to solve a problem that is already solved.

Any consumer can find a REALTOR on the TREC website and then identify who I am or who my Broker is and pull up all of our information.

The proposed change is redundant, plain and simple, and would cost Texas Realtors millions of dollars.

Thank you for your time!

Stacey Rider, Realtor®
Bartlett Real Estate, Keller Williams
512.423.8122

## TREC advertisements Proposed rule

**From :** Katrina@katrinaheifner.com
**Subject :** TREC advertisements Proposed rule
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
Mon Sep 20 2010 5:32:52 PM

Loretta-

Please let me know how to correctly voice my opposition to a change in advertising rules.

As a REALTOR, I see confusion in the way we work (how we get paid, how much we make, etc) by the general population on a daily basis. (I only wish we made what they think we do!) The proposal to add the Broker's information will further confuse the public, because they do not seem to understand that we hold our licenses under a Broker anyway, so I do not see a purpose for them needing the additional information of the Broker at that time. Also, it has been my experience that if they think there is someone "above" me, they will just prefer to use the Broker directly.

The information is already on the contract, and the office information is already there. If someone needs the information on who the Broker is, they can call the office and find out, or look it up on the TREC website as well. My opinion is that adding the Broker's information will add questions to the public rather than clarify anything.

Can you help me understand why this information is needed, or share my opposition with anyone controlling this topic?

Thank you so much.

Katrina

*Katrina Heifner*, REALTOR, ABR, GRI, SFR, TAHS
www.NorthTexasTopTeam.com
**214.244.3664 Direct**
214.233.9378 Fax
**Note:** Texas Law requires all real estate licensees to give the following information about brokerage services:
http://www.trec.state.tx.us/pdf/contracts/OP-K.pdf

## Proposed TREC rules regarding license number required on advertising, etc.

**From :** Carol Dochen <carol@caroldochenrealtors.com>
**Subject :** Proposed TREC rules regarding license number required on advertising, etc.
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
**Cc :** Carol <Carol@CarolDochenRealtors.com>
Mon Sep 20 2010 5:01:46 PM

Hi Loretta,

I have become alerted to the proposed TREC rules changes regarding requiring licensees putting our license number on all advertising, websites, real estate signs, etc.

The cost to the real estate companies would be vast, especially if we have to redo all our signs, and if the license number is supposed to be as large as our phone number on our signs can you image how the signs would look????

I am proud to be a Realtor and as you can see in my signature below I now have my license number appearing and have required that of all my agents. But to require us to redo signs and websites and other costly items is prohibitive and the type size requirement for the license number seems out of proportion for its importance for consumers.

Please reconsider which locations the license number must appear and how large it must be. If you can make two changes to this ruling, please consider the real estate yard signs as the LAST PLACE we have to put our license number. Also please reconsider the type size of the license number.

Thanks,

Carol
*Carol Dochen*, **REALTOR, CRB, CRS, ABR,**

## TREC proposed rules

**From :** Renee Buckhoff <renee@reneebuckhoff.com>
**Subject :** TREC proposed rules
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
**Reply To :** renee@reneebuckhoff.com
Sun Sep 19 2010 8:33:44 PM

Loretta,

I would like to make my voice heard regarding the proposals before TREC at the Nov meeting. I am completely opposed to the additional regulations on advertising, as I am promoting and trying to build my name in the market place, not that of my broker. Additonally, I am opposed to any further disclosure to the client regarding how the fees are paid. All the client should be concerned with is the fee that they have agreed to pay. How it is split is between myself and my broker and no one else's concern.

Thank you for your consideration in these matters.

*Renee M. Buckhoff*
*Realtor®*
*281-639-5982 Cell*
*866-836-9601 Fax*
*GRI, ALHS, CRNS, ASR, E-Pro*
Coldwell Banker United, Realtors®

## Proposed TREC Rule Changes

**From :** Luisa Mauro <luisa@marathon-re.com>
**Subject :** Proposed TREC Rule Changes
**To :** Loretta deHay <Loretta.deHay@trec.state.tx.us>
Sun Sep 19 2010 1:24:26 PM

Hi Loretta~

Thank you for taking the time to read this email. I have recently been informed of a couple proposed TREC rule changes, and I adamantly oppose them. The below bullets share the rule changes, and I hope sending this email will cause TREC to re-think these items.

.. TREC is suggesting the adoption of a form for disclosure to clients regarding fees receiving. The Seller already acknowledges the commission in the listing agreement. The Buyer sees the Buyer Brokerage share in the contract. I do not agree with any further delineation of the fees. Clients do not understand our true costs and think we make so much money; this proposed rule will have Sellers and Buyers asking us to pay for additional items. In Austin, the average sales price is $200K. Statistics show the average agent has 7 transactions per year; based on the way I conduct my business, this equates to revenue of approximately $42K per year. With the constant increasing of fees and rising expenses of conducting business, it's becoming almost impossible to break even.

.. TREC is also proposing the name and license number of the sponsoring broker for salesperson advertisements for all advertisements. The name of the brokerage is already present. Adding license numbers will prove costly beyond belief, not only in monetary terms but also in terms of time, and in perhaps, the number of licensees. There is no hue and cry from the general population in righteous indignation that they cannot identify and complain about someone who has, in their opinion, committed an unethical or arbitrary act. All they need is the last name of the alleged offender, and the TREC website provides all the other information they may need. The budgets for all associations and TREC have already been affected by the loss of licensees.

There are agents I know who have had no transactions this year, or only one or two. There's a good chance we will lose more licensees when their renewals are due. TAR fees are going up. GEPAR fees must increase to cover credit card costs. Having to retrofit signs will add an even more to an already overburdened population of professionals.

Thank you again for your time and consideration. .

Luisa Mauro, Broker / Owner
**Marathon Real Estate**
**Certified Luxury Home Marketing Specialist**
**Certified Negotiation Expert**
**Green Designation**
Direct # 512.633.8220
Fax # 512.583.3814
www.Marathon-RE.com
**Your referrals are the highest compliment that you can give me. Thank you for trusting in my service.**

## TREC proposed rule regarding advertisements

**From :** Samson Young <samsonsay@verizon.net>
**Subject :** TREC proposed rule regarding advertisements
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
Sat Sep 18 2010 3:59:01 PM

It seems to me the current proposal will create consumer confusion with the brokers name being as prominent as the agent.

Perhaps the broker information should be presented as a footnote or disclaimer in considerably smaller font than the agents information.

Sam Young

Realtor® SFR, TAHS
Multi-Million Dollar Producer
Investor Consultant
(972) 837-0788
(817) 733-4262
samsonsay@verizon.net
www.samsellstexas.com
www.coldwellbanker.com

## Proposed change regarding Brokers name and License number on Advertising

**From :** Scott Senter <scott@senterrealtors.com>
**Subject :** Proposed change regarding Brokers name and License number on Advertising
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
**Reply To :** Scott Senter <scott@senterrealtors.com>
Sat Sep 18 2010 3:47:27 PM

Hello MS DeHay;

My Name is Bill Scott Senter, I have been licensed in Texas for 30 years, I hold the ABR, CCIM and GRI designations. Our family real estate company has been in business since 1957.

Our absolute biggest expense in this business is advertising and the proposal of having to add the Brokers name and License number in all advertising will just increase our already prohibitive cost in this area and if this also has to go on business cards it will only clutter up the card and make the numbers more difficult for the consumer to sort. **I am absolutely opposed to this change.**

The idea of having to add the Brokers name and License Number on all Signs is also very cost prohibitive and will detract from the ease of the consumer catching our companies phone number and name as they drive by, this will clutter the sign and be confusing to the consumer. **I am absolutely opposed to this change.**

Regards

Senter,REALTORS
3401 Curry lane
Abilene,TX. 79606
Scott Senter,CCIM
President
325-695-8000 office
325-695-8884 fax
325-668-6922 cell

## New proposed TREC Rules for Advertising

**From :** Jim <jim@jwcrentals.com>
**Subject :** New proposed TREC Rules for Advertising
**To :** Loretta DeHay <Loretta.DeHay@TREC.state.tx.us>
**Cc :** Michael DeHart <michael@fhaar.org>
Sat Sep 18 2010 2:30:19 PM
September 18, 2010

Loretta DeHay

TREC

Dear Ms. DeHay,

I was provided a copy of the proposed new advertising rules by TREC and I would like to voice my opposition to requiring the name and license number of the sponsoring broker in all advertising. These proposed new rules are not only unrealistc, but will pose unnecessary expense on all advertising. Current rules require that a firm name or broker's name to be listed and I think that is enough.

Please voice my opposition to these new rules with TREC.

Sincerely,

James Wright
Broker

## Proposed TREC Rules

**From :** Maria Pyle <mariapyle@hotmail.com>
**Subject :** Proposed TREC Rules
**To :** loretta dehay <loretta.dehay@trec.state.tx.us>
Sat Sep 18 2010 2:14:40 PM
Hello Loretta,

My email concens the proposed advertising changes by TREC. I am a Realtor, an independent contractor, who has a broker by the name of Keller Williams. Keller Williams does not pay for any of my personal marketing. I always have the logo and address of my firm, however, I do not understand why it is necessary to to include the broker license number etc on my personal web site and my ads that **I PAY FOR**. We have always been taught to have our own branding. Afterall, again, I am an independent contractor who pays Keller Williams royalty fees, monthly fees, and capping fees. I pay for my Texas license; not my broker. I took the Texas Real Estate exam;

> not my broker. Are we getting to a point that we really do not want free enterprise but would rather handicap those who want their own businesses? Are we moving real estate into a "big brother" state?

I am hopeful that those wanting to impose these new rules, willo sit back and rethink the purpose or objective of a Texas Realtor and then of the broker, and finally, of TREC.

Thank you,
**Maria Pyle**
Keller Williams
281-923-1843
www.MariaPyleHomes.com

## RE: TREC proposed rules

**From :** Dana Blanton <DBlanton@sos.state.tx.us>
**Subject :** RE: TREC proposed rules
**To :** cmyersrealtor@cebridge.net
**Cc :** loretta dehay <loretta.dehay@trec.state.tx.us>
Thu Sep 16 2010 1:42:49 PM
You must submit your comment on 22 TAC §535.154 to the Texas Real Estate Commission. Here is the contact information published in
the proposed rule amendment:
"Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188,

Austin, Texas 78711-2188...."
Dana Blanton
Editor, Texas Register / Office of the Secretary of State
**From:** cmyersrealtor@cebridge.net [mailto:cmyersrealtor@cebridge.net]
**Sent:** Thursday, September 16, 2010 1:05 PM
**To:** Register Mailbox Account
**Subject:** TREC proposed rules

I believe the new changes of 535.154 regarding advertising to place Broker's license # on advertising is too costly in $$$ as well as time.

If someone wants to complain about an agent, all they need is the last name of agent, and TREC will assist them. Can you see all of us changing signs, letter heads, open houses, etc to add BROKERS'S LICENSE #??Also, why should clients, customers, know our split with with Broker? I think that is personal and private.Most of proposed changes are applauded by Texas Realtors-Thanks

## §535.154 More information please

**From :** Bob McCranie <Bob@BobMcCranie.com>
**Subject :** §535.154 More information please
**To :** general counsel <general.counsel@trec.state.tx.us>

Fri Sep 3 2010 9:13:15 PM

Can I get a fuller subsection a,b,c & d? I really support strengthning the rules on advertising.

Proposed new §535.154 would replace existing §535.154. Subsection (a) provides a definition of "advertisement"; subsection (b) clarifies what communications are not considered advertisements for purposes of the Act and Rules; subsection (c) requires salespersons and brokers to clearly and conspicuously, as defined in the subsection, include the broker's name and license number in all advertising placed by or on behalf of the licensee, when the licensee is acting either as an agent or a principal, by a specified effective date;

(d) provides a laundry list of types of advertising that are considered deceptive and misleading;

(n) prohibits licensees from advertising information regarding service providers that ranks the providers unless the ranking is based on disclosed objective criteria; subsection (o) prohibits licensees from advertising that a licensee offers, sponsors, or conducts commission approved courses unless the licensee is approved to offer the courses; the remaining subsections restate existing advertising rules.

Bob McCranie
Texas Pride Realty - Broker / Owner
972-754-0582 cell 469-574-5108 fax
Bob@BobMcCranie.com

## Fwd: proposed rule change 22 TAC § 535.154(c)

**From :** information@trec.state.tx.us
**Sender :** pat holder <pat.holder@trec.state.tx.us>
**Subject :** Fwd: proposed rule change 22 TAC § 535.154(c)
**To :** general counsel <general.counsel@trec.state.tx.us>
Sat Oct 30 2010 4:29:35 PM
Patricia Holder
AMS Division, TREC
512-465-3926
**From:** "Glenn Still" <glenn@stillbrothers.com>

**To:** information@trec.state.tx.us
**Sent:** Friday, October 29, 2010 2:03:33 PM
**Subject:** proposed rule change 22 TAC § 535.154(c)
Re: 22 TAC § 535.154(c)

Several years ago posting a license number on a sign or advertisement may have been a helpful way to cross reference information about someone- I believe that is no longer true.

With the excellent websites available any member of the public can easily find out about any licensed person by searching for them by name. A long number would be harder for the public to remember than the name that is already there on the sign and would clog the sign making any one part of it harder to read.

I think this rule moves us backwards and hurts the public rather than helps anyone.

Glenn Still

**From:** candace@sntinspections.com
**To:** information@trec.state.tx.us, "douglas oldmixon" <douglas.oldmixon@trec.state.tx.us>
**Cc:** jdeckstrum@cs.com, dona@stockton-scurry-smith.com, meastm@hotmails.com, jaime@americanrealestate.com, chris@dayandwallace.com, "joanne justice" <joanne.justice@cbdfw.com>, talley@con-real.com, avis@aviswukasch.com, adrian@aaare.com
**Sent:** Sunday, October 24, 2010 1:44:47 PM
**Subject:** Lowering the pass rate

Dear Mr. Oldmixon, Mr. Chairman and Commissioners:

I am writing to express my concern about the proposal for lowering the pass rate for inspectors. I strongly feel that this would be a grave disadvantage for consumers. Even though inspectors are general, the perception by the public is that TREC inspectors are the "experts" on houses.

Lowering the pass rate for the exam will allow more inspectors to pass with less of an understanding of the SOP, ethics and rules for inspectors. From my understanding, some of the inspector professional organizations and schools are FOR this change because they want more students and more members.

The concern here should be for the consumer. The consumer deserves to have the best inspectors. Lowering the pass rate does not offer future homeowners a benefit but is actually a detriment.

I implore you; please do not lower the pass rate for inspectors.

Respectfully,

Candace Whitsitt
TREC 7451
Show-N-Tell Inspections P.C.
214-284-9130
214-279-0100 fax
candace@sntinspections.com
www.sntinspections.com

**From:** "Nolan Kienitz" <Nolan@nolansinspections.com>
**To:** "douglas oldmixon" <douglas.oldmixon@trec.state.tx.us>
**Cc:** "Michael Boyett" <borntxn@hotmail.com>, "Brian Murphy - A-Action Home Inspection Group" <brian@a-action.com>, "devon bijansky" <devon.bijansky@trec.state.tx.us>, Bradp@homespec1.com, "Jay Fuller" <fullerjd@yahoo.com>, craig@reioftexas.com, "Robert La Montagne" <rolamco@gmail.com>

**Sent:** Friday, September 3, 2010 8:46:15 PM
**Subject:** Passing Scores ...

Mr. Oldmixon,

This message is a 're-hash' from me as we've traded messages already concerning this issue, but I just want to again vent my dis-pleasure with the actions of TREC concerning the lowering of the passing score for the professional inspectors.

I have heard time and again the "un-intended consequences" due to legislation that has allegedly caused the situation with the schools and the resulting low pass rates.

Lowering the score for inspectors is a serious dumbing down of our profession and I'm very dis-pleased with this action.

To make matters worse with another slap in my face I see where the passing score for the brokers has been "raised". I certainly don't know the basis for that move, but to me it is just another chink against our profession.

As for the schools they need to buck up and start a better internal performance standard and vet potential applicants better. However I am sure their lobby and related politics has played a much heavier hand in this decision as opposed to any input from the actual inspectors.

There is nothing that I expect you or anyone at TREC to do … I just wanted to again officially register my complaint so that it might actually be on record somewhere for the files.

Cheers,
**Nolan E. Kienitz - KI5IO**
**Plano, TX**

TREC - Texas Real Estate Commission - # 7095
ASHI - American Society of Home Inspectors - # 248020
TPREIA - Texas Professional Real Estate Inspectors Association
PTI - Post-Tensioning Institute - Level 1 Inspector
FHA Fee Inspector - J-195
203(k) Consultant - D-0850
ICC - Residential Combination Inspector R-5

**Nolan's Inspections, LLC**
972-922-2111 - Direct
Nolan@NolansInspections.com
www.NolansInspections.com

**Zimbra** **pat.holder@trec.state.tx.us**

## Fwd: License # 7593 - Comments to proposed rule changes

From: "Emmanuel Scanlan" <escanlan@psinspection.com>
To: information@trec.state.tx.us
Cc: escanlan@psinspection.com

Sent: Wednesday, September 29, 2010 8:56:03 AM
Subject: License # 7593 - Comments to proposed rule changes

It is with respect, and without ill intent, that I submit these comments to the proposed rule changes. It is my hope that other ideas and potential avenues are explored to solve the issues these rule changes are intended to correct.

TRD - 201005035
Rule 535.209, Examinations
Proposed 9/10/2010

Changing the passing scores for Professional Inspectors from 80% to 75% It is my opinion that this rule change is in direct conflict with the mission of TREC (as noted on their own WEB page) " The agency exists to safeguard the public interest and protect consumers of real estate services." . It also contradicts the TREC "Compact with Texans" with one of TREC's main goals stated to be " Demand integrity, accountability and high standards , both of license holders and ourselves" . The reason for this change has been brought forth as the failure of teaching institutions to achieve a 55% passing grade on the license test for the students attempting to obtain an Inspector or Professional Inspector license.

Regardless of the reason(s) for this change, the change will only harm consumers by allowing more incapable individuals to easily pass their test for the benefit of the training institutions and NOT the consumers. If anything the test passing scores should be raised instead of lowered to help prevent incapable individuals from entering this licensed profession. This is an opportune time (with the job losses and economy as it is) to help ensure that only the best and brightest are allowed to enter this field.

Raising the bar now will go a long way to helping increase the quality, and commitment to consumers, of Inspectors becoming licensed. Lowering the bar will only draw more incapable people into the profession which is not a protection to consumers! As for the training institutions not meeting the 55% pass rate criteria that is a business issue that they must solve themselves. If they are not properly training and/or screening prospective licensees then the State should not be taking action to condone nor protect this activity.

TRD - 201005035
Rule 535.218, Continuing Education
Proposed 9/10/2010

(a)Continuing education for renewal of a real estate inspector or professional inspector license must include six hours of Texas Standards of Practice/Legal/Ethics Update.
I have a strong objection to this new requirement given the vague and ambiguous condition of the current Standards of Practice. I have no objections to an annual legal and ethics update course of a much shorter duration as these topics can easily be covered in 3 hours. This current condition of the SOP has led to many requests for interpretation, classes already being offered to understand "The true meaning of the SOP", and the SOP requires extensive rewriting from its current form due to its unclear and ambiguous nature. With this new rule we will now be required to pay a training institution to provide us their understanding/opinions of "The true meaning of the SOP". Any small and properly written document (of which the SOP is) would convey its meaning on its own merits and not require additional training time to understand. Unless TREC is going to set a specific course outline, down to what will be taught, then this requirement will do nothing more than cause additional confusion with the SOP, and with Inspectors having to pay for it as well!

It is regrettable that we have many Inspectors now who do not even know nor keep abreast of the changes to the SOP, rules, and laws. However as an alternative to the issues caused by this, and to prevent additional confusion by being forced to listen to a training institutions opinions, I suggest two

potential alternatives. The first option is a simple statement that the Inspector must agree upon before they are allowed to renew their license. This statement can be added to the renewal application and indicate that the Inspector has read and familiarized themselves with the latest SOP, rules and laws. If TREC so chooses they could even add this to the Inspectors new online profile and make it an annual requirement instead. Regardless of what is forced on an Inspector, whose opinion they are given, they will still do as they please and will only answer for it if summoned by TREC due to a consumer complaint. With this method it will be left to the Inspector and can be used against them if they flagrantly violate the SOP, rules or laws.
The second approach is a free online course, provided and completely controlled by TREC as to its content and delivery. This online course can be tasked to the Inspector Advisory Committee to create and maintain as they were the ones who wrote this SOP and provide(d) TREC with the suggested amendments/corrections. This free course can be in addition to the currently required 32 hours of CEU which will not reduce the current CEU training requirement times. The free online training can be a simple PowerPoint presentation listing the changes to the SOP, rules, laws, and explain the purpose of the changes as well as additional information. This training can easily be generated from the many

"Requests For Interpretation" and questions that TREC receives all year. This course can also be made as a mandatory requirement to take at least once each year and logged in the new online profile system. The advantage to this method is that we are now not hearing the opinion of some training institutions instructor. Instead we will be hearing the interpretations directly from the Inspector Advisory Committee members who are creating the SOP, and the Commission members generating the laws and other rules.

Sincerely Emmanuel J. Scanlan
PS Inspection & Property Services LLC
www.psinspection.com TREC License # 7593
International Code Council, Residential Combination Inspector
#5247015-R5 (Electrical, Mechanical, Plumbing and Building)
Certified Infrared Thermographer (ASNT-TC1A Standards)
Texas Department Of Insurance, VIP Inspector # 08507061016

**Agenda Item 8**

8. Discussion and possible action to adopt amendments to:

a. Amend §537.20 concerning Standard Contract Form TREC No. 9-8
b. Amend §537.28 concerning Standard Contract Form TREC No. 20-9
c. Amend §537.30 concerning Standard Contract Form TREC No. 23-10
d. Amend §537.31 concerning Standard Contract Form TREC No. 24-10
e. Amend §537.32 concerning Standard Contract Form TREC No. 25-7
f. Amend §537.37 concerning Standard Contract Form TREC No. 30-8
g. Amend §537.43 concerning Standard Contract Form TREC No. 36-6
h. Amend §537.47 concerning Standard Contract Form TREC No. 40-4

**SUMMARY**

adopts amendments to 22 TAC §537.20 concerning Standard Contract Form TREC No. 9-8; §537.28 concerning Standard Contract Form TREC No. 20-9, One to Four Family Residential Contract (Resale); §537.30 concerning Standard Contract Form TREC No. 23-10, New Home Contract (Incomplete Construction); §537.31 concerning Standard Contract Form TREC No. 24-10, New Home Contract (Completed Construction); §537.32 concerning Standard Contract Form TREC No. 25-7, Farm and Ranch Contract; §537.37 concerning Standard Contract Form TREC No. 30-8, Residential Condominium Contract; §537.43 concerning Standard Contract Form TREC No. 36-6, Addendum for Property Subject to Mandatory Membership in a Property Owners Association; and §537.47 concerning Standard Contract Form TREC No. 40-4 Third Party Financing Condition Addendum for Credit Approval with changes to the proposed text and forms adopted by reference with changes as published in the September 10, 2010 issue of the *Texas Register* (35 TexReg 8284). The amendments adopt by reference eight revised contract forms and one new form for use by Texas real estate licensees.

The difference between the rules and forms as proposed and those adopted are as follows: the proposed new §537.53 concerning Standard Contract form No. 46-0 entitled Non-Realty Items Addenda is not adopted; the title of form No. 40-4 is changed to Third Party Financing Condition Addendum for Credit Approval; references to the title of form No. 40-4 are changed in all relevant forms; the reference to "affidavit" in paragraph 6.C.(1) of all relevant forms is changed to "T-47 Affidavit"; proposed 6.C.(4) "No survey required" is deleted from all relevant forms; paragraph 6.E(2) in all relevant forms is amended to provide notice that the property may be subject to more than one property owners associations if applicable; "if any" is deleted from paragraph 7.D(2) in all relevant forms; paragraph 15.B in all relevant forms is changed to provide for waiver of buyer's or seller's right to enforce specific performance if the party fails to file a petition for such and provide notice to the escrow agent within 45 days of the closing date; paragraph 22 of all relevant forms is corrected for typographical errors; conforming title changes to relevant forms and to delete the reference to the non-realty items addendum are made; the reference to "broker or designee" on page eight of all relevant forms is changed to "licensed supervisor of associate"; paragraph A.2 of Addendum for Property Subject to Mandatory Membership in a Property Owners Association is rewritten for additional clarification.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

The amendments to §537.28 propose to adopt by reference Standard Contract Form TREC No. 20-9, One to Four Family Residential Contract (Resale). Paragraph 2.B. is revised to include mounts and brackets for televisions and speakers; the phrase regarding controls in paragraph 2.C. is rewritten and placed at the end of the list of accessories. Paragraph 4.A.(1) is amended to provide examples of underwriting examples to include appraisal, insurability,

and lender required repairs; the termination provision under this paragraph is revised. Paragraph 4.A.(2) is revised to change Financing Approval to Credit approval. The reference to the title of form no. 40-4 is changed to Third Party Financing Condition Addendum for Credit Approval. The sentence regarding Sellers failure to timely provide the existing survey or affidavit in paragraph 6.C.(1) is moved from the end of the paragraph to the middle of the paragraph; paragraph 6.E.(2) is revised to delete apostrophes to be consistent with statutory provisions; paragraph 6.E(2) is amended to provide notice that the property may be subject to more than one property owners associations. Paragraph 7.D.(2) is rewritten to include a blank line for specific repairs and an admonishment telling parties not to insert general phrases. A notice is added to the end of paragraph 7 reminding the parties about the buyer's rights to conduct inspections, negotiate repairs under a subsequent amendment, or terminate during the option period, if any. Paragraph 9.B.(3) is rewritten; new subparagraph 5 regarding leases is added to paragraph 9.B. The two sentences at the end of paragraph 10 are underlined. Paragraph 12.A.(2) is restructured. Paragraph 15.B is changed to provide for waiver of buyer's or seller's right to enforce specific performance if the party fails to file a petition for such and provide notice to the escrow agent within 45 days of the closing date. Paragraph 18.B. is rewritten for clarity. Addenda are added to and deleted from paragraph 22. Option Period is defined in paragraph 23. Paragraph 24 is rewritten. The Broker Information page is rewritten and restructured.

The amendment to §537.20 proposes to adopt by reference Standard Contract Form TREC No. 9-8, Unimproved Property Contract. The proposed revisions are the same as those proposed for Form TREC No. 20-9 as further described below, except for paragraph 2.

The amendment to §537.30 proposes to adopt by reference Standard Contract Form TREC No. 23-10, New Home Contract (Incomplete Construction). The proposed revisions are the same as those proposed for Form TREC No. 20-9, except for paragraph 2, paragraph 6.C.(1), paragraph 7.B., and paragraph 9.B.(5).

The amendment to §537.31 proposes to adopt by reference Standard Contract Form TREC No. 24-10, New Home Contract (Completed Construction). The proposed revisions are the same as those proposed for Form TREC No. 20-9, except for paragraph 2, paragraph 6.C.(1), paragraph 7.B., and paragraph 9.B.(5).

The amendment to §537.32 proposes to adopt by reference Standard Contract Form TREC No. 25-7, Farm and Ranch Contract. The same amendments are made as those proposed for Form TREC No. 20-9. In addition, paragraph 2.F. is revised to delete "mineral" and "royalty."

The amendment to §537.37 proposes to adopt by reference Standard Contract Form TREC No. 30-8, Residential Condominium Contract. The same amendments are made to 30-8, Residential Condominium Contract as those proposed for Form TREC No. 20-9. In addition, paragraphs 2.B.(2) and 2.C.(2) are amended by adding a provision regarding Buyer's cancellation of the contract; subparagraph (3) is revised and subparagraph (4) is added to paragraph 12.

The amendment to §537.43 propose to adopt by Standard Contract Form TREC No. 36-6, Addendum for Property Subject to Mandatory Membership in a Property Owners Association. Subparagraph A.2. is revised to add a reference to providing an updated resale certificate. New paragraph C. is added regarding deposits for reserves.

The amendment §537.47 proposes to adopt by reference Standard Contract Form TREC No. 40-4 Third Party Financing Condition Addendum for Credit Approval. The references to "Financing Approval" are changed to "Credit Approval." The reference to "Loan Fees" is changed to "Adjusted Original Charges" in subparagraphs (1) and (2) of paragraph A, and paragraphs C and D. The note regarding HUD 92564-CN is deleted.

The reasoned justification for the amendments and forms adopted by reference is to provide updated contract forms that reflect current law and industry practices for use by licensees, and is further articulated below in response to the

comments received.

The commission received 53 comments on the rules and forms as proposed.

Comment: 33 commenters suggested changes to paragraph 6.A(8).

Response: The commission is unable to make the recommended substantive changes without reposting all the forms for notice and comment. The commission may address the suggestions in future contract revisions.

Comment: One commenter suggested adding ice makers in the Seller's Disclosure Notice.

Response: The commission did not make the change because the TREC Seller's Disclosure Notice tracks the statutory requirements of section 5.008 of the Property Code and the commission is not currently reviewing the Seller's Disclosure Notice at this time.

Comment: Two commenters disagreed with changing "financing approval" to "credit approval".

Response: The commission respectfully disagrees with the commenter, but did decide to rephrase the last part of the first sentence of the Third Party Financing Condition Addendum so that it reads: "make every reasonable effort to obtain credit approval for the financing." Additionally, the commission decided to change the title of the addendum to "Third Party Financing Addendum for Credit Approval" and to make conforming changes in Paragraph 4A(2) and in Paragraph 22 of the contract forms.

Comment: One commenter suggested revising the title of the Third Party Financing Addendum to be consistent with "Credit Approval" changes.

Response: The commission agrees with the commenter and revised the name of the form to Third Party Financing Addendum for Credit Approval as describe above.

Comment: One commenter suggested deleting "if any" from paragraph 7.D(2) and other revisions to proposed text.

Response: The commission agrees with the suggestion to delete "if any" from paragraph 7.D(2) but respectfully disagrees with the other suggestions for further non-substantive editing.

Comment: Two commenters disagreed with adding the proposed paragraph that provides no survey is required.

Response: The commission concurs with the commenter and eliminated that paragraph in all the relevant forms.

Comment: Four commenters disagreed with promulgating for required use the Non-Realty Items Addendum.

Response: The commission agrees with the commenters and decided not to promulgate the form but, instead, decided to approve the use of the form on a voluntary basis.

Comment: One commenter suggested removing the reference to city in Paragraph 2.

Response: The commission respectfully disagrees with the suggestion and decided not to adopt it.

Comment: One commenter suggested changing Paragraph 4A(1) to include a requirement for buyer to provide notice that the property has met lenders underwriting requirements or waive such requirements within 7 days, to include a reference to the paragraph number in the reference to the option period in paragraph 7.D(2); to insert the ratification language on page 8 back to the top of the page, and to change the name of the Third Party Financing Condition Addendum as described above.

Response: The commission respectfully disagrees with the suggestions and decided not to adopt them except for the changes to the title of the Third Party Financing Condition Addendum.

Comment: One commenter suggested that the proposed changes to paragraph 15 amounted to changing the statute of limitations for filing an action for specific performance.

Response: The commission respectfully disagrees as parties to a contract may agree to terms and conditions in the contract that affect a party's statutory rights.

Comment: Two commenters generally disagreed with using the term "designee" on page 8.

Response: The commission agrees with the commenter and changed it to "licensed supervisor of associate".

Comment: One commenter suggested adding a reference to "bonus to selling agent" on page 8.

Response: The commission respectfully disagrees with the commenter and decided not to make the suggested change.

Comment: Three commenters suggested making the cost of providing the subdivision information or resale certificate a choice of expense for buyer or seller.

Response: The commission respectfully disagrees and decided not to take action in response to the comments.

Comment: One commenter suggested referencing additional transfer fees in the Addendum for Property Subject to Mandatory Membership in an Owners' Association.

Response: The commission respectfully disagrees and decided not to take action in response to the comment.

Comment: One commenter suggested increasing the time period for providing the updated resale certificate under paragraph A.2. of the Addendum for Property Subject to Mandatory Membership in an Owners' Association.

Response: The commission respectfully disagrees and decided not to take action in response to the comment.

Comment: One commenter suggested changing "or" to "and" in the bolded sentence in Paragraph 6C(1).

Response: The commission respectfully disagrees and decided not to take action in response to the comment.

The revisions to the rules and forms as adopted do not change the nature or scope so much that they could be deemed different rules or forms. The rules and forms as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules and forms as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules and forms.

## STAFF RECOMMENDATION

Adopt the amendments as presented.

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to 22 TAC §537.20 concerning Standard Contract Form TREC No. 9-8; §537.28 concerning Standard Contract Form TREC No. 20-9, One to Four Family Residential Contract (Resale); §537.30 concerning Standard Contract Form TREC No. 23-10, New Home Contract (Incomplete Construction); §537.31 concerning Standard Contract Form TREC No. 24-10, New Home Contract (Completed Construction); §537.32 concerning Standard Contract Form TREC No. 25-7, Farm and Ranch Contract; §537.37 concerning Standard Contract Form TREC No. 30-8, Residential Condominium Contract; §537.43 concerning Standard Contract Form TREC No. 36-6, Addendum for Property Subject to Mandatory Membership in a Property Owners Association; and §537.47 concerning Standard Contract Form TREC No. 40-4 Third Party Financing Condition Addendum for Credit Approval and the forms adopted by reference, with technical, non-substantive corrections as staff may deem necessary or advisable, for adoption to the *Texas Register*.

***§537.20. Standard Contract Form TREC No. 9-~~8~~[7].*** The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-~~8~~**[7]** approved by the Texas Real Estate Commission in ~~**2010**~~ **[2008]** for use in the sale of unimproved property where intended use is for one to four family residences. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

***§537.28. Standard Contract Form TREC No. 20-~~9~~[8].*** The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-~~9~~**[8]** approved by the Texas Real Estate Commission in ~~**2010**~~ **[2008]** for use in the resale of residential real estate. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

***§537.30. Standard Contract Form TREC No. 23-~~10~~[9].*** The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-~~10~~**[9].** approved by the Texas Real Estate Commission in ~~**2010**~~ **[2009]** for use in the sale of a new home where construction is incomplete. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

***§537.31. Standard Contract Form TREC No. 24-~~10~~[9].*** The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-~~10~~**[9]** approved by the Texas Real Estate Commission in ~~**2010**~~ **[2009]** for use in the sale of a new home where construction is completed. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

***§537.32. Standard Contract Form TREC No. 25-~~7~~[6].*** The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-~~7~~**[6]**approved by the Texas Real Estate Commission in ~~**2010**~~ **[2008]** for use in the sale of a farm or ranch. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

***§537.37. Standard Contract Form TREC No. 30-~~8~~[7].*** The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-~~8~~**[7]** approved by the Texas Real Estate Commission in ~~**2010**~~ **[2008]** for use in the resale of a residential condominium unit. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

***§537.43. Standard Contract Form TREC No. 36-~~6~~[5].*** The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-~~6~~**[5]**approved by the Texas Real Estate Commission in ~~**2010**~~ **[2008]** for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

***§537.47. Standard Contract Form TREC No. 40-~~4~~[3].*** The Texas Real Estate Commission adopts by The Texas Real Estate Commission adopts by reference standard contract form, TREC No. 40-~~4~~**[3]**approved by the Texas Real Estate Commission in ~~**2010**~~ **[2008]** for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

EQUAL HOUSING OPPORTUNITY

# UNIMPROVED PROPERTY CONTRACT

NOTICE: Not For Use For Condominium Transactions

**1. PARTIES:** The parties to this contract are _____(Seller) and _____(Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

**2. PROPERTY:** Lot _____, Block _____, _____Addition, City of _____, County of_____, Texas, known as_____ (address/zip code), or as described on attached exhibit together with all rights, privileges and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships (the Property).

**3. SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at closing..... $_____

B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) ..... $_____

C. Sales Price (Sum of A and B) ..... $_____

**4. FINANCING:** The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

❑ A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of $_____ (excluding any loan funding fee or mortgage insurance premium).

(1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s) (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.

(2) Credit Approval: (Check one box only)

❑ (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.

❑ (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.

❑ B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.

❑ C. SELLER FINANCING: A Buyer to Seller of $_____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

**5. EARNEST MONEY:** Upon execution of contract by all, shall $_____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of $_____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

**6. TITLE POLICY AND SURVEY:**

A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:

(1) Restrictive covenants common to the platted subdivision in which the Property is located.
(2) The standard printed exception for standby fees, taxes and assessments.
(3) Liens created as part of the financing described in Paragraph 4.
(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
(6) The standard printed exception as to marital rights.
(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

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B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

❑ (1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at ❑ Seller's ❑ Buyer's expense no later than 3 days prior to Closing Date.

❑ (2) Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.

❑ (3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; or disclosed in the Commitment other than items 6A(1) through (8) above; (ii) any portion of the Property lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity:

_____
_____.

Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property ❑is ❑is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2 in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.



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(5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

(6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

(7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

(8) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property ❑ is ❑ is not located in a Texas Agricultural Development District. For additional information, contact the Texas Department of Agriculture.

**7. PROPERTY CONDITION:**

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.
**NOTICE**: Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.

B. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)
❑ (1) Buyer accepts the Property in its present condition.
❑ (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments:_____ _____.(Do not insert general phrases, such as "subject to inspections," that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

C. COMPLETION OF REPAIRS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs prior to the Closing Date. All required permits must be obtained, and repairs must be performed by persons who are licensed or otherwise permitted by law to provide such repairs. At Buyer's election, any transferable warranties received by Seller with respect to the repairs will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs.

D. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

E. SELLER'S DISCLOSURES: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
(1) any flooding of the Property;
(2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
(3) any environmental hazards or conditions affecting the Property;
(4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;

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(5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
(6) any threatened or endangered species or their habitat affecting the Property.

**8. BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

**9. CLOSING:**

A. The closing of the sale will be on or before _____, 20_____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

(1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.

(2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.

(3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.

(4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

(5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s) and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

**10. POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition upon closing and funding.

**11. SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum or other form has been promulgated by TREC for mandatory use.)

**12. SETTLEMENT AND OTHER EXPENSES:**

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed $ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid

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by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS AND ROLLBACK TAXES:**

A. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property claimed by Seller results in Assessments for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

**14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

**15. DEFAULT:**

A. If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

B. Seller automatically waives Seller's right to enforce specific performance if Seller fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. Buyer automatically waives Buyer's right to enforce specific performance if Buyer fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. The party filing the petition for specific performance must send a copy of the petition to escrow agent at the time the petition is filed.

**16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

**18. ESCROW**:

A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from

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the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.

C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

**19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

| **To Buyer at:** | **To Seller at:** |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| Telephone: (  ) _____ | Telephone: (  ) _____ |
| Facsimile: (  ) _____ | Facsimile: (  ) _____ |
| E-mail: _____ | E-mail: _____ |

**22. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- ❑ Third Party Financing Addendum for Credit Approval
- ❑ Seller Financing Addendum
- ❑ Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- ❑ Buyer's Temporary Residential Lease
- ❑ Seller's Temporary Residential Lease
- ❑ Addendum for Reservation of Oil, Gas and Other Minerals
- ❑ Addendum for "Back-Up" Contract
- ❑ Addendum for Coastal Area Property
- ❑ Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- ❑ Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- ❑ Addendum for Sale of Other Property by Buyer
- ❑ Other (list): _____

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**23. TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller $_____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee ❑will ❑will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**24. CONSULT AN ATTORNEY:** TREC rules prohibit real estate licensees from giving legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

| | |
|---|---|
| Buyer's Attorney is: _____ | Seller's Attorney is: _____ |
| _____ | _____ |
| Telephone: (  ) _____ | Telephone: (  ) _____ |
| Facsimile: (  ) _____ | Facsimile: (  ) _____ |
| E-mail: _____ | E-mail: _____ |

**EXECUTED the _____day of _____, 20_____ (EFFECTIVE DATE).**
**(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

| | |
|---|---|
| _____ | _____ |
| Buyer | Seller |
| _____ | _____ |
| Buyer | Seller |

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (http://www.trec.state.tx.us) TREC NO. 9-8. This form replaces TREC NO. 9-7.

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## BROKER INFORMATION

Other Broker Firm License No.

represents ❑ Buyer only as Buyer's agent
❑ Seller as Listing Broker's subagent

Licensed Supervisor of Associate Telephone

Associate Telephone

Other Broker's Address Facsimile

City State Zip

Associate Email Address

Listing Broker Firm License No.

represents ❑ Seller and Buyer as an intermediary
❑ Seller only as Seller's agent

Licensed Supervisor of Listing Associate Telephone

Listing Associate Telephone

Listing Broker's Office Address Facsimile

City State Zip

Listing Associate's Email Address

Selling Associate Telephone

Selling Associate's Office Address Facsimile

City State Zip

Selling Associate's Email Address

Listing Broker has agreed to pay Other Broker_____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

## OPTION FEE RECEIPT

Receipt of $_____ (Option Fee) in the form of _____ is acknowledged.

Seller or Listing Broker Date

## CONTRACT AND EARNEST MONEY RECEIPT

Receipt of ❑Contract and ❑$_____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____ Email Address

Address Telephone (_____) _____

City State Zip Facsimile: (_____) _____

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EQUAL HOUSING OPPORTUNITY

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

# ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)

NOTICE: Not For Use For Condominium Transactions

**1. PARTIES:** The parties to this contract are _____(Seller) and _____(Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

**2. PROPERTY:**

A. LAND: Lot _____ Block_____, _____ Addition, City of _____ , County of _____ _____, Texas, known as _____ _____(address/zip code), or as described on attached exhibit.

B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following **permanently installed and built-in items,** if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.

C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) satellite dish systems, (ii) garage doors, (iii) entry gates, and (iv) other improvements and accessories.

D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession:_____ _____.

The land, improvements and accessories are collectively referred to as the "Property".

**3. SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at closing..... $_____

B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium)..... $_____

C. Sales Price (Sum of A and B)..... $_____

**4. FINANCING:** The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

❑ A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of $_____ (excluding any loan funding fee or mortgage insurance premium).

(1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s) (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.

(2) Credit Approval: (Check one box only)

❑ (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.

❑ (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.

❑ B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.

❑ C. SELLER FINANCING: A promissory note from Buyer to Seller of $_____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

**5. EARNEST MONEY:** Upon execution of this contract by all parties, Buyer shall deposit $_____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of $_____ with escrow agent within

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days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

**6. TITLE POLICY AND SURVEY:**

A. TITLE POLICY: Seller shall furnish to Buyer at ❑ Seller's ❑ Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
(1) Restrictive covenants common to the platted subdivision in which the Property is located.
(2) The standard printed exception for standby fees, taxes and assessments.
(3) Liens created as part of the financing described in Paragraph 4.
(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
(6) The standard printed exception as to marital rights.
(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)
❑(1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at ❑Seller's ❑Buyer's expense no later than 3 days prior to Closing Date.
❑(2) Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
❑(3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: _____
_____.
Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:
(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly

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reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property ❑is ❑is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

(6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

(7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

**7. PROPERTY CONDITION:**

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.

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B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice): (Check one box only)
❑ (1) Buyer has received the Notice.
❑ (2) Buyer has not received the Notice. Within _____ days after the effective date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.
❑ (3)The Seller is not required to furnish the notice under the Texas Property Code.

C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.

D. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)
❑ (1) Buyer accepts the Property in its present condition.
❑ (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____ _____.(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

E. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

F. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date. All required permits must be obtained, and repairs and treatments must be performed by persons who are licensed or otherwise authorized by law to provide such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs and treatments.

G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding $_____. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

**8. BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

**9. CLOSING:**

A. The closing of the sale will be on or before _____, 20_____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:
(1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
(2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.

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(3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.

(4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

(5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s) and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

**10. POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: ❑upon closing and funding ❑according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

**11. SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

**12. SETTLEMENT AND OTHER EXPENSES:**

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed $ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

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B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS:** Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

**14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

**15. DEFAULT:**

A. If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

B. Seller automatically waives Seller's right to enforce specific performance if Seller fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. Buyer automatically waives Buyer's right to enforce specific performance if Buyer fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. The party filing the petition for specific performance must send a copy of the petition to escrow agent at the time the petition is filed.

**16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion ❑will ❑will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

**18. ESCROW:**

A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.

C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a

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release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

**19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

| | |
|---|---|
| **To Buyer at:** _____ | **To Seller at:** _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| Telephone: ( ) _____ | Telephone: ( ) _____ |
| Facsimile: ( ) _____ | Facsimile: ( ) _____ |
| E-mail: _____ | E-mail: _____ |

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**22. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (Check all applicable boxes):

- ❑ Third Party Financing Addendum for Credit Approval
- ❑ Seller Financing Addendum
- ❑ Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- ❑ Buyer's Temporary Residential Lease
- ❑ Loan Assumption Addendum
- ❑ Addendum for Sale of Other Property by Buyer
- ❑ Addendum for Reservation of Oil, Gas and Other Minerals
- ❑ Addendum for "Back-Up" Contract
- ❑ Addendum for Coastal Area Property
- ❑ Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- ❑ Seller's Temporary Residential Lease
- ❑ Short Sale Addendum
- ❑ Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- ❑ Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
- ❑ Other (list): _____

**23. TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller $_____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee ❑will ❑will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**24. CONSULT AN ATTORNEY:** TREC rules prohibit real estate licensees from giving legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

| | |
|---|---|
| Buyer's Attorney is: _____ | Seller's Attorney is: _____ |
| _____ | _____ |
| Telephone: (  ) _____ | Telephone: (  ) _____ |
| Facsimile: (  ) _____ | Facsimile: (  ) _____ |
| E-mail: _____ | E-mail: _____ |

**EXECUTED the _____ day of _____, 20____ (EFFECTIVE DATE).**
**(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

| | |
|---|---|
| _____ | _____ |
| Buyer | Seller |
| _____ | _____ |
| Buyer | Seller |

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (http://www.trec.state.tx.us) TREC NO. 20-9. This form replaces TREC NO. 20-8.

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## BROKER INFORMATION

Other Broker Firm License No.

represents ❑ Buyer only as Buyer's agent
❑ Seller as Listing Broker's subagent

Licensed Supervisor of Associate Telephone

Associate Telephone

Other Broker's Address Facsimile

City State Zip

Associate Email Address

Listing Broker Firm License No.

represents ❑ Seller and Buyer as an intermediary
❑ Seller only as Seller's agent

Licensed Supervisor of Associate Telephone

Listing Associate Telephone

Listing Broker's Office Address Facsimile

City State Zip

Listing Associate's Email Address

Selling Associate Telephone

Selling Associate's Office Address Facsimile

City State Zip

Selling Associate's Email Address

Listing Broker has agreed to pay Other Broker_____of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

## OPTION FEE RECEIPT

Receipt of $_____ (Option Fee) in the form of _____ is acknowledged.

Seller or Listing Broker Date

## CONTRACT AND EARNEST MONEY RECEIPT

Receipt of ❑Contract and ❑$_____ Earnest Money in the form of _____ is acknowledged.
Escrow Agent: _____ Date: _____

By: _____ _____
Email Address

_____ Telephone (_____) _____
Address

_____ Facsimile: (_____) _____
City State Zip

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PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 11-15-2010

EQUAL HOUSING OPPORTUNITY

# NEW HOME CONTRACT

**(Incomplete Construction)**

NOTICE: Not For Use For Condominium Transactions or Closings Prior to Completion of Construction

**1. PARTIES:** The parties to this contract are _____(Seller) and _____(Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

**2. PROPERTY:** Lot _____,Block_____, _____Addition, City of_____,County of _____ Texas, known as _____(address/zip code), or as described on attached exhibit, together with: (i) improvements, fixtures and all other property described in the Construction Documents; and (ii) all rights, privileges and appurtenances thereto, including but not limited to: permits, easements, and cooperative and association memberships. All property sold by this contract is called the "Property".

**3. SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at closing..... $_____

B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) ..... $_____

C. Sales Price (Sum of A and B)..... $_____

**4. FINANCING:** The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

❑ A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of $_____ (excluding any loan funding fee or mortgage insurance premium).

(1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s), (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.

(2) Credit Approval: (Check one box only)

❑ (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.

❑ (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.

❑ B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.

❑ C. SELLER FINANCING: A promissory note from Buyer to Seller of $_____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

**5. EARNEST MONEY:** Upon execution of this contract by all parties, Buyer shall deposit $_____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of $_____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

**6. TITLE POLICY AND SURVEY:**

A. TITLE POLICY: Seller shall furnish to Buyer at ❑Seller's ❑Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:

(1) Restrictive covenants common to the platted subdivision in which the Property is located.

(2) The standard printed exception for standby fees, taxes and assessments.

(3) Liens created as part of the financing described in Paragraph 4.

(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.

(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.

(6) The standard printed exception as to marital rights.

(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.

(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines,

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encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made after the Substantial Completion Date by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s).
(Check one box only)
❑ (1) At least _____ days prior to the Closing Date, Seller, at Seller's expense, shall provide a new survey to Buyer.
❑ (2) At least _____ days prior to the Closing Date, Buyer, at Buyer's expense, shall obtain a new survey. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: _____.
Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:
(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
(2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property ❑is ❑is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**
(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
(4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
(5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

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(6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

(7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

**7. PROPERTY CONDITION:**

A. ACCESS AND INSPECTIONS: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections.

B. CONSTRUCTION DOCUMENTS: Seller shall complete all improvements to the Property with due diligence in accordance with the Construction Documents. "Construction Documents" means the plans and specifications, the finish out schedules, any change orders, and any allowances related to the plans and specifications, finish out schedules, and change orders. The Construction Documents have been signed by the parties and are incorporated into this contract by reference.

C. COST ADJUSTMENTS: All change orders must be in writing. Increase in costs resulting from change orders or items selected by Buyer which exceed the allowances specified in the Construction Documents will be paid by Buyer as follows:_____
_____.
A decrease in costs resulting from change orders and unused allowances will reduce the Sales Price, with proportionate adjustments to the amounts in Paragraphs 3A and 3B as required by lender.

D. BUYER'S SELECTIONS: If the Construction Documents permit selections by Buyer, Buyer's selections will conform to Seller's normal standards as set out in the Construction Documents or will not, in Seller's judgment, adversely affect the marketability of the Property. Buyer will make required selections within _____ days after notice from Seller.

E. COMPLETION: Seller must commence construction no later than _____ days after the effective date of this contract. The improvements will be substantially completed in accordance with the Construction Documents and ready for occupancy not later than _____, 20___ . The improvements will be deemed to be substantially completed in accordance with the Construction Documents upon the final inspection and approval by all applicable governmental authorities and any lender (Substantial Completion Date). Construction delays caused by acts of God, fire or other casualty, strikes, boycotts or nonavailability of materials for which no substitute of comparable quality and price is available will be added to the time allowed for substantial completion of the construction. However, in no event may the time for substantial completion extend beyond the Closing Date. Seller may substitute materials, equipment and appliances of comparable quality for those specified in the Construction Documents.

F. WARRANTIES: Except as expressly set forth in this contract, a separate writing, or provided by law, Seller makes no other express warranties. Seller shall assign to Buyer at closing all assignable manufacturer warranties.

G. INSULATION: As required by Federal Trade Commission Regulations, the information relating to the insulation installed or to be installed in the Improvements at the Property is: (check only one box below)

❑ (1) as shown in the attached specifications.

❑ (2) as follows:

a) Exterior walls of improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.

b) Walls in other areas of the home: insulated with_____ insulation to a thickness of _____ inches which yields an R-Value of _____.

c) Ceilings in improved living areas: insulated with_____ insulation to a thickness of _____ inches which yields an R-Value of _____.



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d) Floors of improved living areas not applied to a slab foundation: insulated with insulation to a thickness of ___ inches which yields an R-Value of _____.
e) Other insulated areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.

All stated R-Values are based on information provided by the manufacturer of the insulation.

H. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

I. SELLER'S DISCLOSURE: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
(1) any flooding of the Property which has had a material adverse effect on the use of the Property;
(2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
(3) any environmental hazards or conditions materially affecting the Property;
(4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
(5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
(6) any threatened or endangered species or their habitat affecting the Property.

**8. BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

**9. CLOSING:**

A. The closing of the sale will be on or before _____, 20_____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:
(1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
(2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
(3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
(4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing payment of any loans assumed by Buyer and assumed loans will not be in default.

**10. POSSESSION:** Seller shall deliver to Buyer possession of the Property: ❑ upon closing and funding ❑ according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

**11. SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

**12. SETTLEMENT AND OTHER EXPENSES:**

A. The following expenses must be paid at or prior to closing:
(1) Expenses payable by Seller (Seller's Expenses):
(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of

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escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed $ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS AND ROLLBACK TAXES**:

A. PRORATIONS: Taxes for the current year, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer will be obligated to pay taxes for the current year.

B. ROLLBACK TAXES: If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property results in additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

**14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 45 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

**15. DEFAULT:**

A. If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

B. Seller automatically waives Seller's right to enforce specific performance if Seller fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. Buyer automatically waives Buyer's right to enforce specific performance if Buyer fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. The party filing the petition for specific performance must send a copy of the petition to escrow agent at the time the petition is filed. .

**16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Subject to applicable law, any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion ❑will ❑will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

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**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

**18. ESCROW:**

A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, [the parties] and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.

C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

**19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

| | |
|---|---|
| **To Buyer at:** _____ | **To Seller at:** _____ |
| _____ | _____ |
| _____ | _____ |
| Telephone: (  ) _____ | Telephone: (  ) _____ |
| Facsimile: (  ) _____ | Facsimile: (  ) _____ |
| E-mail: _____ | E-mail: _____ |

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**22. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- ❑ Third Party Financing Addendum for Credit Approval
- ❑ Seller Financing Addendum
- ❑ Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- ❑ Buyer's Temporary Residential Lease
- ❑ Loan Assumption Addendum
- ❑ Addendum for Sale of Other Property by Buyer
- ❑ Addendum for Reservation of Oil, Gas and Other Minerals
- ❑ Addendum for "Back-Up" Contract
- ❑ Addendum for Coastal Area Property
- ❑ Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- ❑ Seller's Temporary Residential Lease
- ❑ Short Sale Addendum
- ❑ Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- ❑ Other (list): _____

**23. TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller $_____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee ❑will ❑will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**24. CONSULT AN ATTORNEY:** TREC rules prohibit real estate licensees from giving legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

| | |
|---|---|
| Buyer's Attorney is: _____ | Seller's Attorney is: _____ |
| _____ | _____ |
| Telephone: (  ) _____ | Telephone: (  ) _____ |
| Facsimile: (  ) _____ | Facsimile: (  ) _____ |
| E-mail: _____ | E-mail: _____ |

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**EXECUTED the _____day of _____, 20_____ (EFFECTIVE DATE).**
**(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

_____
Buyer

_____
Buyer

_____
Seller

_____
Seller

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The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 1-800-250-8732 or (512) 459-6544 (http://www.trec.state.tx.us) TREC NO. 23-10. This form replaces TREC NO. 23-9.

## BROKER INFORMATION

Other Broker Firm License No.

represents ❑ Buyer only as Buyer's agent
❑ Seller as Listing Broker's subagent

Licensed Supervisor of Associate Telephone

Associate Telephone

Other Broker's Address Facsimile

City State Zip

Associate Email Address

Listing Broker Firm License No.

represents ❑ Seller and Buyer as an intermediary
❑ Seller only as Seller's agent

Licensed Supervisor of Associate Telephone

Listing Associate Telephone

Listing Broker's Office Address Facsimile

City State Zip

Listing Associate's Email Address

Selling Associate Telephone

Selling Associate's Office Address Facsimile

City State Zip

Selling Associate's Email Address

Listing Broker has agreed to pay Other Broker_____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

## OPTION FEE RECEIPT

Receipt of $_____ (Option Fee) in the form of _____ is acknowledged.

Seller or Listing Broker Date

## CONTRACT AND EARNEST MONEY RECEIPT

Receipt of ❑Contract and ❑$_____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____ _____
Email Address

_____ Telephone (_____) _____
Address

_____ Facsimile: (_____) _____
City State Zip

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PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 11-15-2010

EQUAL HOUSING OPPORTUNITY

# NEW HOME CONTRACT

**(Completed Construction)**

NOTICE: Not For Use For Condominium Transactions or Closings Prior to Completion of Construction

**1. PARTIES:** The parties to this contract are _____ (Seller) and _____(Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

**2. PROPERTY:** Lot _____,Block_____, _____Addition, City of_____,County of_____, Texas, known as _____ _____ (address/zip code), or as described on attached exhibit, together with: (i) improvements, fixtures and all other property located thereon; and (ii) all rights, privileges and appurtenances thereto, including but not limited to: permits, easements, and cooperative and association memberships. All property sold by this contract is called the "Property".

**3. SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at closing ..... $_____

B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) ..... $_____

C. Sales Price (Sum of A and B) ..... $_____

**4. FINANCING:** The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

❑ A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of $_____ (excluding any loan funding fee or mortgage insurance premium).

(1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s), (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.

(2) Credit Approval: (Check one box only)

❑ (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.

❑ (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.

❑ B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.

❑ C. SELLER FINANCING: A promissory note from Buyer to Seller of $_____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

**5. EARNEST MONEY:** Upon execution of this contract by all parties, Buyer shall deposit $_____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of $_____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

**6. TITLE POLICY AND SURVEY:**

A. TITLE POLICY: Seller shall furnish to Buyer at ❑Seller's ❑Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:

(1) Restrictive covenants common to the platted subdivision in which the Property is located.

(2) The standard printed exception for standby fees, taxes and assessments.

(3) Liens created as part of the financing described in Paragraph 4.

(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.

(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.

(6) The standard printed exception as to marital rights.

(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.

(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary

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lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

❑ (1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at ❑ Seller's ❑ Buyer's expense no later than 3 days prior to Closing Date. ❑ (2)Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.

❑ (3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: _____.
Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property ❑is ❑is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies

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Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

(6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

(7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

**7. PROPERTY CONDITION:**

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller shall pay for turning on existing utilities for inspections.

B. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)

❑ (1) Buyer accepts the Property in its present condition.

❑ (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments:_____ _____(Do not insert general phrases, such as "subject to inspections," that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

C. WARRANTIES: Except as expressly set forth in this contract, a separate writing, or provided by law, Seller makes no other express warranties. Seller shall assign to Buyer at closing all assignable manufacturer warranties.

D. INSULATION: As required by Federal Trade Commission Regulations, the information relating to the insulation installed or to be installed in the Improvements at the Property is: (check only one box below)

❑ (1) as shown in the attached specifications.

❑ (2) as follows:

a) Exterior walls of improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.

b) Walls in other areas of the home: insulated with_____ insulation to a thickness of _____ inches which yields an R-Value of _____.

c) Ceilings in improved living areas: insulated with_____ insulation to a thickness of _____ inches which yields an R-Value of _____.

d) Floors of improved living areas not applied to a slab foundation: insulated with insulation to a thickness of ___ inches which yields an R-Value of _____.

e) Other insulated areas:insulated with _____insulation to a thickness of _____ inches which yields an R-Value of _____.

All stated R-Values are based on information provided by the manufacturer of the insulation.

E. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for

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wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

F. COMPLETION OF REPAIRS, TREATMENTS, AND IMPROVEMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs, treatments, and improvements (Work) prior to the Closing Date. All required permits must be obtained, and Work must be performed by persons who are licensed or otherwise authorized by law to provide such Work. At Buyer's election, any transferable warranties received by Seller with respect to the Work will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed Work prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete Work.

G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. SELLER'S DISCLOSURE: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:

(1) any flooding of the Property which has had a material adverse effect on the use of the Property;

(2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;

(3) any environmental hazards or conditions materially affecting the Property;

(4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;

(5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or

(6) any threatened or endangered species or their habitat affecting the Property.

I. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding $_____ . Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

**8. BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

**9. CLOSING:**

A. The closing of the sale will be on or before _____, 20_____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

(1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.

(2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.

(3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.

(4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

**10. POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: ❑ upon closing and funding ❑ according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

**11. SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

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**12. SETTLEMENT AND OTHER EXPENSES:**

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed $ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS AND ROLLBACK TAXES**:

A. PRORATIONS: Taxes for the current year, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer will be obligated to pay taxes for the current year.

B. ROLLBACK TAXES: If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property results in additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

**14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

**15. DEFAULT:**

A. If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or

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survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

B. Seller automatically waives Seller's right to enforce specific performance if Seller fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. Buyer automatically waives Buyer's right to enforce specific performance if Buyer fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. The party filing the petition for specific performance must send a copy of the petition to escrow agent at the time the petition is filed.

**16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Subject to applicable law, any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion ❑will ❑will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

**18. ESCROW:**

A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: : (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.

C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

**19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

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**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

| **To Buyer at:** | **To Seller at:** |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| Telephone: (  ) _____ | Telephone: (  ) _____ |
| Facsimile: (  ) _____ | Facsimile: (  ) _____ |
| E-mail: _____ | E-mail: _____ |

**22. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- ❑ Third Party Financing Addendum for Credit Approval
- ❑ Seller Financing Addendum
- ❑ Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- ❑ Buyer's Temporary Residential Lease
- ❑ Loan Assumption Addendum
- ❑ Addendum for Sale of Other Property by Buyer
- ❑ Addendum for Reservation of Oil, Gas and Other Minerals
- ❑ Addendum for "Back-Up" Contract
- ❑ Addendum for Coastal Area Property
- ❑ Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- ❑ Seller's Temporary Residential Lease
- ❑ Short Sale Addendum
- ❑ Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- ❑ Other (list): _____

**23. TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller $_____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee ❑will ❑will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**24. CONSULT AN ATTORNEY:** TREC rules prohibit real estate licensees from giving legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

| Buyer's Attorney is: _____ | Seller's Attorney is: _____ |
|---|---|
| _____ | _____ |
| Telephone: (  ) _____ | Telephone: (  ) _____ |
| Facsimile: (  ) _____ | Facsimile: (  ) _____ |
| E-mail: _____ | E-mail: _____ |

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**EXECUTED the _____day of _____, 20____ (EFFECTIVE DATE).**
**(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

_____
Buyer

_____
Buyer

_____
Seller

_____
Seller

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The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (http://www.trec.state.tx.us) TREC NO. 24-10. This form replaces TREC NO. 24-9.

## BROKER INFORMATION

Other Broker Firm License No.

represents ❑ Buyer only as Buyer's agent
❑ Seller as Listing Broker's subagent

Licensed Supervisor of Associate Telephone

Associate Telephone

Other Broker's Address Facsimile

City State Zip

Associate Email Address

Listing Broker Firm License No.

represents ❑ Seller and Buyer as an intermediary
❑ Seller only as Seller's agent

Licensed Supervisor of Associate Telephone

Listing Associate Telephone

Listing Broker's Office Address Facsimile

City State Zip

Listing Associate's Email Address

Selling Associate Telephone

Selling Associate's Office Address Facsimile

City State Zip

Selling Associate's Email Address

Listing Broker has agreed to pay Other Broker_____of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

## OPTION FEE RECEIPT

Receipt of $_____ (Option Fee) in the form of _____ is acknowledged.

Seller or Listing Broker Date

## CONTRACT AND EARNEST MONEY RECEIPT

Receipt of ❑Contract and ❑$_____ Earnest Money in the form of _____ is acknowledged.
Escrow Agent: _____ Date: _____

By: _____ _____
Email Address

_____ Telephone (_____) _____
Address

_____ Facsimile: (_____) _____
City State Zip

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PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

11-15-2010

# FARM AND RANCH CONTRACT

EQUAL HOUSING OPPORTUNITY

**1. PARTIES:** The parties to this contract are _____ (Seller) and _____(Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

**2. PROPERTY:** The land, improvements, accessories and crops are collectively referred to as the "Property".

A. LAND: The land situated in the County of _____, Texas, described as follows:_____

_____

or as described on attached exhibit, also known as _____ (address/zip code), together with all rights, privileges, and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships.

B. IMPROVEMENTS:

(1) FARM and RANCH IMPROVEMENTS: The following **permanently installed and built-in items**, if any: windmills, tanks, barns, pens, fences, gates, sheds, outbuildings, and corrals.

(2) RESIDENTIAL IMPROVEMENTS: The house, garage, and all other fixtures and improvements attached to the above-described real property, including without limitation, the following **permanently installed and built-in items,** if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.

C. ACCESSORIES:

(1) FARM AND RANCH ACCESSORIES: The following described related accessories: (check boxes of conveyed accessories) ❑ portable buildings ❑ hunting blinds ❑ game feeders ❑ livestock feeders and troughs ❑ irrigation equipment ❑ fuel tanks ❑ submersible pumps ❑ pressure tanks ❑ corrals ❑ gates ❑ chutes ❑ other:_____

_____

_____

(2) RESIDENTIAL ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) satellite dish systems, (ii) garages, (iii) entry gates, and (iv) other improvements and accessories.

CROPS: Unless otherwise agreed in writing, Seller has the right to harvest all growing crops until delivery of possession of the Property.

E. EXCLUSIONS: The following improvements, accessories, and crops will be retained by Seller and must be removed prior to delivery of possession: _____

_____

_____

F. RESERVATIONS: Any reservation for oil, gas, or other minerals is described on the attached TREC addendum. Seller reserves the following water, timber, or other interests:_____

_____

**3. SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at closing ..... $_____

B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) ..... $_____

C. Sales Price (Sum of A and B) ..... $_____

D. The Sales Price ❑ will ❑ will not be adjusted based on the survey required by Paragraph 6C. If the Sales Price is adjusted, the Sales Price will be calculated on the basis of $ _____ per acre. If the Sales Price is adjusted by more than 10%, either party may terminate this contract by providing written notice to the other party within _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is 10% or less, the adjustment will be made to the amount in ❑ 3A ❑ 3B ❑ proportionately to 3A and 3B.

**4. FINANCING:** The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

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❑ A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of $_____ (excluding any loan funding fee or mortgage insurance premium).

(1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s) (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.

(1) Credit Approval: (Check one box only)

❑ (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.

❑ (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.

❑ B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.

❑ C. SELLER FINANCING: A promissory note from Buyer to Seller of $_____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

**5. EARNEST MONEY:** Upon execution of this contract by all parties, Buyer shall deposit $ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of $_____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

**6. TITLE POLICY AND SURVEY:**

A. TITLE POLICY: Seller shall furnish to Buyer at ❑Seller's ❑Buyer's expense an owner policy of title insurance (Title Policy) issued by: _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:

(1) The standard printed exception for standby fees, taxes and assessments.

(2) Liens created as part of the financing described in Paragraph 4.

(3) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.

(4) The standard printed exception as to marital rights.

(5) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.

(6) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only):

❑ (1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** The existing survey ❑ will ❑ will not be recertified to a date subsequent to the effective date of this contract at the expense of ❑ Buyer ❑ Seller. If the existing survey is not approved by the Title Company or Buyer's lender (s), a new survey will be obtained at the expense of ❑ Buyer ❑ Seller no later than 3 days prior to Closing Date.

❑ (2) Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.

❑ (3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title disclosed on the survey other than items 6A(1) through (5) above; or disclosed in the Commitment other than items 6A(1) through (6) above; (ii) any portion of the Property lying in a special flood hazard area (Zone V or A) as shown on the current Federal

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Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity:

_____

_____

_____

Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. EXCEPTION DOCUMENTS: Prior to the execution of the contract, Seller has provided Buyer with copies of the Exception Documents listed below or on the attached exhibit. Matters reflected in the Exception Documents listed below or on the attached exhibit will be permitted exceptions in the Title Policy and will not be a basis for objection to title:

| Document | Date | Recording Reference |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

F. SURFACE LEASES: Prior to the execution of the contract, Seller has provided Buyer with copies of written leases and given notice of oral leases (Leases) listed below or on the attached exhibit. The following Leases will be permitted exceptions in the Title Policy and will not be a basis for objection to title: _____

_____

_____

G. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(3) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(4) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

(5) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to

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determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

(6) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

(7) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property ❑ is ❑ is not located in a Texas Agricultural Development District. For additional information contact the Texas Department of Agriculture.

**7. PROPERTY CONDITION:**

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.
**NOTICE**: Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.

B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice): (Check one box only)
❑ (1) Buyer has received the Notice
❑ (2) Buyer has not received the Notice. Within _____ days after the effective date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.
❑ (3) The Texas Property Code does not require this Seller to furnish the Notice.

C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.

D. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)
❑ (1) Buyer accepts the Property in its present condition.
❑ (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____ _____.(Do not insert general phrases, such as "subject to inspections," that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

E. COMPLETION OF REPAIRS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs prior to the Closing Date. All required permits must be obtained, and repairs must be performed by persons who are licensed or otherwise permitted by law to provide such repairs. At Buyer's election, any transferable warranties received by Seller with respect to the repairs will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs.

F. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. SELLER'S DISCLOSURES: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
(1) any flooding of the Property which has had a material adverse effect on the use of the

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Property;
(2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
(3) any environmental hazards or conditions materially affecting the Property;
(4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
(5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
(6) any threatened or endangered species or their habitat affecting the Property.

I. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding $_____. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

J. GOVERNMENT PROGRAMS: The Property is subject to the government programs listed below or on the attached exhibit:_____.
Seller shall provide Buyer with copies of all governmental program agreements. Any allocation or proration of payment under governmental programs is made by separate agreement between the parties which will survive closing.

**8. BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

**9. CLOSING:**

A. The closing of the sale will be on or before _____, 20_____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:
(1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6, an assignment of Leases, and furnish tax statements or certificates showing no delinquent taxes on the Property.
(2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
(3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
(4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
(5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s) and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

**10. POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: ❑ upon closing and funding ❑ according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

**11. SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum or other form has been promulgated by TREC for mandatory use.)

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**12. SETTLEMENT AND OTHER EXPENSES:**

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed $ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses) Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS AND ROLLBACK TAXES:**

A. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year. Rentals which are unknown at time of closing will be prorated between Buyer and Seller when they become known.

B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property claimed by Seller results in Assessments for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

**14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer, (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

**15. DEFAULT:**

A. If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

B. Seller automatically waives Seller's right to enforce specific performance if Seller fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. Buyer automatically waives Buyer's right to enforce specific performance if Buyer fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. The party filing the petition for specific performance must send a copy of the petition to escrow agent at the time the petition is filed.



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**16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion ❑will ❑will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

**18. ESCROW:**

A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.

C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

**19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

| **To Buyer at:** | **To Seller at:** |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| Telephone: (  ) _____ | Telephone: (  ) _____ |
| Facsimile: (  ) _____ | Facsimile: (  ) _____ |
| E-mail: _____ | E-mail: _____ |



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**22. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- ❑ Third Party Financing Addendum for Credit Approval
- ❑ Seller Financing Addendum
- ❑ Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- ❑ Buyer's Temporary Residential Lease
- ❑ Loan Assumption Addendum
- ❑ Addendum for Sale of Other Property by Buyer
- ❑ Addendum for Reservation of Oil, Gas and Other Minerals
- ❑ Addendum for "Back-Up" Contract
- ❑ Addendum for Coastal Area Property
- ❑ Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- ❑ Seller's Temporary Residential Lease
- ❑ Short Sale Addendum
- ❑ Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- ❑ Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
- ❑ Other (list): _____

**23. TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller $_____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee ❑will ❑will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**24. CONSULT AN ATTORNEY:** TREC rules prohibit real estate licensees from giving legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

| | |
|---|---|
| Buyer's Attorney is: _____ | Seller's Attorney is: _____ |
| _____ | _____ |
| Telephone: ( ) _____ | Telephone: ( ) _____ |
| Facsimile: ( ) _____ | Facsimile: ( ) _____ |
| E-mail: _____ | E-mail: _____ |

**EXECUTED the _____day of _____, 20_____ (EFFECTIVE DATE).**
**(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

| | |
|---|---|
| _____ | _____ |
| Buyer | Seller |
| _____ | _____ |
| Buyer | Seller |

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (http://www.trec.state.tx.us) TREC NO. 25-7. This form replaces TREC NO. 25-6.

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## RATIFICATION OF FEE

Listing Broker has agreed to pay Other Broker_____ of the total Sales Price when Listing Broker's fee is received. Escrow Agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.

Other Broker: Listing Broker:

By: _____ By: _____

## BROKER INFORMATION AND AGREEMENT FOR PAYMENT OF BROKERS' FEES

| | |
|---|---|
| Other Broker License No. | Listing or Principal Broker License No. |
| Licensed Supervisor of Associate Telephone | Licensed Supervisor of Associate Telephone |
| Associate | Associate |
| Address | Address |
| City State Zip | City State Zip |
| Telephone Facsimile | Telephone Facsimile |
| E-mail | E-mail |
| represents ❑ Buyer only as Buyer's agent ❑ Seller as Listing Broker's subagent | represents ❑ Seller only ❑ Buyer only ❑ Seller and Buyer as an intermediary |

Upon closing of the sale by Seller to Buyer of the Property described in the contract to which this fee agreement is attached: (a) ❑Seller ❑ Buyer will pay Listing/Principal Broker ❑a cash fee of $ _____ or ❑ _____% of the total Sales Price; and (b) ❑Seller ❑ Buyer will pay Other Broker ❑a cash fee of $_____or ❑ _____% of the total Sales Price. Seller/Buyer authorizes and directs Escrow Agent to pay the brokers from the proceeds at closing.

**Brokers' fees are negotiable. Brokers' fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested or maintained by the Texas Real Estate Commission.**

| | |
|---|---|
| Seller | Buyer |
| Seller | Buyer |

**Do not sign if there is a separate written agreement for payment of Brokers' fees.**

## OPTION FEE RECEIPT

Receipt of $_____ (Option Fee) in the form of _____ is acknowledged.

Seller or Listing Broker _____ Date _____

## CONTRACT AND EARNEST MONEY RECEIPT

Receipt of ❑Contract and ❑$_____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____ _____ Email Address

_____ Address Telephone (_____) _____

_____ Facsimile: (_____) _____

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PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 11-15-2010

NOTICE: Not For Use Where Seller Owns Fee Simple Title To Land Beneath Unit

# RESIDENTIAL CONDOMINIUM CONTRACT (RESALE)

**1. PARTIES:** The parties to this contract are _____ (Seller) and _____(Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

**2. PROPERTY AND CONDOMINIUM DOCUMENTS:**

A. The Condominium Unit, improvements and accessories described below are collectively referred to as the "Property".

(1) CONDOMINIUM UNIT: Unit _____, in Building _____, of _____, a condominium project, located at _____(address/zip code), City of _____,County of _____, Texas, described in the Condominium Declaration and Plat and any amendments thereto of record in said County; together with such Unit's undivided interest in the Common Elements designated by the Declaration, including those areas reserved as Limited Common Elements appurtenant to the Unit and such other rights to use the Common Elements which have been specifically assigned to the Unit in any other manner. Parking areas assigned to the Unit are:_____.

(2) IMPROVEMENTS: All fixtures and improvements attached to the above described real property including without limitation, the following **permanently installed and built-in items**, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, mounts and brackets for televisions and speakers, heating and air conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described Condominium Unit.

(3) ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) satellite dish system, (ii) garage doors, (iii) entry gates, and (iv) other improvements and accessories.

(4) EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: _____ _____.

B. The Declaration, Bylaws and any Rules of the Association are called "Documents". (Check one box only):

❑ (1) Buyer has received a copy of the Documents. Buyer is advised to read the Documents before signing the contract.

❑ (2) Buyer has not received a copy of the Documents. Seller shall deliver the Documents to Buyer within _____ days after the effective date of the contract. Buyer may cancel the contract before the sixth day after Buyer receives the Documents by hand-delivering or mailing written notice of cancellation to Seller by certified United States mail, return receipt requested. If Buyer cancels the contract pursuant to this paragraph, the contract will terminate and the earnest money will be refunded to Buyer.

❑ (3) Buyer has received Seller's affidavit that Seller requested information

C. The Resale Certificate from the condominium owners association (the Association) is called the "Certificate". The Certificate must be in a form promulgated by TREC or required by the parties. The Certificate must have been prepared no more than 3 months before the date it is delivered to Buyer and must contain at a minimum the information required by Section 82.157, Texas Property Code.

(Check one box only):

❑ (1) Buyer has received the Certificate.

❑ (2) Buyer has not received the Certificate. Seller shall deliver the Certificate to Buyer within_____days after the effective date of the contract. Buyer may cancel the contract before the sixth day after the date Buyer receives the Certificate by hand-delivering or mailing written notice of cancellation to Seller by certified United States mail, return receipt requested. If Buyer cancels the contract pursuant to this paragraph, the contract will terminate and the earnest money will be refunded to Buyer.

❑ (3) Buyer has received Seller's affidavit that Seller requested information from the Association concerning its financial condition as required by the Texas Property Code, and that the Association did not provide a Certificate or information required in the Certificate. Buyer and Seller agree to waive the requirement to furnish the Certificate.

**3. SALES PRICE:**

A. Cash portion of Sales Price payable by Buyer at closing..... $_____

B. Sum of all financing described below (excluding any loan funding

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fee or mortgage insurance premium) ..... $_____
C. Sales Price (Sum of A and B)..... $_____

**4. FINANCING:** The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

❑ A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of $_____ (excluding any loan funding fee or mortgage insurance premium).

(1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s), (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.

(2) Credit Approval: (Check one box only)

❑ (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.

❑ (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.

❑ B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.

❑ C. SELLER FINANCING: A promissory note from Buyer to Seller of $_____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

**5. EARNEST MONEY:** Upon execution of this contract by all parties, Buyer shall deposit $_____ as earnest money with _____, as escrow agent, at _____(address). Buyer shall deposit additional earnest money of $_____ with escrow agent within days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

**6. TITLE POLICY:**

A. TITLE POLICY: Seller shall furnish to Buyer at ❑Seller's ❑Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:

(1) Restrictive covenants common to the platted subdivision in which the Property is located.
(2) The standard printed exception for standby fees, taxes and assessments.
(3) Liens created as part of the financing described in Paragraph 4.
(4) Terms and provisions of the Documents including the assessments and platted easements.
(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
(6) The standard printed exception as to marital rights.
(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements.

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: _____. Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment and Exception Documents. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

D. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.



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(2) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(3) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(4) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

(5) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

**7. PROPERTY CONDITION:**

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.

B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice): (Check one box only)

❑ (1) Buyer has received the Notice.

❑ (2) Buyer has not received the Notice. Within _____ days after the effective date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.

❑ (3) The Texas Property Code does not require this Seller to furnish the Notice.

C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.

D. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)

❑ (1) Buyer accepts the Property in its present condition.

❑ (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments:_____
_____.
(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

E. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or 0treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

F. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date. All required permits must be obtained, and repairs and treatments must be performed by persons who are licensed or otherwise authorized by law to provide such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and

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treatments prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs and treatments.

G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding $_____. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

**8. BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

**9. CLOSING:**

A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections to matters disclosed in the Commitment have been cured, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

(1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.

(2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.

(3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.

(4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

(5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s) and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

**10. POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: ❑ upon closing and funding ❑ according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

**11. SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

**12. SETTLEMENT AND OTHER EXPENSES:**

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; lender, FHA, or VA completion requirements; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed $ _____ to be applied in the

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following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

(3) Except as provided by 12(A)(4) below, Buyer shall pay any and all Association fees or other charges resulting from the transfer of the Property not to exceed $_____ and Seller shall pay any excess.

(4) Buyer shall pay any deposits for reserves required at closing by the Association.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS:** Taxes for the current year, interest, maintenance fees, regular condominium assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year. Cash reserves from regular condominium assessments for deferred maintenance or capital improvements established by the Association will not be credited to Seller. Any special condominium assessment due and unpaid at closing will be the obligation of Seller.

**14. CASUALTY LOSS:** If any part of the Unit which Seller is solely obligated to maintain and repair under the terms of the Declaration is damaged or destroyed by fire or other casualty, Seller shall restore the same to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer, (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. If any part of the Common Elements or Limited Common Elements appurtenant to the Unit is damaged or destroyed by fire or other casualty loss, Buyer will have 7 days from receipt of notice of such casualty loss within which to notify Seller in writing that the contract will be terminated unless Buyer receives written confirmation from the Association that the damaged condition will be restored to its previous condition within a reasonable time at no cost to Buyer. Unless Buyer gives such notice within such time, Buyer will be deemed to have accepted the Property without confirmation of such restoration. Seller will have 7 days from the date of receipt of Buyer's notice within which to cause to be delivered to Buyer such confirmation. If written confirmation is not delivered to Buyer as required above, Buyer may terminate this contract and the earnest money will be refunded to Buyer. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

**15. DEFAULT:**

A. If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

B. Seller automatically waives Seller's right to enforce specific performance if Seller fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. Buyer automatically waives Buyer's right to enforce specific performance if Buyer fails to file a petition for specific performance within 45 days after the Closing Date as specified in Paragraph 9 or as extended in a written amendment in escrow agent's possession. The party

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filing the petition for specific performance must send a copy of the petition to escrow agent at the time the petition is filed.

**16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion ❑will ❑will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

**18. ESCROW:**

A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.

C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

**19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

| **To Buyer at:** | **To Seller at:** |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| Telephone: (  ) _____ | Telephone: (  ) _____ |
| Facsimile: (  ) _____ | Facsimile: (  ) _____ |
| E-mail: _____ | E-mail: _____ |



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**22. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- ❑ Third Party Financing Addendum for Credit Approval
- ❑ Loan Assumption Addendum
- ❑ Buyer's Temporary Residential Lease
- ❑ Seller's Temporary Residential Lease
- ❑ Addendum for Sale of Other Property by Buyer
- ❑ Addendum for "Back-Up" Contract
- ❑ Seller Financing Addendum
- ❑ Addendum for Coastal Area Property
- ❑ Short Sale Addendum
- ❑ Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
- ❑ Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- ❑ Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- ❑ Addendum for Release of Liability on Assumption of FHA, VA, or Conventional Loan Restoration of Seller's Entitlement for VA Guaranteed Loan
- ❑ Other (list): _____

**23. TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller $_____ (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within _____ days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee ❑will ❑will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**24. CONSULT AN ATTORNEY:** TREC rules prohibit real estate licensees from giving legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

| | |
|---|---|
| Buyer's Attorney is: _____ | Seller's Attorney is: _____ |
| _____ | _____ |
| Telephone: ( ) _____ | Telephone: ( ) _____ |
| Facsimile: ( ) _____ | Facsimile: ( ) _____ |
| E-mail: _____ | E-mail: _____ |

**EXECUTED the _____day of _____, 20_____ (EFFECTIVE DATE).**
**(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

| | |
|---|---|
| _____ | _____ |
| Buyer | Seller |
| _____ | _____ |
| Buyer | Seller |

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (http://www.trec.state.tx.us) TREC NO. 30-8. This form replaces TREC NO. 30-7.



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## BROKER INFORMATION

Other Broker Firm License No.

represents ❑ Buyer only as Buyer's agent
❑ Seller as Listing Broker's subagent

Licensed Supervisor of Associate Telephone

Associate Telephone

Other Broker's Address Facsimile

City State Zip

Associate Email Address

Listing Broker Firm License No.

represents ❑ Seller and Buyer as an intermediary
❑ Seller only as Seller's agent

Licensed Supervisor of Associate Telephone

Listing Associate Telephone

Listing Broker's Office Address Facsimile

City State Zip

Listing Associate's Email Address

Selling Associate Telephone

Selling Associate's Office Address Facsimile

City State Zip

Selling Associate's Email Address

Listing Broker has agreed to pay Other Broker_____of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

## OPTION FEE RECEIPT

Receipt of $_____ (Option Fee) in the form of _____ is acknowledged.

Seller or Listing Broker Date

## CONTRACT AND EARNEST MONEY RECEIPT

Receipt of ❑Contract and ❑$_____ Earnest Money in the form of _____ is acknowledged.
Escrow Agent: _____ Date: _____

By: _____ _____
Email Address

_____ Telephone (_____) _____
Address

_____ Facsimile: (_____) _____
City State Zip

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EQUAL HOUSING OPPORTUNITY

# ADDENDUM FOR PROPERTY SUBJECT TO MANDATORY MEMBERSHIP IN A PROPERTY OWNERS ASSOCIATION

(NOT FOR USE WITH CONDOMINIUMS)

**ADDENDUM TO CONTRACT CONCERNING THE PROPERTY AT**

_____

(Street Address and City)

_____

(Name of Property Owners Association)

**A. SUBDIVISION INFORMATION:** "Subdivision Information" means: (i) the restrictions applying to the subdivision, (ii) the bylaws and rules of the Property Owners Association (Association), and (iii) a resale certificate, all of which comply with Section 207.003 of the Texas Property Code.

(Check only one box):

❑ 1. Within _____ days after the effective date of the contract, Seller shall, at Seller's expense, deliver the Subdivision Information to Buyer. If Buyer does not receive the Subdivision Information, Buyer may terminate the contract at any time prior to closing and the earnest money will be refunded to Buyer. If Seller delivers the Subdivision Information, Buyer may terminate the contract for any reason within 7 days after Buyer receives the Subdivision Information or prior to closing, whichever first occurs, and the earnest money will be refunded to Buyer.

❑ 2. Buyer has received and approved the Subdivision Information before signing the contract. Buyer ❑ does ❑ does not require an updated resale certificate. If Buyer requires an updated resale certificate, Seller, at Buyer's expense, shall deliver it to Buyer within 10 days after receiving payment for the updated resale certificate from Buyer. Buyer may terminate this contract and the earnest money will be refunded to Buyer if Seller fails to deliver the updated resale certificate within the time required.

❑ 3. Buyer does not require delivery of the Subdivision Information.

If Seller becomes aware of any material changes in the Subdivision Information, Seller shall promptly give notice to Buyer.

Buyer may terminate the contract prior to closing by giving written notice to Seller if: (i) any of the Subdivision Information provided was not true; or (ii) any material adverse change in the Subdivision Information occurs prior to closing, and the earnest money will be refunded to Buyer.

**B. FEES:** Except as provided by Paragraph C, Buyer shall pay any and all Association fees or other charges resulting from the transfer of the Property not to exceed $_____ and Seller shall pay any excess.

**C. DEPOSITS FOR RESERVES:** Buyer shall pay any deposits for reserves required at closing by the Association.

**NOTICE TO BUYER REGARDING REPAIRS BY THE ASSOCIATION:** The Association may have the sole responsibility to make certain repairs to the Property. If you are concerned about the condition of any part of the Property which the Association is required to repair, you should not sign the contract unless you are satisfied that the Association will make the desired repairs.

_____ _____

Buyer Seller

_____ _____

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (http://www.trec.state.tx.us) TREC No. 36-6. This form replaces TREC No. 36-5.

11-15-2010 Draft

EQUAL HOUSING OPPORTUNITY

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

# THIRD PARTY FINANCING ADDENDUM FOR CREDIT APPROVAL

TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Street Address and City)

Buyer shall apply promptly for all financing described below and make every reasonable effort to obtain credit approval for the financing (Credit Approval). Buyer shall furnish all information and documents required by lender for Credit Approval. Credit Approval will be deemed to have been obtained when (1) the terms of the loan(s) described below are available and (2) lender determines that Buyer has satisfied all of lender's requirements related to Buyer's assets, income and credit history. If Buyer cannot obtain Credit Approval, Buyer may give written notice to Seller within ____ days after the effective date of this contract and this contract will terminate and the earnest money will be refunded to Buyer**. If Buyer does not give such notice within the time required, this contract will no longer be subject to Credit Approval. Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

*NOTE: Credit Approval does not include approval of lender's underwriting requirements for the Property, as specified in Paragraph 4.A.(1) of the contract.*

Each note must be secured by vendor's and deed of trust liens.

**CHECK APPLICABLE BOXES:**

❑ A. CONVENTIONAL FINANCING:

❑ (1) A first mortgage loan in the principal amount of $ _____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____% per annum for the first _____year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____ of the loan.

❑ (2) A second mortgage loan in the principal amount of $_____(excluding any financed PMI premium), due in full in _____year(s), with interest not to exceed _____% per annum for the first _____year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____ % of the loan.

❑ B. TEXAS VETERANS LOAN: A loan(s) from the Texas Veterans Land Board of $_____ for a period in the total amount of _____years at the interest rate established by the Texas Veterans Land Board."

❑ C. FHA INSURED FINANCING: A Section _____ FHA insured loan of not less than $_____ (excluding any financed MIP), amortizable monthly for not less than _years, with interest not to exceed _____% per annum for the first _____year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____ % of the loan. As required by HUD-FHA, if FHA valuation is unknown, "*It is expressly agreed that, notwithstanding any other provision of this contract, the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the purchaser (Buyer) has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than $_____. The purchaser (Buyer) shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the*

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_____
(Address of Property)

*appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the Property. The purchaser (Buyer) should satisfy himself/herself that the price and the condition of the Property are acceptable."*

❑ D. VA GUARANTEED FINANCING: A VA guaranteed loan of not less than $_____ (excluding any financed Funding Fee), amortizable monthly for not less than_____years, with interest not to exceed_____% per annum for the first _____year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____% of the loan.

VA NOTICE TO BUYER: "*It is expressly agreed that, notwithstanding any other provisions of this contract, the Buyer shall not incur any penalty by forfeiture of earnest money or otherwise or be obligated to complete the purchase of the Property described herein, if the contract purchase price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs. The Buyer shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs."*

If Buyer elects to complete the purchase at an amount in excess of the reasonable value established by VA, Buyer shall pay such excess amount in cash from a source which Buyer agrees to disclose to the VA and which Buyer represents will not be from borrowed funds except as approved by VA. If VA reasonable value of the Property is less than the Sales Price, Seller may reduce the Sales Price to an amount equal to the VA reasonable value and the sale will be closed at the lower Sales Price with proportionate adjustments to the down payment and the loan amount.

Buyer hereby authorizes any lender to furnish to the Seller or Buyer or their representatives information relating only to the status of Credit Approval of Buyer.

_____ _____
Buyer Seller

_____ _____
Buyer Seller

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This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (http://www.trec.state.tx.us) TREC No. 40-4. This form replaces TREC No. 40-3.

# Comments on Contract forms

## Paragraph 6(a)(8)

**Amendment to Residential Contract**

**From :** Laurie Wirth
**Subject :** Ammendment to Residential Contract
**To :** general counsel <general.counsel@trec.state.tx.us>
**Reply To :**
Fri Oct 15 2010 1:06:12 PM
"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: Buyer, at Buyer's expense, may have the exception amended to read, shortages in area.**

To**: ☐ Buyer declines, ☐Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

This buyer selection needs to be offered to every buyer. It currently it is being left to the Title Companies to explain to the buyer and is being done inconsistently. I feel that the buyer should have the option to select this action in the same manner as other selections are made in the contract. By simply adding selection ?boxes? and slightly revising the language this can be done. This will mean Realtors have one more item to explain to a buyer but perhaps that will be better than leaving it to a third party that is not a party to the contract. This action should benefit the consumer. This might even be important enough to be in ?Bob bold?."

Laurie Wirth
214-223-7488
Keller Williams Realty
3600 Preston Rd.
Plano, TX 75093

---

**Proposed Change to Paragraph 6.A**
**From :** Doug Wieser
**Subject :** Proposed Change to Paragraph 6.A
**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Oct 14 2010 3:18:59 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: ". Buyer declines, .Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

I feel that the buyer should have the option to select this action in the same manner as other selections are made in the contract. By simply adding selection "boxes" and slightly revising the language this can be done. This will mean Realtors have one more item to explain to a buyer, but that will be better than leaving it to a third party that is not a party to the contract.

Thank you for your consideration.

**DOUG WIESER, GRI, ABR**
Keller Williams Realty – Plano

3600 Preston Road, Suite 100
Plano, Texas 75093

---

**Proposed change to Paragraph 6.A (8)**
**From :** Deb Reich, ABR, CRS
**Subject :** Proposed change to Paragraph 6.A (8)
**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Oct 14 2010 1:20:27 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

**Deb Reich, ABR, CRS, GREEN**
Keller Williams Realty Plano

---

**amend contract**
**From :** Robin Mowrer
**Subject :** amend contract
**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Oct 14 2010 12:42:32 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."

To: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".

This buyer selection needs to be offered to every buyer. It currently it is being left to the Title Companies to explain to the buyer and is being done inconsistently. I feel that the buyer should have the option to select this action in the same manner as other selections are made in the contract. By simply adding selection "boxes" and slightly revising the language this can be done. This will mean Realtors have one more item to explain to a buyer but perhaps that will be better than leaving it to a third party that is not a party to the contract. This action should benefit the consumer. This might even be important enough to be in "bold"."

Thanks for all of your help!!!
--
**Robin Mowrer**
**Keller Williams Realty**

---

**Amending contract**
**From :** jimmy mac **Subject :** Amending contract
**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Oct 14 2010 11:49:15 AM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: “Buyer, at Buyer’s expense, may have the exception amended to read, “shortages in area”.”**

To**: “□ Buyer declines, □Buyer elects, at Buyer’s expense, to amend the exception to read, “shortages in area”.**

This buyer selection needs to be offered to every buyer. It currently it is being left to the Title Companies to explain to the buyer and is being done inconsistently. I feel that the buyer should have the option to select this action in the same manner as other selections are made in the contract. By simply adding selection “boxes” and slightly revising the language this can be done. This will mean Realtors have one more item to explain to a buyer but perhaps that will be better than leaving it to a third party that is not a party to the contract. This action should benefit the consumer. This might even be important enough to be in “bold”.

Thank you for your time in this...
James Reimers 0472883

---

**Please amend the last line in paragraph 6.A (8) of the 1-4 Family Residential Contract (Resale) TREC**
**From :** Diane Tackett
**Subject :** Please amend the last line in paragraph 6.A (8) of the 1-4 Family Residential Contract (Resale) TREC
**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Oct 14 2010 10:08:27 AM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: ?Buyer, at Buyer?s expense, may have the exception amended to read, ?shortages in area?.?**

To**: ?? Buyer declines, ?Buyer elects, at Buyer?s expense, to amend the exception to read, ?shortages in area?.**

Diane Tackett
Keller Williams Plano

---

**change to Paragraph 6.A (8)**
**From :** pshah@kw.com
**Subject :** change to Paragraph 6.A (8)
**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Oct 14 2010 9:57:05 AM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: ?Buyer, at Buyer?s expense, may have the exception amended to read, ?shortages in area?.?**

To**: ?? Buyer declines, ?Buyer elects, at Buyer?s expense, to amend the exception to read, ?shortages in area?.**

Pankaj "Peter" Shah
Keller Williams Realty

---

**Proposed change to Paragraph 6.A (8) of ) TREC NO.20-8**
**From :** Cretha Mathews
**Subject :** Proposed change to Paragraph 6.A (8) of ) TREC NO.20-8

**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Oct 14 2010 9:45:49 AM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: ". Buyer declines, .Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

This buyer selection needs to be offered to every buyer. It currently it is being left to the Title Companies to explain to the buyer and is being done inconsistently. I feel that the buyer should have the option to select this action in the same manner as other selections are made in the contract. By simply adding selection "boxes" and slightly revising the language this can be done. This will mean Realtors have one more item to explain to a buyer but perhaps that will be better than leaving it to a third party that is not a party to the contract. This action should benefit the consumer. This might even be important enough to be in "bold".

Cretha Mathews
Action Property Management

---

**Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:**
**From :** carolecurtis
**Subject :** Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL
CONTRACT (RESALE) TREC NO.20-8 as follows:
**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Oct 14 2010 9:11:56 AM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

This buyer selection needs to be offered to every buyer. It currently it is being left to the Title Companies to explain to the buyer and is being done inconsistently. I feel that the buyer should have the option to select this action in the same manner as other selections are made in the contract. By simply adding selection "boxes" and slightly revising the language this can be done. This will mean Realtors have one more item to explain to a buyer but perhaps that will be better than leaving it to a third party that is not a party to the contract. This action should benefit the consumer. This might even be important enough to be in "bold"."

Thanks for all of your help!!!

**Carole Curtis**
**Broker-Associate**
**ABR, SRES, IRES, ILS, SFR**
**Keller Williams Realty**
**3600 Preston Road,**
**Suite 100**
**Plano, Texas 75093**

---

**Amend 6.A.8**
**From :** Laurie Deckert
**Subject :** Amend 6.A.8
**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Oct 14 2010 8:16:04 AM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: ?Buyer, at Buyer?s expense, may have the exception amended to read, ?shortages in area?.?**

To**: ?? Buyer declines, ?Buyer elects, at Buyer?s expense, to amend the exception to read, ?shortages in area?.**

This buyer selection needs to be offered to every buyer. It currently it is being left to the Title Companies to explain to the buyer and is being done inconsistently. I feel that the buyer should have the option to select this action in the same manner as other selections are made in the contract. By simply adding selection ?boxes? and slightly revising the language this can be done. This will mean Realtors have one more item to explain to a buyer but perhaps that will be better than leaving it to a third party that is not a party to the contract. This action should benefit the consumer.--

Laurie Deckert, Realtor®
Jackie Siegel & Associates
Keller Williams Realty

---

**From :** james exum
**Subject :** <No Subject>
**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Oct 14 2010 12:50:10 AM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

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---

**Please Amend**
**From :** Ragen Jones
**Subject :** Please Amend
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 10:23:46 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

This buyer selection needs to be offered to every buyer. It currently it is being left to the Title Companies to explain to the buyer and is being done inconsistently. I feel that the buyer should have the option to select this action in the same manner as other selections are made in the contract. By simply adding selection "boxes" and slightly revising the language this can be done. This will mean Realtors have one more item to explain to a buyer but perhaps that will be better than leaving it to a third party that is not a party to the contract. This action should benefit the consumer. This might even be important enough to be in "bold"."

Sincerely,

**Ragen S. Jones,** REALTOR_
Keller Williams of Plano

---

**Trec 20-8 para 6.A.(8) Proposed change**
**From :** John Applegate <john@appleteam.com>
**Subject :** Trec 20-8 para 6.A.(8) Proposed change
**To :** general counsel <general.counsel@trec.state.tx.us>
**Reply To :** beth@appleteam.com
Wed Oct 13 2010 9:52:24 PM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

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Beth and John Applegate
Keller Williams Plano

---

**"Please amend the last line in paragraph 6.A.(8)**
**From :** Joe Martins <joe_martins@verizon.net>
**Subject :** "Please amend the last line in paragraph 6.A.(8)
**To :** general counsel <general.counsel@trec.state.tx.us>
**Reply To :** Joe Martins <joe_martins@verizon.net>
Wed Oct 13 2010 8:10:44 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

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**With Respect,**

**Joe Martins, Broker - Associate**
**Keller Williams Plano**

---

**Proposed change to Paragraph 6.A (8)**
**From :** Nancy Lyndon <nancylyndon@yahoo.com>
**Subject :** Proposed change to Paragraph 6.A (8)
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 7:58:23 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

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---

**Contract Change**
**From :** Pam Reed <aeaereed@swbell.net>
**Subject :** Contract Change
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 7:21:49 PM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

Thanks You.....
**Pam Reed, ABR,GRI,CRS**
Keller Williams Realty Plano

---

**Please change to Paragraph 6.A (8)**
**From :** Melissa Loan Bui <melissaloan@melissaloan.com>
**Subject :** Please change to Paragraph 6.A (8)
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 7:18:52 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

**Melissa Loan Bui Team**
Keller Williams Realty

---

**Changes: Para 6a(8)**
**From :** Jamuna Thill, Texas Realtor <jamuna.thill@gmail.com>
**Subject :** Changes: Para 6a(8)
**To :** general counsel <general.counsel@trec.state.tx.us>
**Cc :** bobbaker@kw.com
Wed Oct 13 2010 6:33:24 PM

This change would be of great benefit for our clients, eliminate risk, easier to explain and allow Realtors to at least have a conversation with the buyer. As it stands right now, it is an option not clearly understood and many times overlooked.

From: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."

To: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".

This buyer selection needs to be offered to every buyer. It currently it is being left to the Title Companies to explain to the buyer and is being done inconsistently. I feel that the buyer should have the option to select this action in the same manner as other selections are made in the contract. By simply adding selection "boxes" and slightly revising the language this can be done. This will mean Realtors have one more item to explain to a buyer but perhaps that will be better than leaving it to a third party that is not a party to the contract. This action should benefit the consumer. This might even be important enough to be in "bold"."

Have a great day!
Jamuna
Jamuna (Jam) Thill, GRI,TAHS,SFR
Keller Williams Realty

---

**One to FourFamily 6.A.(8)**
**From :** joe@jdfproperties.com
**Subject :** One to FourFamily 6.A.(8)

**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 6:11:23 PM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

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Thanks for all of your help!!!
**Joe Flores**
**JDF Properties**
**Keller Williams Realty - Plano**

---

**please read: 1 to 4 Family Res. Contract**
**From :** PAULA WRIGHT <paula_wright623@yahoo.com>
**Subject :** please read: 1 to 4 Family Res. Contract
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 6:01:47 PM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

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**Paula Wright**
**Realtor,GRI,CHMS**
**Coldwell Banker Residential Realtors**

---

**Proposed change to Paragraph 6.A (8)**
**From :** Wayne Taylor <wayne.taylor@cbdfw.com>
**Subject :** Proposed change to Paragraph 6.A (8)
**To :** general counsel <general.counsel@trec.state.tx.us>
**Reply To :** wayne taylor <wayne.taylor@cbdfw.com>

Wed Oct 13 2010 5:26:00 PM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

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Thanks for all of your help!!!

**Wayne Taylor**
**Coldwell Banker Real Estate**

---

**Proposed change to Paragraph 6.A (8) of One to Four Family Residential Contract (Resale)**
**From :** Sally Misner <stmisner@kw.com>
**Subject :** Proposed change to Paragraph 6.A (8) of One to Four Family Residential Contract (Resale)
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 5:16:09 PM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: ?Buyer, at Buyer?s expense, may have the exception amended to read, ?shortages in area?.?**

To**: ?? Buyer declines, ?Buyer elects, at Buyer?s expense, to amend the exception to read, ?shortages in area?.**

Sally Misner
Keller Williams Plano Realtors

---

**Amend 1-4 Contract for 'shortages in area'**
**From :** waltphillips@kw.com
**Subject :** Amend 1-4 Contract for 'shortages in area'
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 5:11:05 PM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: ?Buyer, at Buyer?s expense, may have the exception amended to read, ?shortages in area?.?**

To**: ?? Buyer declines, ?Buyer elects, at Buyer?s expense, to amend the exception to read, ?shortages in area?.**

This buyer selection needs to be offered to every buyer. It currently it is being left to the Title Companies to explain to the buyer and is being done inconsistently. I feel that the buyer should have the option to select this action in the same manner as other selections are made in the contract. By simply adding selection ?boxes? and slightly revising the language this can be done. This will mean Realtors have one more item to explain to a buyer but perhaps that will be better than leaving it to a third party that is not a party to the contract. This action should benefit the consumer.

Thank you,

Walt Phillips, CRS, ABR, e-PRO, GRI, MBA
Keller Williams Realty, 3600 Preston Rd, Plano, TX

---

**shortage in area modification**
**From :** John Hill <jrhill@kw.com>
**Subject :** shortage in area modification
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 5:08:36 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

**John R. Hill**
Real Estate Consultant
Keller Williams – Plano

---

**Amendment Paragraph 6.A.(8) of TREC No. 20-8**
**From :** Sally Bartz <sallybartz@kw.com>
**Subject :** Amendment Paragraph 6.A.(8) of TREC No. 20-8
**To :** general counsel <general.counsel@trec.state.tx.us>
**1 to 4 Residential Contract**

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: "□ Buyer declines, □Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

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Expect Great Things!

Sally Bartz, Realtor, ABR, GRI

Keller Williams Realty - Plano

---

**From :** Mike Shepherd <Mikeshepherd@kw.com>
**Subject :** 1 to 4 Residential Contract
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 4:56:15 PM

Sirs:

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: ". Buyer declines, .Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

Thank you.

Mike Shepherd

---

**Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8**
**From :** Julia W. Fitzpatrick <juliaf@kw.com>
**Subject :** Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL
CONTRACT (RESALE) TREC NO.20-8
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 4:46:32 PM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: ?Buyer, at Buyer?s expense, may have the exception amended to read, ?shortages in area?.?**

To**: ?? Buyer declines, ?Buyer elects, at Buyer?s expense, to amend the exception to read, ?shortages in area?.**

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Thank you,
Julia W. Fitzpatrick, Realtor
Keller Williams Realty

---

**amendment suggestion**
**From :** Gary Stewart <garys@kw.com>
**Subject :** amendment suggestion

**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 4:34:20 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

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Thanks for all of your help!!!
*Gary Stewart, REALTOR®*
Keller Williams Plano

---

**Kim Brown of Keller Williams Plano**
**From :** Kimberly Brown <homeforgood@suddenlink.net>
**Subject :** Kim Brown of Keller Williams Plano
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 4:32:21 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

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Kim Brown

**Keller Williams Realty Plano**

---

**Please amend the following! Thank you in advance.**
**From :** Heather Ferry <hferry@kwplano.com>
**Subject :** Please admend the following! Thank you in advance.
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 4:31:01 PM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

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With you in the success of your business,

**Heather Ferry, REALTOR®**
**Keller Williams Realty, Plano**

---

**ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8**
**From :** Malik <malik1963@gmail.com>
**Subject :** ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 4:30:10 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

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Thank you,
Tarique Malik. SFR Realtor
Keller Williams Realty, Plano

---

**paragraph 6.A. change**
**From :** joe@myhalorealtor.com
**Subject :** paragraph 6.A. change
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 4:29:23 PM

Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY

RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: ". Buyer declines, .Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

Sincerely,
Joe Barlow

---

**Please AMEND AS FOLLOWS.....**
**From :** CONNIE MARTINS <conniemartins@verizon.net>
**Subject :** Please AMEND AS FOLLOWS.....
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 4:27:36 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

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**Connie and Joe Martins**
**Keller Williams Plano**

---

**Paragraph 6.A**
**From :** Mechelle Moore <mechellem@kw.com>
**Subject :** Paragraph 6.A
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 13 2010 4:27:11 PM

"Please amend the last line in paragraph 6.A.(8) of the ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE) TREC NO.20-8 as follows:

From**: "Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area"."**

To**: ". Buyer declines, .Buyer elects, at Buyer's expense, to amend the exception to read, "shortages in area".**

## Ice Makers

## Fwd: Seller's disclosure

**From :** PatNoon2@aol.com
**Subject :** Fwd: Seller's disclosure
**To :** loretta dehay <loretta.dehay@trec.state.tx.us>
Mon Oct 18 2010 9:07:20 AM

Loretta
I am forwarding a suggestion that was given to me by a Longview realtor. More than likely, it has been previously addressed, but promised that I would send it on to you. It has to do with ice makers that are separate units. There are a lot of East Texas homes that have these devices and it seems most are not working when a house changes ownership. Thanks
Pat Noon

**From :** DEBI FARRELL <debifarrell9@aol.com> Mon, Aug 09, 2010 10:28 AM
**Subject :** Seller's disclosure
**To :** patnoon@noonrealestate.com

Pat

Just a reminder about suggesting that a place for an ice machine is needed on a seller's disclosure. I personally have had numerous ( not just 1 or 2) issues ( both buyers & sellers) with ice machines that did not work, and also feel that is an appliance just like a dishwasher, which is much less expensive to repair or replace.

Debi

---

## Paragraph 4

## Contract change comments

**From :** Bob Baker <bbaker@kwplano.com>
**Subject :** Contract change comments
**To :** loretta dehay <loretta.dehay@trec.state.tx.us>
**Cc :** Avis Wukasch <avis@aviswukasch.com>
Fri Oct 15 2010 4:37:50 PM
Loretta,

Please express my appreciation to the Broker/Lawyer Committee for the work they have done on the proposed changes. I know there was much discussion before the committee to come up with the results. Below are my respectful comments:

1. First is my concern with changing the Financing Approval term to Credit Approval. I believe this is not an appropriate change and will not Solve the problem of agents and lenders still confusing Financing Approval, Property Approval and Loan Approval.

   Financing Approval is Still the appropriate phrase since the approval we refer to in 4A2 and the Third Party Financing Condition Addendum relates to more than just Credit. On the Financing Addendum in the first paragraph where Financing Approval is defined there are 2 elements of that definition.

   One Being the term of the loan(s) described below are available and then the Buyer's assets, income and credit history. While you could argue that In the second element the

Buyer's assets and income are credit functions I don't think you can reasonably include the terms of the loans Described below as a credit function.

Generally a change as significant as this should only be done if there is a large outcry of anguish and gnashing of teeth of the agents and the Public or changes in the law or major lawsuits that cry out for a fix to the form. In my market area none of this is true and in fact the consistent Feedback I get from agents and lenders is that this is not needed.

So I would really request that the Committee reconsider this change.

2. Paragraph 6C4: While there are occasionally times when a survey is not required or chosen by the Buyer that is fairly rare and doesn't Require an additional box. The downside of having this choice is it may cause some Buyers to think this is a viable option since it is in The contract form. I think the potential harm of this is greater than any potential gain by having the choice.
3. Non-Realty Item addendum: We are having significant challenges with non-realty items and lender/underwriters and how it affects the Appraised value. My concern is making this a Promulgated form since I think it will cause licensees to think they have to use it. If you Want a form to replace or in addition to the TAR form please make this an Approved TREC form rather than Promulgated.

By the way I really like the addition of 9B5 since that is happening more frequently in today's market. I also like the addition of 15 B but would like the time frame to be 15 days to be consistent with paragraph 18C (although in the redline draft on TREC'S website there are two 18B's) and I do know this is for two very different problems one being specific performance and the other an earnest money dispute. It will be very interesting to see how the title companies accept this paragraph.

Paragraph 24: I had heard that we as licensees could not give legal advice but I am glad to know why and that it is TREC that says we can't do that since I thought it was just the attorneys having a bad attitude about us being helpful

Mandatory HOA addendum: Really good new language and hopefully it will help the title companies and Parties from fussing over this at closing.

Again I thank you for your work and appreciate your consideration of my comments.

Bob Baker
Team Leader
Director of Risk Management and Compliance

---

## RE: comments on forms 20-9 and 40-4

**From :** Leslie K. Purvis <leslie@purvisrealestate.com>
**Subject :** RE: comments on forms 20-9 and 40-4
**To :** general counsel <general.counsel@trec.state.tx.us>
Tue Sep 21 2010 10:13:31 AM

After teaching two MCE courses over the last month, there has been concern and confusion among the students regarding the use of the words "financing" and "credit" approval in regards to Form No. 20-9, Para 4, and Form No. 40-4. It is quite confusing where the word "credit" is replacing the word "financing" in many places of Form No. 40-4 but not all places - particularly the heading and sub-headings of the form. Is that the intent?
Overall, the general consensus is that the students like the proposed changes to the forms.

Leslie K Purvis

Purvis Real Estate Training Institute
2020 Montgomery Street
Fort Worth, Texas 76107
817-738-4669
leslie@purvisrealestate.com
http://www.purvisrealestate.com

---

# Proposed changes comments

**From :** Sue Presley <presleysue@aol.com>
**Subject :** Proposed changes comments
**To :** general counsel <general.counsel@trec.state.tx.us>
Sat Oct 9 2010 8:57:14 PM

**ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)**

Survey

(4) No A survey is not required.

(To stay in the positive format)

D. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)

(1) Buyer accepts the Property in its present condition.

(2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following

specific repairs and treatments, if any:.(this box should not be chosen if not "any")

(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs.) (I don't think what "not" to enter into the contract should be addressed)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D (1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any. (Perhaps without an option period, the Buyer should not expect that the seller will negotiate repairs or treatments.)

9. CLOSING

B. At closing

(5) If the Property is subject to a lease, Seller shall, as applicable (i) deliver to Buyer the lease(s) contract and the move-in condition form, signed by the tenant, if any, and (ii) transfer security deposits, as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit, the dollar amount of the security deposit received and that the Buyer is responsible for the return of the security deposit, as applicable. and specifying the exact dollar amount of the security deposit.

Different arrangement of verbiage

18. ESCROW:

**A.** ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.

**B.** EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party., [the parties] and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money [a written release of liability of escrow agent from all parties]. (iii) conflicts with (ii). (iii) should be deleted.

**C. B.** DEMAND: Upon termination of this contract, either party or the escrow agent may send are lease of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.

**D. C.** DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

**E. D.** NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

**Sue Presley**
**Benchmark MCE**
Setting the standard in real estate education!
TREC Provider # 0707
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Provider/Instructor
Broker, NHS, SFR
713-252-5102
SuePresley@BenchmarkMCE.com
www.BenchmarkMCE.com

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## Contract changes

**From :** Sally Rankin <RANKINS@garygreene.com>

**Subject :** Contract changes
**To :** general counsel <general.counsel@trec.state.tx.us>
Sat Sep 4 2010 10:10:20 AM
In paragraph 2 of the contracts, the city is listed in the middle of the legal description. The legal description is **lot, block, subdivision,**
**section, and county.** Would it be possible to move the city to the line with the address and the zip code?
Sally F. Rankin, CRB, CCDS
Prudential GARY GREENE, REALTORS
17250 El Camino Real
Houston, TX 77058
Cell: 713-806-7364, Fax: 281-486-9201

---

## Forms Under Revision

**From :** mclapp@kw.com
**Subject :** Forms Under Revision
**To :** general counsel <general.counsel@trec.state.tx.us>
Thu Sep 2 2010 3:39:23 PM

I only recently became aware that there were proposed changes to TREC forms. It may be too late to offer suggestions, but I thought I would send them along anyway.
One to Four Family Residential Contract (Resale and others that may have similar verbage)
Para. 4. A. I understand the reason to provide clarification of what the Lender's Underwriting requirements. However, the issue that we experience is the late delay in getting this information from the buyer's lender to either party. I wish there was a way for the Lender's Underwritting Requirement to be fulfilled or waived no later than 7 days prior to closing. That would at least cause buyers to help keep their lender accountable for determining the property's value and condition sooner rather than later.

Para. 4. A. 2. a.
Since the term Financing has been removed and now is referred to as Credit, shouldn't the Third Party Financing Condition Addendum be also renamed "Credit Condition Addendum"?

Para. 7. D. 2.
I believe that the comment refering to the Option Period should also refer to Para. 23.

Broker Information and Ratification of Fee
I'm concerned that the ratification of fee has been moved below the signature of the Listing Brokerage or Designee. My training on contracts is that the agreement is everything above the signature line. Is this an attempt to move the compensation to a place less obvious to Buyers and Sellers? If so, then it should be removed entirely from the agreement and treated as the Broker Compensation Agreement is done on Lease agreements.
--
Michael Clapp
KELLER WILLIAMS REALTY
General Manager
20665 W. Lake Houston Parkway
Kingwood, TX 77346
281-812-8292
mclapp@kw.com

## Comment: paragraph 7.B.(2)

**From :** hhenslee <hhenslee@cbunited.com>
**Subject :** Comment: paragraph 7.B.(2)
**To :** general counsel <general.counsel@trec.state.tx.us>
Tue Aug 24 2010 3:39:39 PM

Confusion: if "Within "1" days after the effective date…" for delivery of the Notice day has been entered in 7.B.(2) and the Notice has been delivered on the 2nd day after the effective date, THEN which of the following sentences applies:
If Buyer does not receive the Notice, then Buyer may terminate this contract at any time prior to the closing …..
OR
If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to closing …

So when delivery is made after the "1" day that was inserted and agreed to by the parties, what happens if the Notice is delivered on the 2nd day after the effective date ????

Does the Buyer have the right to terminate for any reason up to closing OR does Buyer only have 7 days after receiving the Notice to terminate?

Maybe the first sentence should say "If the Buyer does not receive the Notice within the x days after the effective date…" it would be more clear as to Buyers rights to terminate for any reason up to closing OR If the second sentence said "If Seller delivers the Notice at any time prior to closing …"

We have heard this argued both ways and it would really help for a change or two in Paragraph 7.B.(2) to make the Buyer's options perfectly clear when the Notice is delivered after the "x" days as agreed to by the parties.

Thank you.
Howard Henslee
Vice President of Sales
Coldwell Banker United, Realtors
Copperas Cove Branch

---

## 1-4 Family Contract-Draft

**From :** Howard Walker <hwalker@hwalker.com>
**Subject :** 1-4 Family Contract-Draft
**To :** general counsel <general.counsel@trec.state.tx.us>
Tue Aug 31 2010 10:27:34 AM

**Paragraph 15. Default**.
While I agree in principle as to the changes regarding the time frame to bring a claim for specific performance, I think this exceeds the authority of TREC and is a legislative matter. Changing the statute of limitations is not rule making.

Howard D. Walker
20920 Kuykendahl, Suite E

Spring, Texas 77379
281-580-2522 telephone
832-603-4017 telecopier
hwalker@hwalker.com

---

## Comments on Contract Changes

**From :** Pamela Weathers <scgpamela@verizon.net>
**Subject :** Comments on Contract Changes
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 20 2010 7:48:58 AM

Why is the Term Designee on the Signature page of the Contracts, per TREC It has to be a licensed person ergo, there is no License for a Designee, it should always State the Broker who is legally responsible for the Agent on the contract.

Is there now a License for a Designee, if not , it should be an option.

Unless you are making these contracts user friendly for Non Licensees, ie: Owners who are selling their own property, without Realtor assistance, in that case, that signature option should be Owner, not Designee.

There should be no Term Designee, you will then have non licensed persons filling in their information, pls remove that Vague Title from our Contracts.

Designee is a vague and non legal term, it's either POA, Broker, Owner, Attorney, etc.

What is a Designee????

Pamela Weathers

SCG Properties, Inc.

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## RE: Broker Lawyer Committee meeting

**From :** Dawn Moore <dmoore@allegiancetitle.com>
**Subject :** RE: Broker Lawyer Committee meeting
**To :** Charles Kramer <ckramer@hklegal.net>, Loretta DeHay <loretta.dehay@trec.state.tx.us>, Mary Steele <msteele@heritagetexas.com>, Jane Caskey <jcaskey@cbharper.com>, Judy Elliot <jelliott@suddenlinkmail.com>, Charles Jacobus <jacobusbellaire@aol.com>, Ashley Smith <easmith@stewart.com>, Ron Walker <ron-walker@austindiocese.org>, Pat Noon <patnoon2@aol.com>, Dan Odom <dodom@sbcglobal.net>, Rusty Faulk <rfaulk@wafpc.com>, Steve Leipsner <steve@leipsner.com>, Christopher Bell <cbell@cbelllaw.com>
**Cc :** Lori Levy <llevy@texasrealtors.com>, Jim Wiedemer <jiwiedemer@aol.com>, Douglas Oldmixon <douglas.oldmixon@trec.state.tx.us>, John Eckstrum <JDECKSTRUM@CS.COM>, TWatson@stewart.com
Fri Jul 16 2010 10:20:32 AM

I agree.

**Dawn Enoch Moore**
**President/CEO**
**Allegiance Title Company**

**From:** Charles Kramer [mailto:ckramer@hklegal.net]
**Sent:** Friday, July 16, 2010 10:14 AM

**To:** Loretta DeHay; Mary Steele; Jane Caskey; Judy Elliot; Charles Jacobus; Dawn Moore; Ashley Smith; Ron Walker; Pat Noon; Dan
Odom; Rusty Faulk; Steve Leipsner; Christopher Bell
**Cc:** Lori Levy; Jim Wiedemer; Douglas Oldmixon; John Eckstrum; TWatson@stewart.com
**Subject:** RE: Broker Lawyer Committee meeting

Additional comment to place somewhere: I met with about 9 title lawyer colleagues yesterday to go over the forms as currently proposed and listen to their comments. Collectively, they had approx. 246 years of lawyer experience (excluding me), most all of that in the title business. The one item that created the most buzz and discussion were the changes to para. 15.
Everyone was pleased with the change and think it represents a good step, but many or most of them also felt it did not go far enough. Specifically, they fear that if it is specifically spelled out that all you have to do is make a legal demand to preserve your rights, title companies are going to get lots of poorly worded legal demands from buyer or sellers or their agents, for specific performance on day 29, unaided by lawyers. By creating the deadline and the easy way to avoid losing your rights – just make a legal demand – you may actually cause more specific performance claims to bog down title, even if they are bogus. Many buyer and sellers and their brokers will not hire / pay for an attorney to assist them in a default situation, will call title company counsel for advice, and draft something on their own.
This group suggested that the trigger be a little more serious – anyone can write a legal demand to hold title hostage in order to get your earnest money, but filing suit is a different matter. If the right of specific performance were lost if SUIT was not filed within 30 days – that would be enough time to consult a lawyer, have him or her read the contract and decide whether to file suit or not.

So, maybe this section deserves more discussion – sometimes by creating a deadline you also create a new thing. I would hate to see specific performance claims, which are rare in residential, suddenly increase as a result of this provision.

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## Re: Contracts

**From :** Loretta DeHay <loretta.dehay@trec.state.tx.us>
**Subject :** Re: Contracts
**To :** Ron Walker <ron-walker@austindiocese.org>
Fri Jul 23 2010 1:49:33 PM

Dawn thinks we should leave it in. Since I already sent it out this way, I'll leave it in and we can discuss at the next meeting. It will be easier to leave it in for now rather than take it out, and then perhaps put it back in after the forms are proposed. Thanks.

Regards,
Loretta DeHay
Deputy Administrator and General Counsel
Texas Real Estate Commission
512.465.3900

**From:** "Ron Walker" <ron-walker@austindiocese.org>
**To:** "Loretta DeHay" <loretta.dehay@trec.state.tx.us>
**Sent:** Monday, July 12, 2010 7:41:00 AM
**Subject:** RE: Contracts

I can't think of when the New Home Incomplete would not include a survey. A survey will be required in order for a title policy to be issued. However, the survey should not be completed until after the

construction is complete. I wonder if we should restate the survey paragraph options in the New Home Incomplete to provide that the survey will be delivered to the buyer not less than XXX days before closing. I think this how the older forms were drafted a few decades back. I guess to be safe, I would, at this time, make 6C the same as the other forms, but exclude the existing survey option and the no survey option. I think this will need some discussion at the next meeting. Good catch.

I think it is good to make the change as Avis noted. I think it was our intent to do what the Broker Responsibility Group is recommending. We just did not get it exactly right.

Ron Walker
-----Original Message-----
From: Loretta DeHay [mailto:loretta.dehay@trec.state.tx.us]
Sent: Sunday, July 11, 2010 7:30 PM
To: Ron Walker
Subject: Contracts

I have a question about the contracts. Regarding para 6(c) of the new homes, are we giving them the no survey option? I don't think it's applicable, but I don't recall discussing it. I checked the minutes, and you just cut and pasted all the changes, but clearly there is no option for the survey and affidavit, so the first change doesn't apply (to move the bolded sentence in c(1)) since c1 in the new home contracts is different from the others. So what do you think?

Regarding the broker info, i talked to Avis, and I'm going to change it around a bit to be more like what broker responsibility is recommending.
Thanks.
Loretta DeHay
Deputy Administrator and General Counsel
Texas Real Estate Commission
512.465.3966

---

## Draft TREC contracts

**From :** John McGill <jmcgill@hancockmcgill.com>
**Subject :** Draft TREC contracts
**To :** 'general.counsel@trec.state.tx.us' <general.counsel@trec.state.tx.us>
Wed Sep 22 2010 1:58:16 PM
It might be a good idea to include in the ratification of fee a place to indicate any “bonus” to be paid to the selling agent. As the sentence is written it is likely only a percentage will be filled in leaving the possibility of a dispute over a bonus that may have been offered in the listing.

John F. K. McGill
6010 Balcones Drive, Suite 100
Austin, Texas 78731
(512) 459-6010
(512) 381-7617 (fax)
e-mail: jmcgill@hancockmcgill.com

---

## Concerns about proposed contract changes

**From :** Mike Hancock <mike_hancock@earthlink.net>
**Subject :** Concerns about proposed contract changes

**To :** general counsel <general.counsel@trec.state.tx.us>
Tue Oct 5 2010 3:15:10 AM

I have a question regarding the proposed Third Party Financing Condition Addendum 40-4. The addendum removes the loan fees contingency and adds a contingency relating to the Adjusted Origination Charges as shown on Buyer's GFE.

My questions are:

1. Are we to assume as licensees that the Buyer has a GFE when the offer is being written? Lenders are very reluctant to issue a GFE without a contract in hand, and certainly without identifying a property.
2. As written, does the Buyer purport to have a GFE in hand that reflects the fees indicated in the addendum? Or, is this in anticipation of a GFE to be obtained in the future? If the addendum suggests that the buyer has the GFE in hand and does not, does the buyer have a liability (Deceptive Trade)?
3. If the buyer does not have a GFE in hand, are we just giving it our "best guess" as to the terms of the loan? If so, I have three concerns:
    a. If the buyer does not have a GFE in hand, the licensee might be working from a Prequalification form or an Initial Fees Worksheet. Does that conflict with the GFE language in the addendum. Because of the new GFE/HUD-1, lenders are very reluctant to commit to anything until a formal application has been received.
    b. If the licensee "guesses" low, we have a contract that is rather "toothless". Does that lead to some liability on the part of the licensee if they write a contract with terms that prove to be impossible to obtain? Could the buyer and/or seller argue that we were simply wasting their time? This could amount to a free option for the number of days allowed for financing approval.
    c. If the licensee "guesses" high, I know for a fact that there is a multitude of lender who will simply qualify them at the higher rate when they could have qualified on better terms.

Thanks, Mike Hancock

---

**TREC 36-5 Revision**
**From :** Ronnie Ginsberg <ronnieginsberg@comcast.net>
**Subject :** TREC 36-5 Revision
**To :** loretta dehay <loretta.dehay@trec.state.tx.us>
Wed Sep 22 2010 1:23:37 PM
Loretta,
Per our conversation today, I suggest that TREC 36-5 Addendum for property subject to mandantory membership in home owners association be
revised.
The cost for resale certificate and transfer fee should be optional seller or buyer's expense. Transfer fee we split a lot of times.
Some of the subdivision management companies make the seller pay for entire resale certificate mandantory even though the buyer checked box that they do not require. This cost can exceed $250 even though deed restrictions are free online. With the cost of transfer fee, it can be as much as $400.00.
Thank you,

Ronald S. Ginsberg #0418795
SOUTH SHORE REALTY
ronnieginsberg@comcast.net

281-538-0700

---

## Comments on Draft Form 36-6 HOA New Fees

**From :** Nick Broderson <nickbroderson@kw.com>
**Subject :** Comments on Draft Form 36-6 HOA New Fees
**To :** general counsel <general.counsel@trec.state.tx.us>
**Cc :** Judy(at work) Broderson <jbroderson@kw.com>
Fri Sep 10 2010 10:02:08 PM
General Counsel, TREC:

When updating the HOA Form, as in Draft Form 36-6, please make it very clear and very specific about which party (Buyer or Seller) will pay the following new types of fees currently being charged by HOA entities which are becoming more common: Buyer Entry Fee, Working Capital Fee, Initial Assessment Fee, Reserve Contribution, Initiation Fee, etc.

Thanks,
Nick
Nick Broderson, Realtor 659-9504, area 512
CRS, ABR, GRI, SRS, SRES, GREEN, BSEE, MBA
ClubNet Peak Performer Buffini & Co Member
**The Broderson Team** *www.BrodersonTeam.com*

Keller Williams Realty

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## Contract Changes

**From :** Robbie Young <robbie_young@msn.com>
**Subject :** Contract Changes
**To :** general counsel <general.counsel@trec.state.tx.us>
Sat Jul 3 2010 7:16:20 AM

Sirs - I hope that you address the Form for Homes in a Mandatory Home Owner Association (TREC-36-5;TAR 1922) - the resale certificate should be a separate item from the rest of the documents...bylaws, etc. as there is a charge for this certificate - i.e. that is a negotiable issue for the parties and most sellers have the documents pursuant to bylaws, etc. but do not want to pay for the resale certificate - please have that issue as a separate item/box from the other documents request.

Thank you -

---

## Comments on Drafts

**From :** Ron Walker <ron-walker@austindiocese.org>
**Subject :** Comments on Drafts
**To :** 'Loretta DeHay' <loretta.dehay@trec.state.tx.us>
Thu Jul 15 2010 7:00:00 AM
Loretta:
These look good to me. I did not see any errors. Once they are printed in the register, it might good for us to read them as a whole, just to make

sure that the paragraphs are consistent and the changes are the same in all the forms. But it looks like you did a good job. I had a couple of
comments noted below. Thanks.

## 36-6; POA Addendum

My comments on this form do not related to a correction, but are suggestions or questions. So you may want to hold the comment until our next meeting.
I don't like the grammar in the third sentence is Paragraph A(2). I would suggest that it read: "If Buyer requires an updated resale certificate, Seller, at Buyer's expense, shall deliver it to Buyer within 10 days after the receiving payment for the update resale certificate from Buyer."
Do we need an option under A(1) for an updated resale certificate; or did we already discuss that?

**46-0; Non-Realty Items Addendum**

We need a line for the address. Just a formatting error.

---

## Comments on Addendum for Property Sub to Mandatory

**From :** Pamela Weathers <scgpamela@verizon.net>
**Subject :** Comments on Addendum for Property Sub to Mandatory
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 20 2010 7:51:39 AM

The timeframe to deliver the HOA Resale Certificate should be 14 days, as HOAS do not respond within 10 day timeframe. You are short sheeting the timeframe which will require amendments when it is not received within 10 DAYS.

Pls extend that timeframe to 14 days.

Pamela Weathers
SCG Properties, Inc.

## Comments for Addendum for Prop Sub to Man HOA

**From :** Pamela Weathers <scgpamela@verizon.net>
**Subject :** Comments for Addendum for Prop Sub to Man HOA
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 20 2010 8:06:44 AM

Why would the resale certificate be automatically considered a Buyers Expense, as to obtain Clear Title AND LOAN APPROVAL, It is a tax, and must be clear to transfer ownership,

The HOA via the Seller,,,, must furnish a Clear RESALE CERTIFICATE, as well as the fact that if buyer does not move forward, the Resale certificate is considered valid for 90 DAYS for seller's use on next contract.

This cost should be negotiable between Seller and BUYER , not shown as mandatory BUYERS COSTS,,,

AGAIN< seller can't sell, their property without a Clear HOA Resale certificate, therefore it should be considered Seller's Cost.

With Transfer fees, reserves etc, being Buyers Costs.

I disagree with this and it will be negotiated going forward, if left as written, and will cause more amendments…

Rewrite this giving it as either a Buyer Option or Seller option Cost.

Pamela Weathers

SCG Properties, Inc.

---

## Draft contracts

**From :** Jacobusbellaire@aol.com
**Subject :** Draft contracts
**To :** loretta dehay <loretta.dehay@trec.state.tx.us>
Tue Sep 14 2010 4:34:00 PM
Loretta,
In the draft 1-4 Family Form, there is a typo in paragraph 24 "READ" is omitted. I didn't check the others.
I'm getting a lot of push back on the Non Realty items addenda. This is fun!
Chuck Jacobus

---

## Non-Realty Items Addendum

**From :** Bill Bailey <baileyb@wr-sa.com>
**Subject :** Non-Realty Items Addendum
**To :** general counsel <general.counsel@trec.state.tx.us>
Sat Sep 4 2010 11:54:34 PM
To Whom It May Concern:
I am opposed to the proposed change to the non-realty items addendum. Appraisers will not include any value from such items in their appraisals and as this will be a promulgated form, we will be required to make it a part of the contract. This will potentially further the problems we are already having with low appraisals. Please do not approve the new form as it has been proposed. There is nothing wrong with the existing form and it has worked well for many years.
Thank you,
Bill Bailey, bba, mba, gri
Associate Broker
Relocation Specialist

---

## COMMENTS on Non Realty Addendum

**From :** Pamela Weathers <scgpamela@verizon.net>
**Subject :** COMMENTS on Non Realty Addendum
**To :** general counsel <general.counsel@trec.state.tx.us>
Wed Oct 20 2010 7:59:25 AM

Per all appraisers, NON Realty items, should be attached to the property contract, that will then make the Items, subject to an Appraisal value, which

will skew the property value, as Non Realty items, will not in the future go forward, ergo attaching a value to something that is not Real Estate.

Pls do not ADD NON REALTY ITEMS To the contracts, as an addendum.

Non Realty Items, should be handled between the Seller and the Buyer with a Bill of Sale, apart from the Real Estate.

It should be attached to the contract.

Appraisers are not going to value a Color Tv,,,,, Motorcycle, or RV ,

We do not need to attach NON Realty ITEMS< to a Real Estate Sales CONTRACT.

The Loan UNDERWRITERS will not allow it to go forward and it will have to amended and removed from the contract anyway…

Only real Estate should be involved in a Real Estate Contract. ITEMS ATTACHED to the PROPERTY or addressed in the contract.

Pamela Weathers
SCG Properties, Inc.

---

## contract draft comments

**From :** Avis Wukasch <avis@aviswukasch.com>
**Subject :** contract draft comments
**To :** 'Ron Walker' <ron-walker@austindiocese.org>, 'Loretta DeHay' <loretta.dehay@trec.state.tx.us>
**Cc :** 'Bill Jones' bill@c21-accent.com

Hi Guys,
Here are my comments on the contract drafts:
Paragraph 4.A.2: also applies to Third Party Financing Condition Addendum;
Credit Approval vs. Financing Approval
When the Broker Lawyer committee changed the forms from 'creditworthiness' to financing approval' the change was made with a great deal of dialogue with the mortgage industry. It seems at this moment we almost have the licensees understanding the difference in "Property Approval" vs. "Financing Approval" and now we propose changing it. I have not seen or received a justification for the change, therefore I cannot support a change just for the sake of change.

Paragraph 6.C.4:
I oppose this on many levels – surveys should always be done and almost always new surveys. I see licensees suggesting checking this box when there is a loan involved, the lender then requires a survey and we are re-negotiating paragraph 6 outside of all types of deadlines.

Non-Realty Items:
I do not support promulgating this form

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## RE: TREC 1 to 4 Residential Contract -- comments to changes to contract REGARDING THE SURVEY -- one more comment

**From :** Sydney Young <sydney@youngtitle.com>
**Subject :** RE: TREC 1 to 4 Residential Contract -- comments to changes to contract REGARDING THE SURVEY -- one more comment
**To :** 'Sydney Young' <sydney@youngtitle.com>, general counsel <general.counsel@trec.state.tx.us>
Wed Oct 20 2010 9:57:59 AM

Hello again,

I got so wrapped up in the construction, that I forgot to say my bottom line feelings about this paragraph. I think it is too harsh of a remedy for the failure to deliver those items within the negotiated time frame. I believe that should just be dealt with as a breach of contract issue. I think that is why realtors are avoiding its use. I know when I use the TREC forms (which I like to use for normal home purchases because the

industry professionals know what they say), I always change the paragraph or provide for something different in the special agreements.

But, if TREC is determined to leave the penalty as it could be construed, I believe the paragraph must be rewritten the way I provided in my first example, so that it is clear that payment for the survey is what will happen unless the seller provides both documents within the negotiated time frame.

Again, thanks for your consideration, I know you have a big job!

Sincerely,

*Sydney Young**
*The Law Offices of Sydney Young*

**From:** Sydney Young [mailto:sydney@youngtitle.com]
**Sent:** Tuesday, October 19, 2010 11:40 AM
**To:** general.counsel@trec.state.tx.us
**Subject:** TREC 1 to 4 Residential Contract -- comments to changes to contract REGARDING THE SURVEY
**Importance:** High

Dear TREC Forms Counsel/Committee –

I am writing to make a comment regarding changes to the TREC 1 to 4 Residential Contract – in particular this paragraph:

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)

_(1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (Affidavit). **If Seller fails to furnish the existing survey or Affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or Affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at _Seller's _Buyer's expense no later than 3 days prior to Closing Date. **[If Seller fails to furnish the existing survey or Affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.]**

My experience is that this paragraph causes a lot of confusion between parties and even between realtors and lawyers. I think I understand why you have moved the bolded sentence up in the paragraph – to emphasize it, but I still think the paragraph is contradictory. Usually parties pick this paragraph with the intent that they believe that a new survey is probably not necessary, but that if it is the Buyer will pay. Yet, the bold language suggests a different result. I do think that moving the sentence up will help, but not enough. Here are some problems that we continue to run into:

1. Parties, realtors, and lawyers interpret the bolded sentence differently. Some believe that because the word "or" is used, this means that the Seller just has to provide one of these within the negotiated time frame, in order to avoid the penalty of having to purchase the buyer's survey. This makes sense under the rules of contract construction. I know from my clerking days with the Fort Worth Court of Appeals that a judge who is looking at this in an appeal (it's ridiculous to think it would get that far, but it could) would look to the definition of "**or**" as a conjunction. Its first meaning under Black's Law Dictionary [5th Edition] is:

   "**A disjunctive particle used to express an alternative or to give a choice of one among two or more things."**

   So, the judge would hold that because the survey or the affidavit was provided within the negotiated time period, then Seller's obligation was met and Seller did not have to pay for the survey.

   HOWEVER, the last definition given for "**or**" is:

   "**In some usages, the word "or" creates a multiple rather than an alternative obligation; where necessary in interpreting an instrument**."

Therefore, you have on its face a sentence that could be construed two ways, depending on the whim of the judge. In other words, the judge could decide that the Seller had to purchase the survey, even though Seller had provided one of the items within the time frame, if Seller didn't provide both items within that time frame. This could also makes sense, considering the use of "and" in the first sentence.

I could continue to argue this back and forth all day long. For example, because "and" was used in the first sentence, if TREC meant "and" for the penalty sentence, why not just use it? Or, since "and" was clearly used, that is the obvious meaning of "or" in the penalty sentence.

Etc., etc.

Is this really an issue? Yes.

For example, the affidavit must be notarized. Many times in rural areas, parties cannot or do not get to a notary until the day of signing. So, the Seller can look at the affidavit and say: "Yes, I can sign this," but be unable to sign it in front of a notary until after the time period has passed. In that event, is it your intent that the seller pay for the survey because the affidavit (signed and sworn) was not delivered within ___ days? That is a harsh penalty.

Or, the Seller KNOWS there was a survey but can't find it. They call the title company, and the title company sends the survey after the ____ day. Another harsh remedy.

And perhaps for good reason, as we don't want to have to wait for closing because we believed we didn't need a survey when we actually did.

Regardless, my point is that the intent of the sentence is not clear and has caused numerous problems in my rural area of the state, so I imagine it is a problem all over Texas.

2. It seems that the intent of the entire paragraph, except for the one sentence, is to state that if a new survey is required (which is usually due to financing), then the buyer will pay for it. Being in the title industry, and understanding why a new survey is required for financing when there is no acceptable improvement survey, I know why the sentence was added. However, because it completely contradicts the intent of the paragraph, I think many parties, realtors, and lawyers alike, tend to ignore that bolded sentence until it comes back to bite them. Moving it ahead of the last sentence might help, but it is still contradictory and confusing.

3. I think that the paragraph should be split into two paragraphs, providing another option.

   First: Seller will pay for a required survey unless they provide both the existing survey and the affidavit within ___ days. If Seller timely provides these items, and buyer needs a new survey for any reason, buyer will pay for the survey.

   (That way, the intent is clear and gives Seller reason to rush to provide the necessary instruments.)

   Second: Seller has provided a legal description to the property. Buyer will be responsible for any new survey if required or desired for any reason.

   (Again, the intent is clear that buyer will purchase a new survey, if it is required). I know that this lessens the Seller's responsibility to a legal description rather than a survey, but most sellers don't know which one they have. This streamlines the process and lets the title company know that a new survey is probably going to be required if Buyer is obtaining secondary mortgage market financing.

With these options, realtors would be able to choose the appropriate paragraph and the intent would be clear.

Please consider my comments, as imperfect as they may be. Currently, realtors are avoiding option 1 at almost all costs, and instead are just choosing option 2 or 3. This makes the title company and lawyers think we are waiting for a survey. When we get a scheduled closing we must call the realtors to learn that the survey is being waived. Typically, this is last minute without an amendment to the contract. I just don't think this practice is what TREC is aiming for either.

I truly appreciate your efforts to streamline these TREC contracts so that they are usable for many situations, and understand that this is a situation which has plagued the industry since the onset of the secondary mortgage market. I hope my comments are helpful to you.

Sincerely,

*Sydney Young**

*The Law Offices of Sydney Young*

**Agenda Item 9:**

Discussion and possible action to propose amendments to 22 TAC §535.400 concerning Easement or Right-of-Way Agents

## SUMMARY

TREC proposes amendments to Subchapter T regarding Easement or Right-of-Way Agents; §535.400 regarding Registration of Easement or Right-of-Way Agents; and §535.403 concerning Renewal of Registration. Application forms will no longer be promulgated by the commission, but they will be approved when substantive changes are made. The amendments to §535.403 change the renewal fee from $83 to $80 to remove the $3 fee that registrants are required to pay for TexasOnline fees. Since such fees are adopted by Department of Information Resources Rules, the fee does not need to be separately adopted as a fee by the commission.

## STAFF RECOMMENDATION

Propose the amendments as presented.

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit §535.400 regarding Registration of Easement or Right-of-Way Agents; and §535.403 concerning Renewal of Registration, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for proposal in the *Texas Register* and for public comment.

**§535.400. Registration of Easement or Right-of-Way Agents. [~~(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission in 2000. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.~~ ]**

**[ ~~(1) ERW 1-3, Application For Easement Or Right-of-Way Agent Registration For An Individual; and~~ ]**

**[ ~~(2) ERW 2-3, Application For Easement Or Right-of-Way Agent Registration For A Business~~.]**

**(a)** **[~~(b)~~]** An individual desiring to be registered by the commission as an easement or right-of-way agent must file **an application on a** form **[~~ERW 1-3 with~~]** **approved by** the commission. If the applicant is a business, the applicant must file **an application on a** form **approved by the commission** **[~~ERW 2-3~~]**. All applicants must submit **a fee of $80** **[~~the applicable fees set forth in The Real Estate License Act, Texas Occupations Code, Chapter 1101, (the Act)~~]**. The commission will not accept an application which has been submitted without the correct filing fees or which has been submitted in pencil. A person also may apply for registration by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. If the person is an individual, the person must provide the commission with the person's photograph and signature prior to issuance of a registration certificate. The person may provide the photograph **[~~and signature~~]** prior to the submission of an electronic application. If the applicant does not complete the application process as required by this subsection, the commission shall terminate the application.

(c) - (f) No Change.

**§535.403 Renewal of Registration.** (a) The commission shall establish a time period for renewal of each registration, which shall end with the expiration date of the current registration. Each registrant has the responsibility to apply for renewal of a registration by making proper application as specified by this section. Applications must be made on the current renewal application form approved by the commission accompanied by an annual fee of **$80** **[~~$83~~]**. Failure to receive a registration renewal application form from the commission does not relieve a registrant of the obligation to obtain the appropriate form and to apply for renewal to maintain registration. A registrant also may renew an unexpired registration by accessing the commission's Internet web site, entering the required information on the renewal application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Failure to provide information requested by the commission in connection with a renewal application is grounds for disciplinary action under the Act, §1101.653. A registrant who fails timely to pay a renewal fee must apply for and receive a new registration in order to act as an easement or right-of-way agent.

**[~~(b) The Texas Real Estate Commission adopts by reference Renewal Application Form ERW 5-2, approved by the commission in 2003. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.~~]**

**(b)** **[~~(c)~~]** The commission shall advise each registrant of the time period for filing a renewal application and paying

the renewal fee by mailing a renewal application form to the registrant's last known permanent mailing address as shown in the commission's computerized records at least three months before expiration of the current registration. Each registrant shall furnish a permanent mailing address to the commission and report a change in permanent mailing address within 10 days after the change occurs. If a registrant fails to provide a permanent mailing address, the last known mailling address for the registrant will be deemed to be the registrant's permanent mailing address. The commission shall have no obligation to so notify a business entity such as a corporation, limited liability company or partnership, that has failed to designate an officer, manager or partner who meets the requirements of §1101.502 of the Act. The commission may not renew a registration issued to a business entity unless the entity has designated an officer, manager or partner who meets the requirements of the Act.

(d) - (e) No. Change.

**Agenda Item 10(a-b):**

10. Discussion and possible action to propose amendments to 22 TAC Chapter 537 as follows:
    a. Amend §537.45 concerning Standard Contract Form TREC No. 38-3
    b. Amend §537.46 concerning Standard Contract Form TREC No. 39-7

## SUMMARY

TREC proposes amendments to §537.45 concerning Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract, and §537.46 concerning Standard Contract Form TREC No. 39-7, Amendment to Contract. The amendments propose to adopt by reference two revised contract forms for use by Texas real estate licensees.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

The amendments to §537.45 propose to adopt by reference Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract. Paragraph 2 of the notice would be amended to read: "(2) Buyer cannot obtain Credit Approval in accordance with the Third Party Financing Addendum for Credit Approval to the contract" to be consistent with a recent change to the title of TREC Form No. 40-4 Third Party Financing Condition Addendum for Credit Approval.

The amendments to §537.46 propose to adopt by reference Standard Contract Form TREC No. 39-7, Amendment to Contract. An admonishment would be added to Paragraph 3 of the form as follows: "(Note: Failure to deliver this amendment to escrow agent may affect the parties' rights to specific performance.)" to be consistent with recent changes to paragraph 15.B of the TREC contract forms.

## STAFF RECOMMENDATION

Propose the amendments as presented.

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit amendments to §537.45 concerning Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract, and §537.46 concerning Standard Contract Form TREC No. 39-7, Amendment to Contract and the two two revised contract forms proposed for adoption by reference in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for proposal in the *Texas Register* and for public comment.

***§537.45. Standard Contract Form TREC No. 38-3[~~2~~].*** The Texas Real Estate Commission adopts by reference standard contract form TREC No. 38-**3**[~~**2**~~] approved by the Texas Real Estate Commission in **2011**[~~**2008**~~] for use as a notice of termination of contract. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

***§537.46. Standard Contract Form TREC No. 39-7[~~6~~]*** The Texas Real Estate Commission adopts by reference standard contract form TREC No. 39-**7**[~~**6**~~] approved by the Texas Real Estate Commission in **2011**[~~**2006**~~] for use as an amendment to promulgated forms of contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

EQUAL HOUSING OPPORTUNITY

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

# NOTICE OF BUYER'S TERMINATION OF CONTRACT

CONCERNING THE CONTRACT FOR THE SALE OF THE PROPERTY AT

_____

(Street Address and City)

BETWEEN THE UNDERSIGNED BUYER AND _____

_____ (SELLER)

Buyer notifies Seller that the contract is terminated pursuant to the following:

❑(1) the unrestricted right of Buyer to terminate the contract under Paragraph 23 of the contract.

❑(2) Buyer cannot obtain **Credit** **[Financing]** Approval in accordance with the Third Party Financing **[Condition]** Addendum **for Credit Approval** to the contract.

❑(3) the Property does not satisfy the lenders' underwriting requirements for the loan under Paragraph 4A(1) of the contract.

❑(4) Buyer elects to terminate under Paragraph A of the Addendum for Property Subject to Mandatory Membership in a Property Owners' Association.

❑(5) Buyer elects to terminate under Paragraph 7B(2) of the contract relating to the Seller's Disclosure Notice.

❑(6) Other *(identify the paragraph number of contract or the addendum)*: _____

_____

_____

_____

_____

*NOTE: Release of the earnest money is governed by the terms of the contract.*

| Buyer | Date | Buyer | Date |
|---|---|---|---|

This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, **[1-800-250-8732]** or (512) 459-6544 (http://www.trec.state.tx.us) TREC No. 38-**3**[2]. This form replaces TREC No. 38-2[1].

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) **11-15-10**

EQUAL HOUSING OPPORTUNITY

# AMENDMENT

TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Street Address and City)

Seller and Buyer amend the contract as follows: (check each applicable box)

❑(1) The Sales Price in Paragraph 3 of the contract is:

A. Cash portion of Sales Price payable by Buyer at closing ..... $_____

B. Sum of financing described in the contract ..... $_____

C. Sales Price (Sum of A and B) ..... $_____

❑(2) In addition to any repairs and treatments otherwise required by the contract, Seller, at Seller's expense, shall complete the following repairs and treatments:

❑(3) The date in Paragraph 9 of the contract is changed to _____, 20_____.

***NOTE:Failure to deliver this amendment to escrow agent may affect the parties' rights to specific performance.***

❑(4) The amount in Paragraph 12A(1)(b) of the contract is changed to $ _____.

❑(5) The cost of lender required repairs and treatment, as itemized on the attached list, will be paid as follows: $ _____ by Seller; $ _____ by Buyer.

❑(6) Buyer has paid Seller an additional Option Fee of $ _____ for an extension of the unrestricted right to terminate the contract on or before _____ , 20_____. This additional Option Fee ❑ will ❑ will not be credited to the Sales Price.

❑(7) Buyer waives the unrestricted right to terminate the contract for which the Option Fee was paid.

❑(8) The date for Buyer to give written notice to Seller that Buyer cannot obtain Financing Approval as set forth in the Third Party Financing Condition Addendum is changed to _____, 20_____.

❑(9) **Other Modifications**: (Insert only factual statements and business details applicable to this sale.)

**EXECUTED the _____day of _____, 20_____ . (BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

| | |
|---|---|
| Buyer | Seller |
| Buyer | Seller |

This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, **[1-800-250-8732 or]** (512) 459-6544 (http://www.trec.state.tx.us) TREC No. 39-**7[6]**. This form replaces TREC No. 39-**6[5]**.

**Agenda Item 11(a):**

Discussion and possible action to propose amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act as follows:

a. Amend §539.61 concerning Applications and Licensing

## SUMMARY

TREC proposes amendments to §539.61 concerning Application and Licensing. The proposed amendments revise subsection (a) to add a reference to the TREC website and add new subsection (c) to provide a deadline for applicants to provide information to the commission in connection with an application.

There is currently no deadline for responding a request for information. Creating a time certain for termination of an incomplete application will allow the Commission to create a records retention period for TREC to maintain the application and related materials.

## STAFF RECOMMENDATION

Propose the amendments as presented.

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to propose amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act by proposing amendments to §539.61 concerning Application and Licensing, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for proposal in the *Texas Register* and for public comment.

# Chapter 539, Provisions of the Residential Service Company Act

## Subchapter G. Application for License

### §539.61 Application and Licensing

**§539.61. Application and Licensing**.

(a) The Texas Real Estate Commission adopts by reference Application Form RSC 1-2 approved by the commission. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(b) The commission shall assign a license number to each residential service company licensed by the commission.

~~(c) An application for residential service company license or an application to approve evidence of coverage/schedule of charges in secti on 539.71(2) of this chapter will be terminated and the commission shall take no further action if the applicant fails to submit a response within 90 days after the commission mails a request to the applicant for curative action.~~

**Agenda Item 11(b):**

Discussion and possible action to propose amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act as follows:

b. Amend §539.121 concerning Examinations

**SUMMARY**

TREC proposes amendments to amendments to §539.121 concerning Examinations. The proposed amendments change the examination period from three to five years.

Experience with recent examinations has shown that most, if not all, licensees are generally in compliance with the commission's requirements and that examinations may be conducted less frequently without compromising consumer protection. In addition, the significant increase in the number of licensed companies in recent years combined with limited staff and resources further necessitate extending the time between examinations from 3 years to 5 years.

**STAFF RECOMMENDATION**

Propose the amendments as presented.

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to propose amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act by proposing amendments to §539.121 concerning Examination, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for proposal in the *Texas Register* and for public comment.

# Chapter 539, Provisions of the Residential Service Company Act

## Subchapter M. Examinations

## §539.121 Examinations

**§539.121. Examinations.** The commission shall examine the affairs of each licensed residential service company as the commission deems necessary, but no less than once every ~~five~~ **[three]** years. A company's failure to provide access to the commission to the books and records of the company is a violation of Texas Occupations Code, Chapter 1303, §1303.053, and may subject the company to the penalties provided in Chapter 1303.

**Agenda Item 11(c):**

Discussion and possible action to propose amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act as follows:

c. New Subchapter P concerning Complaints and new §539.150 concerning Complaints

## SUMMARY

TREC proposes New Subchapter P regarding complaints and new §539.150 concerning complaints. The proposed amendments establish a complaint procedure for filing complaints against residential service companies licensed by the commission. The new rule establishes a deadline in which complaints may be filed with the commission and established a deadline in which respondents must respond to requests for information from the commission. The procedure and time periods are the same as those established by rule for other licensees subject to the commission's jurisdiction.

## STAFF RECOMMENDATION

Propose the amendments as presented.

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to propose amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act by proposing New Subchapter P regarding complaints and new §539.150 concerning complaints, non-substantive corrections as staff may deem necessary or advisable, for proposal in the *Texas Register* and for public comment.

# Chapter 539, Provisions of the Residential Service Company Act

## Subchapter P. Complaints

## §539.150 Complaints

**P. Complaints.**

**New §539.150. Complaints**

**(a) Complaints regarding licensed residential service companies and contracts issued by those companies shall be in writing and signed by the person filing the complaint.**

**(b) The commission shall not investigate a complaint submitted more than four years after the date of the transaction that is the subject of the complaint.**

**(c) A residential service company shall provide information or documents requested by the commission or a commission representative in the course of the investigation of a complaint within 10 working days of receipt of the request.**

**Agenda Item 12:**

Discussion and possible action to adopt the review of 22 TAC Chapter 535

## SUMMARY

The Texas Real Estate Commission (TREC) adopts the review of Chapter 535, General Provisions; in accordance with the Texas Government Code, §535.64 2001.039. The proposed notice of review was published in the June 4, 2010 edition of the *Texas Register*.

The agency made several amendments and adopted several new rules in conjunction with this review. The rules were streamlined, rewritten and restructured for clarity as further described and summarized in the preambles adopting the rules which are being published in other pages in the same volume of the Texas Register publishing this adopted rule review. The agency has determined that the reasons for the adoption of these chapters continue to exist.

The amendments include the following: New §535.1 provides a list of commonly used terms in the chapter; in §535.2 a broker's responsibilities to their sponsored salespersons, the public, and other brokers is clarified; a broker is required to advise a sponsored salesperson of the scope of the salespersons authorized activities under the act and clarifies the liability of the broker for the activities of the salesperson if the broker permits a salesperson to engage in activities beyond the scope originally authorized. A broker is responsible for any property management activity conducted by their sponsored salespersons and for advertising of sponsored salespersons. The amendments would permit a broker to designate in writing another licensee to be responsible for day-to-day supervision of sponsored salespersons; however, the broker would continue to have overall responsibility of the salespersons. The amendments would require a broker to maintain records of transactions for a period of 4 years. Brokers will be required to maintain written policies and procedures to ensure that each sponsored salesperson is advised of the scope of the salesperson's authorized activities subject to the Act and is competent to conduct such activities; each sponsored salesperson maintains their license in active status at all times while they are engaging in activities subject to the Act; any and all compensation paid to a sponsored salesperson for acts or services subject to the Act is paid by, through, or with the written consent of the sponsoring broker; each sponsored salesperson is provided on a timely basis, prior to the effective date of the change, notice of any change to the Act, Rules, or commission promulgated contract forms; in addition to completing statutory minimum continuing education requirements, each sponsored salesperson receives such additional educational instruction the broker may deem necessary to obtain and maintain on a current basis competency in the scope of the sponsored salesperson's practice subject to the Act; each sponsored salesperson complies with the commission's advertising rules. All trust accounts, including but not limited to property management trust accounts, and other funds received from consumers are handled by the broker with appropriate controls; records are properly maintained pursuant to records retention requirements in the rules subsection. The amendments clarify that the broker responsibility rules are not meant to create an employer/employee relationship where there is none. Amendments to §535.3 regarding Compensation to or Paid by a Salesperson would require that an agreement between a broker and sponsored salesperson regarding the compensation a salesperson receives or pays to other licensees must be in writing. New §535.4 regarding License Required is a compilation of existing rules that are put together into one comprehensive rule that addresses the instances in which a license is required under the Act; new provision clarifies that a corporation or limited liability company owned by a broker or salesperson which receives compensation on behalf of the licensee must be licensed as a broker under the Act. New §535.5 regarding License Not Required is a compilation of existing rules that are put together into one comprehensive rule that addresses the instances in which a license is not required under the Act..

New subsection (b) in §535.54 would provide that a bachelor's degree counts towards all the related education requirements for a salesperson license and a broker license. The commission has the authority under §1101.362 of the Act to waive some or all of the education and experience requirements for someone who has been licensed within the six years preceding the date the application is filed. Currently, §535.56, the commission has waived the education and experience required for a broker license for a broker who was licensed in the preceding six years (the maximum authorized under the Act) and otherwise meets the requirements of the section. ("Late Renewal" period.) The amendments would change the period from six years to four years so that a person who was licensed in the preceding four years and otherwise meets the requirements of the section (experience) could apply for a broker license. Anyone applying more than 2 years after their license expired would need to take the examination again. Licensees are required to notify the commission of the licensee's current email address and other contact information. New subsection (c) of §535.53 provides that if a corporation or limited liability company is dissolved with the Secretary of State the license becomes null and void.

The renewal period for accreditation of schools is changed from five years to four years in §535.63(b). For purposes of calculating a school's passage rate in §535.63(b)(3), the commission will use a four year period instead of a five year period. A course approval expires four years from the date of approval, and if any school that offers the same course obtains TREC approval to offer the same course, the expiration date remains unchanged. The requirement in existing §535.64 that examination preparation course be submitted to TREC for approval is deleted. Schools will be required to provide to students and maintain for commission review instructor and course evaluations for each course. A school is required to maintain records of each student enrolled for a minimum of four years; and the full class file and student enrollment agreements must be retained for at least 24 months following completion. §535.71(a) - the renewal term for instructor approval is changed from five to two years in subsections (i) and (j); alternative delivery method courses for required legal credit will need to be certified by a distance learning certification center that is acceptable to the commission under new subsection (z). Subsection (i) is a new provision which requires a provider to make available to students and maintain for commission review instructor and course evaluation for each course. Under relettered subsection (k), a provider is required to maintain the same types of records and for the same period of time as required of schools accredited under Subchapter F, regarding core education providers.

Section 535.141 is amended to include advertising in the laundry list of activities that a licensee may not engage in while the person's license is under suspension; the commission may automatically suspend a license if the licensee violates certain types of terms or conditions of an agreed probated revocation or suspension. Amendments to §535.146 clarify existing requirements that apply to maintenance of trust accounts, including that a broker is ultimately responsible for compliance with the trust account requirements in the Act and Rules; subsection (h) is amended to require a broker to notify all parties in writing when a broker makes a disbursement to which all parties have not expressly agreed to in writing; new subsection (k) clarifies that a broker may deposit and maintain additional amounts in a trust account to cover bank service fees. Amendments to §535.147(a) clarifies that a licensee may not share a commission with an unlicensed person except as provided by the Act or Rules; new subsection (b) would authorize an unlicensed person to share in the income earned by a licensee as long as the person does not engage in real estate brokerage activity; new subsection (c) clarifies that a broker or salesperson may not share a commission with an unlicensed corporation or limited liability company created by a licensee for the purpose of collecting a commission or fees on behalf of the licensee. New subsection (c) is added to §535.148 to prohibit a licensee from entering into contracts with service providers which prohibits a licensee from entering into or offering similar service on behalf of a competing service provider; new subsection (d) prohibits contingent fee arrangements where the licensee accepts a fee that is contingent upon a party purchasing a contract or services from a specific service provider; new subsection (e) adopts by a reference RSC-1, Disclosure of Relationship with

Residential Service Company which licensees are required to use to disclose compensation for services provided to or on behalf of a residential service company.

## STAFF RECOMMENDATION

Adopt the review as presented.

## MOTION

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the adoption of the review of 22 TAC Chapter 535, in substantially the form presented at this meeting, with technical, non-substantive corrections as staff may deem necessary or advisable, for proposal in the *Texas Register* and for public comment.

**Agenda Item 13:**

Discussion and possible action on legislative housekeeping measures.

**SUMMARY**

To be presented at the meeting

**Proposed 2011 TREC Legislative Agenda Items**

**Broker Responsibility Measures**

Establish a 6 hour mandatory Broker Responsibility class for all brokers who supervise salespersons and for agents who are authorized by brokers to supervise other agents; that also qualifies for MCE credit if desired; does not apply to brokers exempt from MCE requirements.

*Increase education for Brokers to include reminders and updates to broker responsibilities via a specifically designed mandatory course taken by brokers who sponsor a salesperson and those to whom they delegate the responsibility to train, oversee and manage the sales licensees they sponsor.*

Change minimum period of sales experience from 2 to *(up to)* 6 years to qualify for broker license

*Currently just 2 years of holding a sales license in "active" status is required as experience to take the broker examination. Many believe this is simply too short a period to gain the qualifying experience in most cases. Professional brokerage requires a higher standard.*

Allow additional transactional competency requirements to be set for initial broker licensure

*Currently "experience" is only determined by tenure of licensure, without any other method of showing transactional competency, such as a minimum number of transactions completed.*

Allow any business entity authorized in Texas to be licensed; repeal "partnership" exception

*Although many forms of business entity are allowed to be formed in Texas, currently only corporations and LLCs are allowed to be licensed as brokers, with an exception for partnerships (requiring no license at all). Any authorized business entity should be allowed.*

Ensure all business entities receiving real estate commissions hold a license from the agency

*If any business entity is allowed to hold a broker license, then all recipients of "commission" compensation should hold a license if engaged in brokerage activity or advertised as such.*

Require $1MM E&O insurance for licensed business entities if designated officer owns less than 10%

*"Designated" officers or managers for business entities holding broker licenses should be active managers of the entities, with a stake in the outcome of the professional services rendered by associated licensees. Uninvolved officers or managers are a fraud on the public who rightfully expect access to the experience, knowledge and expertise of a broker. Having a financial interest to protect is one measure of involvement. Its absence enhances the risk to consumers. Be involved or provide adequate alternate protection for customers represented.*

Require out-of state attorneys to hold Texas law license to conduct brokerage activities in Texas

*The current exception for licensed attorneys involved in brokerage activity in Texas does not distinguish between attorneys licensed in Texas and others. Clarity is needed to meet the reasonable expectations of and to protect Texas consumers.*

Add “control of acceptance or deposit of rent from SFR 1-4 unit property” as “brokerage activity”

*Homeowners who choose not to sell a residence but rather rent it while waiting for better market conditions are being taken advantage of by unlicensed entities. Managing the funds of others is a fiduciary activity that deserves more than mere contract protection. Adding rental activities to the list of brokerage activities requiring a license provides additional protection.*

**Education Improvement Measures**

Change pre-license education core course hours from 210 to 180 hours with an additional requirement of 90 core hours for the first 2-year renewal

*The Act currently provides for 210 hours of pre-licensure education by applicants, with 150 hours designated as “core” and 60 hours as “related”. Additional “core” courses are needed, especially in contracts. By removing related course requirements, this will allow applicants to obtain a license with fewer course hours to start, but they will all be core courses in topics relevant to real estate; then the additional course requirements increase for an additional 90 core hours over the 2-year renewal period.*

Change first time pass rate target from 55% to “average” for pre-license education programs; add suspension, probation, and related tools to allow agency to improve all education programs; add “ownership of previously revoked education programs” as legitimate *(school)* disapproval criteria

*Although the “average” rate was around 55% when this requirement was established, using a set number requires the Commission to adjust all educational considerations to meet that set number. If the concern is that schools with “below average” exam pass rates should be brought into compliance, then more tools are required to actually bring about the desired result. Currently the only tool available is to put a school out of business, treating a school with a 52% pass rate the same as a school with a 22% pass rate. More flexibility is needed.*

**General Efficiency and Fairness Measures**

Require licensees to provide and maintain current primary address, phone number, and email address if available.

Amend law to reflect electronic delivery of licenses, such as “custody”; “surrender”; “delivery”

*These terms belong to an age when a license was a valuable individual piece of paper, not a right that is granted, recorded and monitored electronically. Update is required.*

Extend license application period to 12 months vs. current six months to offset more education

*Current practices require an application to be submitted with all required attachments, including education. If any requirements are not yet met, then applicants should have sufficient time to complete them. Other agencies and states use 12 months as a standard.*

Modify current one year "late renewal" rights to six months and apply to all license types
*Currently a full year is allowed to renew an expired license without a new application. This period remedies for inadvertence with only monetary penalties. Over 95% of late license renewals are completed within 6 months of expiration. This fully recognizes this reality.*

Obtain the authority for the agency to apply for, accept, administer and expend gifts or grant funds
*Some federal agencies connected to the real estate industry are authorized to make grants and gifts to state agencies to assist in the accomplishment of their mission, most notably in the area of mortgage fraud and appraisal standards. The agency needs the ability to apply for, accept and spend such funds to make it more effective without raising license fees.*

**Home Warranty Measures**

Strengthen Residential Service Company Act (e.g. jurisdiction; unlicensed activity penalties)
*Current text needs better definition to allow more effective enforcement and protections.*

**Inspector Related Items**

Eliminate "classroom" from "education/experience alternative"; allowing mandated field time
*Current "field" experience requirements allow the same to be accomplished in a classroom setting, which in many cases defeats the purpose of having a "field" experience. Clarify.*

Distinguish "Standards of Practice" from "Ethics and Legal" courses in inspector education
*Current text contains "or", making standards, legal and ethics as alternative requirements when each should have its own requirement to produce better educated inspectors. Clarify.*

*Fingerprints;*

**Agenda Item 14:**

Discussion and possible action to approve changes to home inspector license application forms and miscellaneous inspector-related forms

**SUMMARY**

TREC proposes changes to the Inspector forms as follows:

1. Update fees on applications to reflect incorporation of $30 ed eval fee
2. Update references to certificate of insurance form (8-0 is no longer current form)
3. Incorporate background history form (like broker/sales forms)
4. Eliminate the fields, such as date of birth, that are not captured in Versa (like broker/sales forms)
5. Update header and formatting as necessary to match other forms

**STAFF RECOMMENDATION**

Approve the changes to the forms as requested.

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to change the Inspector forms as requested.

# Texas Real Estate Commission

P.O. Box 12188
Austin, Texas 78711-2188
**Office Address:**
1101 Camino La Costa
Austin, Texas 78752
PH: (512) 459-6544

INSTRUCTIONS FOR:

## Apprentice Inspector License Application

(Please read all information carefully)

This application must be filed through the sponsorship of a Texas Professional Inspector who is qualified to sponsor applicants and who currently holds an active license. The sponsoring Professional Inspector should determine that the application is complete in all respects before it is filed. An application for an Apprentice Inspector license is considered the responsibility of the sponsoring professional inspector; therefore, all communications are sent to the professional inspector. The application is not transferable. A sponsoring professional inspector cannot be changed during the processing of an application. If an applicant desires a different sponsoring professional inspector, a new application and fees must be filed with the Commission.

1. To be eligible to file an application for an Apprentice Inspector license, an individual must be a citizen of the United States or a lawfully admitted alien, 18 years of age or older and a legal resident of Texas.

2. The filing of an application authorizes an investigation of the applicant's background. Information revealed in an investigation may be cause for disapproval of an application even though other requirements for a license are met.

3. The application must be on a form provided by the Commission and that form can be obtained from the sponsor or from the TREC website (www.trec.state.tx.us). The Professional Inspector is responsible for the Apprentice's inspection activities.

4. Before an apprenticeship may be considered complete, the Apprentice Inspector must have been licensed for a minimum of 90 days and have performed 25 inspections under the direct supervision of the same licensed Professional Inspector. Even after completion of these requirements, an Apprentice Inspector may only perform inspections under direct supervision.

5. All required fees must be submitted at the time of filing an application. An application received without the appropriate fees will be rejected and returned. The fees should be submitted in one cashiers check, personal check or money order payable to the Texas Real Estate Commission.

   Original application fee is $35.00
   $20.00 If not filed electronically at TREC's web site

6. The fee listed above is nonrefundable. Fees not pertaining to this application should not accompany the application. When all other requirements for licensure have been met, the applicant will be notified that the applicant must provide proof of liability insurance. Use TREC's Certificate of Insurance, for this purpose.

7. If the applicant has defaulted on a student loan with the Texas Guaranteed Student Loan Corporation (TG) and is not currently making payments under a repayment agreement, contact Texas Guaranteed Student Loan Corporation, P.O. Box 83100, Round Rock, TX 78683-3100, Telephone: 1-800-252-9743, BEFORE filing an application if you have defaulted on a student loan. An application or renewal may be rejected if this agency has received information from TGSLC that the applicant has defaulted on a student loan. The 8. The time involved in processing an application depends on work volume. Inquiry as to the status of an application delays processing work. Inquiry should not be made unless there is reason to believe that information submitted to the Commission has not been received.

   Note: An incomplete application will not be returned for completion. If the application is incomplete, a letter will be mailed requesting additional information.

**NOTE: Apprentice Inspector licensees are required to submit satisfactory evidence to the Commission of the successful completion of at least 16 hours of Commission-approved core real estate inspection courses annually for their renewal of an active license.**

**Inspector applicants who have met the requirements for licensure must also provide proof of professional liability insurance on TREC Form REI 8-0, Certificate of Insurance. A person may not perform inspections with a n inactive license.**

## PRIVACY NOTICE

**In accordance with Chapter 559, Government Code, the following notice about certain information laws and practices is given.**

**(1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.**

**(2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.**

**(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.**

# Texas Real Estate Commission

P.O. Box 12188
Austin, Texas 78711-2188

APPLICATION FOR:

## Apprentice Inspector License

| FEE | REGISTER NUMBER | AMOUNT | MONEY TYPE | LICENSE # |
|---|---|---|---|---|
| Application Processing Fee | | $35.00 | | |

For TREC Use ONLY

DO NOT WRITE ABOVE THIS LINE

***All Information Must Be Typed or Printed in Ink***

This application must be filed through the sponsorship of a Texas Professional Inspector who is qualified to sponsor applicants and who currently holds an active license. Both the applicant and the sponsoring Professional Inspector MUST sign this application. All correspondence regarding this application will be mailed to the sponsoring inspector.

***This application is not transferable.***

If you have been licensed as a Texas Apprentice Inspector within the last two years, provide the following information:

APPRENTICE LICENSE NUMBER: _____ LICENSES EXPIRATION DATE: _____

1. Applicant's Full Name

_____ Last _____ First _____ Middle

2. Sponsoring Inspector

(a) Name: _____

(b) License Number: _____ (c) Business Telephone Number: _____

3. Applicant's Social Security Number

_____

Note: Section 231.302 of the Texas Family Code requires all applicants to disclose their Social Security Numbers (SSN) when filing an application. The SSN that is provided will be confidential and is required to enforce Child support orders. Failure to provide the SSN will prevent a license from being issued and could ultimately lead to termination of the application.

4. Applicant's permanent mailing address and contact information (Post Office Box is allowed)

_____
Number, Street and Apt. No. or P.O. Box

_____ City _____ State _____ Zip Code

Phone: _____ Fax: _____

Email address: _____

5. Business Address (Fixed Office): Street address must be designated below. **(A license will not be issued to a P. O. Box only.)**

_____
Number, Street and Apt. No. or P.O. Box

_____ City _____ State _____ Zip Code

Phone: _____

Email address: _____

This document is available on the TREC website at www.trec.state.tx.us

| 7. Date of Birth<br>____ Month ____ Day ____ Year | 8. Sex (choose one)<br>☐ M ☐ F | 9. Ethnic Group (choose one)<br>☐ Black ☐ White ☐ Hispanic ☐ Asian<br>☐ Other (specify) _____ |
|---|---|---|

10. Have you been registered or licensed as an inspector in a state other than Texas withinthe last six (6) years? ☐ Yes ☐ No

**If the answer is Yes, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf.**

11.(a) Have you ever had a professional or occupational license in this state or any other state suspended, cancelled or revoked, or ever surrendered such a license? ☐ Yes ☐ No

(b) Have you ever had an application for a professional or occupational license disapproved or denied in this state or any other state? ☐ Yes ☐ No

(c) Are there any disciplinary hearings or investigations pending against any professional or occupational licenses you hold? ☐ Yes ☐ No

**If the answer to a, b, or c is Yes, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf.**

12. Are there any unpaid judgments against you? ☐ Yes ☐ No

**If the answer is Yes, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf.**

13.(a) Have you ever been convicted of a criminal offense? (Include all felonies and misdemeanors other than minor traffic tickets.) ☐ Yes ☐ No

(b) Have you ever been placed on parole, probation or community supervision (also known as deferred adjudication) regardless of whether the case was dismissed or you were discharged? ☐ Yes ☐ No

(c) Are there any criminal charges pending against you? ☐ Yes ☐ No

**If the answer to a, b, or c is Yes, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf.**

14. Have you ever acted, or attempted to act, as a real estate inspector in this state or in anyother state at a time when not properly registered or licensed? ☐ Yes ☐ No

(Include all periods in which you acted either before registering or obtaining a license or after a license may have expired.) ☐ Yes ☐ No

**If the answer is Yes, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf.**

15. Are you currently in default on a student loan guaranteed by the Texas Guaranteed Student Loan Corporation? ☐ Yes ☐ No

16. List below all names (maiden, aliases, nicknames, etc.) by which you have been known

_____ _____ _____

_____ _____ _____

_____ _____ _____

Attach a recent photograph of the applicant here.

FEES:

Application fee is $35.00. Paper filing fee is $20.00 for any application submitted on paper that can be filed electronically on the TREC web site. Only fees pertaining to this application should accompany the application. All required fees must be submitted at the time of filing an application. An application received without the appropriate fees will be rejected and returned. The fees should be submitted in one cashiers check, personal check or money order payable to the Texas Real Estate Commission.

**Note:** State law prohibits renewing a license more than once after a licensee has defaulted on a student loan guaranteed by the Texas Guaranteed Student Loan Corporation (TG) unless the licensee has entered into a repayment agreement with TG. You should contact TG before filing this application if you have defaulted on a student loan. An application or renewal may be rejected if this agency has received information from TG that the applicant has defaulted on a student loan. The Texas Guaranteed Student Loan Corporation can be contacted at: Texas Guaranteed Student Loan Corporation, P.O. Box 83100, Round Rock, Texas 78683-3100; Telephone: 1-800-252-9743

**CERTIFICATION OF REAL ESTATE INSPECTOR APPLICANT**

I certify that I am eighteen (18) years of age or older; that I am a citizen of the United States or a lawfully admitted alien; and that I am a legal resident of Texas. I certify that I have examined this application and the answers given are true, correct and complete. I authorize the Texas Real Estate Commission to conduct any investigations of me which it deems prudent. I understand that information revealed in an investigation may be cause for revocation or other disciplinary action of a license once granted even though other requirements for a license have been met. I further understand that information submitted in conjunction with this application may become a public record. If granted a license, I will abide by the provisions of the Real Estate License Act and the Rules of the Texas Real Estate Commission. I will not perform any act of an apprentice inspector until the Texas Real Estate Commission apprentice inspector license certificate is in my sponsoring professional inspector's possession.

Signature of Applicant _____ Date signed _____

**CERTIFICATION OF SPONSORING PROFESSIONAL INSPECTOR**

I certify that I am currently licensed as a Texas Professional Inspector qualified to sponsor applicants and that my license is currently in active status. I hereby request that the above named applicant be licensed as a real estate inspector for me. I have carefully investigated this applicant and, in my opinion, said person is honest, reliable and of good reputation. I will not allow the applicant to act as a real estate inspector for me until a Texas Real Estate License Certificate authorizing said applicant to do so is in my possession. Upon receipt of the license certificate, I shall be responsible for said real estate inspector's professional actions until such time as I notify both the Texas Real Estate Commission and the inspector, in writing, that our association has been terminated.

Signature of Sponsoring Inspector _____ Date signed _____

**IMPORTANT INFORMATION-PLEASE READ CAREFULLY**

1. Only fees pertaining to this application should accompany this application.
2. Please ensure the following:
   A. All information is printed in ink or typewritten.
   B. All requested information is provided.
   C. All questions have been answered.
   D. All required signatures and dates of signing are in place; do not use signature stamps.
   E. A single cashiers check, personal check or money order for the full amount payable to the Texas Real Estate Commission is enclosed.

**IF ALL REQUIREMENTS FOR A LICENSE ARE NOT MET WITHIN SIX (6) MONTHS OF THE FILING DATE, THE APPLICATION EXPIRES.**

**Agenda Item 15:**

Discussion and possible action to approve changes to salesperson, broker, and easement and right of way application forms and miscellaneous related forms

**SUMMARY**

TREC proposes substantive changes to the salesperson, broker and ERW forms as follows:

1. Update fees on applications to reflect incorporation of $30 education evaluation fee
2. Incorporate background history form
3. Delete:
   a. date of birth
   b. place of birth
   c. driver's license number,
   d. height,
   e. weight
   f. question regarding previous Texas licensure (redundant)
   g. question regarding employment history (moved to Background History Form)
4. Revise:
   a. Questions that reference the Background History Form to clarify that the applicant must send a copy of the form and relevant documents to TREC
   b. Statement of applicant (to be consistent across all forms)
5. Non-substantive revisions
   a. Update header and formatting
   b. delete references to old 800 numbers
   c. fees

**STAFF RECOMMENDATION**

Approve the changes to the forms as requested.

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to change the salesperson, broker, and easement and right-of way application forms and related miscellaneous forms as requested.

MAILING ADDRESS:
TEXAS REAL ESTATE COMMISSION
P.O. Box 12188
Austin, Texas 78711-2188

OFFICE ADDRESS:
TEXAS REAL ESTATE COMMISSION
1101 Camino La Costa
Austin, Texas 78752
Telephone: (512) 459-6544

# APPLICATION FOR INACTIVE SALESPERSON LICENSE

(PLEASE READ ALL INFORMATION CAREFULLY)

**DO NOT USE THIS FORM IF YOU WERE LICENSED AS A TEXAS BROKER OR SALESPERSON IN THE PAST SIX YEARS. USE THE LATE RENEWAL APPLICATION @ www.*trec.state.tx.us***

To obtain an active Texas real estate salesperson license, a person must: (1) satisfy current education requirements, (2) complete and file an application, (3) take and pass an examination, (4) get fingerprinted and meet the honesty, integrity and trustworthiness requirements, and (5)arrange for a broker sponsor.

(1) Complete the current education requirements. Courses must be completed at one of the following types of schools:

A. A school accredited by the Commission or the real estate regulatory agency of another state.
B. A college or university accredited by the appropriate regional accrediting body;
C. A professional trade association;
D. A military service related school.

**A LIST OF APPROVED PROVIDERS OF CORE REAL ESTATE COURSES IS AVAILABLE AT THE TREC WEB SITE.**

**EXPLANATION OF ACADEMIC CREDIT**

| | |
|---|---|
| 1 Semester Hour equals | 15 Classroom Hours |
| 1 Quarter Hour equals | 10 Classroom Hours |
| 1 Continuing Education Unit (CEU) equals | 10 Classroom Hours |

Do not submit original transcripts or course completion certificates with this application. Retain the original documents for the applicant's personal files. The documents submitted to the Texas Real Estate Commission are not returned to the applicant.

| | Core Classroom Hours | Max. Related or other Core Classroom hours | Total Classroom Hours |
|---|---|---|---|
| With Application | 150 hours, as follows:<br>• 60 in Principles of Real Estate<br>• 30 in Law of Agency<br>• 30 in Law of Contracts<br>• 30 any other core real estate course* | 60 hours | 210 total hours |

Once licensed, the salesperson must then complete an additional 60 core real estate classroom hours during the first year of licensure for the totals below:

| | | | |
|---|---|---|---|
| At 1st Renewal (end of 1st year) | 210 core classroom hours | 60 related or core hours | 270 total hours |

(2) File an application for an Inactive Salesperson License with copies of transcripts or course completioncertificates as evidence of completing the education requirements. Fees to be submitted with an application:

| | |
|---|---|
| Application fee | $127.00 |
| Recovery fund fee | $10.00 (if not previously paid) |
| Paper filing fee | $20.00 (if not filed electronically at TREC's website) |

* Other **core** courses are: Real Estate Appraisal; Real Estate Law; Promulgated Contract Forms; Real Estate Finance; Real Estate Marketing; Real Estate Mathematics; Real Estate Brokerage; Property Management; Real Estate Investments; and Residential Inspection for Real Estate Agents.

Answer each question completely and provide copies of all supporting documentation as necessary. An incomplete application may be rejected and returned or take more processing time.

If the applicant has defaulted on a student loan with the Texas Guaranteed Student Loan Corporation (TG) and is not currently making payments under a repayment agreement, contact the Texas Guaranteed Student Loan Corporation, P.O. Box 83100, Round Rock, TX 78683-3100, Telephone: 1-800-252-9743, BEFORE filing an application. State law prohibits renewing a license after a licensee has defaulted on a student loan guaranteed by TG unless the licensee has entered into a repayment agreement with TG. An application or renewal may be rejected if TG has notified the agency that the applicant has defaulted on a student loan.

(3) When the application is complete and education is satisfied, the applicant must take and pass the examination. License examinations are administered by PSI Services, LLC. (PSI), a national testing service. Once the application has been received, processed and education satisfied, the applicant will receive notification that the applicant may obtain a copy of the Candidate Information Brochure (CIB) to register for the exam. The CIB contains information about the examination, study material, and instructions for making a reservation with PSI. A valid photograph ID (driver's license, etc) is required for admission to a testing site. The name on the ID must match the name on the application for a license. The applicant must pass the examination within six months after the date the application is filed with TREC.

(4) An applicant must pay a fee to the Department of Public Safety (DPS) to get fingerprinted and satisfy the statutory requirement for honesty, trustworthiness and integrity (Moral Character). To satisfy the Moral Character requirement you may be required to submit additional information and documentation. **Each licensee is required by law to have fingerprints on file with DPS for TREC. Fingerprints on file for other agencies will not be accepted**. The license will issue once all licensing requirements are met and TREC receives confirmation from DPS that the applicant's fingerprints are on file. The applicant will be required to pay a fee for a background check with each renewal. The applicant must present a completed FAST Pass at the time of fingerprinting. For directions on how to download the FAST Pass and make an appointment to get fingerprints taken go to http://www.trec.state.tx.us/fastpass. The digital fingerprinting process may take up to 10 days, so plan accordingly. An applicant must pay a license application fee AND a fingerprint fee.

**An applicant must satisfy education requirements, pass the examination and get fingerprinted within six months after the date the application is filed with TREC or the application will expire.**

(5) An applicant must arrange for a Texas real estate broker holding an active license to sponsor the salesperson. **Applicants and inactive salespersons are not authorized to act as real estate agents.**

While an applicant is not required to have a sponsoring broker to file an application for a license, a sponsorship request form is included with the application materials. The sponsorship request may be filed along with the application to obtain an active license. Once all licensing requirements have been satisfied, TREC will send an active salesperson license to the broker and salesperson, and the licensee may act for the broker on receipt of the license which is available to both brokers and salespersons electronically.

An applicant may also file the application and arrange for sponsorship after TREC notifies the applicant that an inactive license has been issued. Once a broker holding an active license has mailed a request to TREC to act as the licensee's sponsor, the licensee may begin to act for the broker as a salesperson.

(6) Once you receive your license, go to the TREC web site and register with the new system. You can access this webpage (https://mylicense.state.tx.us) via the "my license" button at the top of www.trec.state.tx.us. You only have to do this once. To register, click the "Register here to set up a User ID and Password" link at the bottom of the homepage and follow the instructions using the security token that wll be provided to you with your license.

**PRIVACY NOTICE**

**In accordance with Chapter 559, Government Code, the following notice about certain information laws and practices is given.**

**(1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.**
**(2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.**
**(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.**

**Texas Real Estate Commission**
**P.O. Box 12188**
**Austin, Texas 78711-2188**
www.trec.state.tx.us

APPLICATION FOR:

# INACTIVE REAL ESTATE SALESPERSON LICENSE

| FEE | REGISTER NUMBER | AMOUNT | MONEY TYPE |
|---|---|---|---|
| Application Fee | | $127.00 | |
| Recovery Fund Fee | | $10.00 | |
| Paper Filing Fee | | $20.00 | |
| | | **License #** | |

For TREC Use Only

**DO NOT WRITE ABOVE THIS LINE**

*NOTE: ALL INFORMATION MUST BE TYPED OR PRINTED IN INK*

This application is for an **INACTIVE** salesperson license. Once an inactive license has been issued, you must obtain an active license under the sponsorship of a licensed broker to practice real estate brokerage. If a sponsorship request form is filed with the application, once all licensing requirements have been satisfied, an active license will issue.

1.Applicant's Full Name:

Last _____ First _____ Middle _____

2. Applicant's Social Security No.: _____

**Note: Section 231.302 of the Texas Family Code REQUIRES all applicants to disclose their Social Security Numbers (SSN) when filing an application. The SSN that is provided will be confidential and is required to enforce Child Support orders. Failure to provide the SSN will prevent a license from being issued and could ultimately lead to termination of the application.**

3. Applicant's Permanent Mailing Address and Contact Information: (Post Office Box may be used)

Number, Street and Apt. No. -or- P.O. Box

City _____ State _____ Zip Code _____ Area Code _____ Phone Number _____

FAX Number: Area Code _____ Phone Number _____ E-mail Address _____

4. Date of Birth: Month _____ Day _____ Year _____

5. Sex: ☐ M ☐ F (check one)

6. Ethnic Group: ☐ Black ☐ White ☐ Hispanic ☐ Asian ☐ Other (specify): _____

This document is available on the TREC website at www.trec.state.tx.us

7. Have you been licensed as a real estate salesperson or broker in a state **other than Texas** within the last five (5) years? ☐ Yes ☐ No

***If the answer is YES, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf.***

8. (a) Have you ever had a professional or occupational license in this state or any other state suspended, canceled or revoked, or ever surrendered such a license? ☐ Yes ☐ No

(b) Have you ever had an application for a professional or occupational license disapproved or denied in this state or any other state? ☐ Yes ☐ No

(c) Are there any disciplinary hearings or investigations pending against any professional or occupational licenses you hold in this state or any other state? ☐ Yes ☐ No

***If the answer to (a), (b), or (c) is YES, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf***

9. Are there any unpaid judgments against you? ☐ Yes ☐ No

***If the answer is YES, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf***

10. (a) Have you ever been convicted of a criminal offense? (Include all felonies and misdemeanors other than minor traffic tickets.) ☐ Yes ☐ No

(b) Have you ever been placed on parole, probation or community supervision (also known as deferred adjudication) regardless of whether the case was dismissed or you were discharged? ☐ Yes ☐ No

(c) Are there any criminal charges pending against you? ☐ Yes ☐ No

***If the answer to (a), (b), or (c) is YES, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf***

11. Have you ever acted, or attempted to act, as a real estate broker or salesperson or appraiser in this state or in any other state at a time when not properly licensed? (Include all periods in which you acted either before obtaining a license or after a license may have expired.) ☐ Yes ☐ No

***If the answer is YES, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf***

12. Are you currently in default on a student loan guaranteed by the Texas Guaranteed Student Loan Corporation? ☐ Yes ☐ No

13. List below all names (maiden, aliases, nicknames, etc.) by which you have been known.

_____ _____

_____ _____

_____ _____

14. Attach photocopies of transcripts or course completion certificates with this application to satisfy the education requirements. Retain the original documents for your personal files. The documents that are submitted with this application will not be returned to the applicant.

## IMPORTANT INFORMATION - PLEASE READ CAREFULLY

FEES

$127.00 Application Fee as follows:
- $107.00 TREC Application Fee
- $20.00 Real Estate Research Center at Texas A&M University

$10.00 Recovery Fund Fee. If not previously paid

$20.00 Applications submitted on paper that may be filed electronically at the TREC website must include a processing fee.

**ALL FEES LISTED ABOVE ARE NONREFUNDABLE**

ONLY FEES PERTAINING TO THIS APPLICATION SHOULD ACCOMPANY THE APPLICATION. **ALL REQUIRED FEES MUST BE SUBMITTED AT THE TIME OF FILING AN APPLICATION.** AN APPLICATION RECEIVED WITHOUT THE APPROPRIATE FEES WILL BE REJECTED AND RETURNED. If mailed, fees should be submitted in the form of **ONE CASHIERS CHECK, PERSONAL CHECK OR MONEY ORDER** payable to the Texas Real Estate Commission.

## NOTE

State law prohibits renewing a license more than once after a licensee has defaulted on a student loan guaranteed by the Texas Guaranteed Student Loan Corporation (TG) unless the licensee has entered into a repayment agreement with TG. YOU SHOULD CONTACT TG BEFORE FILING THIS APPLICATION if you have defaulted on a student loan. An application or renewal may be rejected if this agency has received information from TG that the applicant has defaulted on a student loan. The Texas Guaranteed Student Loan Corporation can be contacted at:

**Texas Guaranteed Student Loan Corporation**
**P.O. Box 83100**
**Round Rock, TX 78683-3100**
**Telephone: 1-800-252-9743**

## STATEMENT OF SALESPERSON APPLICANT

I certify that I am eighteen (18) years of age or older; that I am a citizen of the United States or a lawfully admitted alien; and that I am a legal resident of Texas. I certify that I have examined this application and the answers given are true, correct and complete. I understand that providing answers that are not true, correct, and complete is grounds for disapproval of this application or revocation of my license. I authorize the Texas Real Estate Commission to conduct any investigations of me which it deems prudent. I understand that information revealed in an investigation may be cause for disapproval of the application even though other requirements for a license have been met and that **if an investigation is necessary, it may not be conducted until I have passed the examination**. I further understand that information submitted in conjunction with this application may become a public record. If granted a license, I will abide by the provisions of The Real Estate License Act and the Rules of the Texas Real Estate Commission.

I understand that the contents of the qualifying examination are confidential and that revealing questions and answers to another applicant or to any person associated with a school or examination preparation course is grounds for disapproval of this application or revocation of my license. If I am asked to reveal the contents of an examination, I will not do so.

I CERTIFY THAT I WILL NOT PERFORM ANY ACT OF A REAL ESTATE SALESPERSON UNTIL AN ACTIVE TEXAS REAL ESTATE COMMISSION LICENSE CERTIFICATE IS IN MY SPONSORING BROKER'S POSSESSION.

Date Signed _____ Signature of Applicant _____

## *IMPORTANT INFORMATION - PLEASE READ THIS CAREFULLY*

1. Only fees pertaining to THIS APPLICATION should accompany this application.

2. Please ensure the following:

   a. all information is printed in ink or typewritten;
   b. all requested information is provided;
   c. all questions have been answered;
   d. all required signatures and dates of signing are in place (**do not** use signature stamps);
   e. all education documents have been submitted; and
   f. all fee(s) are enclosed.

# IF ALL REQUIREMENTS FOR A LICENSE ARE NOT MET WITHIN SIX (6) MONTHS OF THE FILING DATE, THE APPLICATION TERMINATES.

MAILING ADDRESS:
TEXAS REAL ESTATE COMMISSION
P.O. Box 12188
Austin, Texas 78711-2188

OFFICE ADDRESS:
TEXAS REAL ESTATE COMMISSION
1101 Camino La Costa
Austin, Texas 78752
Telephone: (512) 459-6544

# APPLICATION FOR LATE RENEWAL OF A SALESPERSON LICENSE OR BROKER LICENSE BY AN INDIVIDUAL

**TO BE USED IF YOUR LICENSE HAS BEEN EXPIRED MORE THAN ONE YEAR BUT LESS THAN SIX YEARS. IF YOU WERE LICENSED AS A SALESPERSON OR BROKER DURING THE PRECEDING SIX YEARS, THE ATTACHED LATE RENEWAL FORM SHOULD BE USED TO REGAIN A LICENSE. IF YOUR LICENSE HAS BEEN EXPIRED FOR MORE THAN SIX YEARS, USE AN ORIGINAL APPLICATION @www.trec.state.tx.us**

1. **Filing Fee: THIS APPLICATION MUST BE FILED WITH ONE OF THE FOLLOWING FEES:**

   (a) If you are a **salesperson** whose license has been expired more than one year but not more than six (6) years, and you are subject to **MCE** the late renewal fee is **$180.00**. The license issued from this fee will be for two years. This application is not available online and must be mailed in with the fee.

   (b) If you are a **broker** whose license has been expired more than one year but not more than six (6) years, the late renewal fee is **$587.00**. The license issued from this fee will be for two years. This application is available online at the TREC website and if mailed, must include a $20.00 processing fee in addition to the renewal amount.

   **IF YOU ARE SUBJECT TO THE FOLLOW-UP BACKGROUND CHECK FEE, ADD $19.25.**

   **IF MAILED,** SUBMIT ONLY ONE CHECK OR MONEY ORDER IN THE EXACT FEE AMOUNT MADE PAYABLE TO THE TEXAS REAL ESTATE COMMISSION. **THIS FEE IS NONREFUNDABLE.**

2. **Required Education: Education must be received prior to or in conjunction with the filing of this application. An active license will not be issued without required education on file with TREC.**

   (a) FOR ACTIVE LICENSES ONLY: A salesperson who did not complete applicable Mandatory Continuing Education (MCE) requirements in connection with the last renewal of the license and who was NOT subject to Salesperson Annual Education (SAE) requirements described above must complete fifteen (15) hours of MCE which must include a three hour legal update course and a three hour legal ethics course created for and approved by TREC to satisfy the six legal hours required by Texas Occupations Code §1101.455. **MCE HOURS MUST BE COMPLETED WITHIN THE TWO YEAR PERIOD PRECEDING** THE FILING OF THIS APPLICATION.

   (b) **If you are a broker,** to apply for an ACTIVE broker license you must complete fifteen (15) hours of MCE including a three hour legal update course and a three hour legal ethics course created for and approved by TREC to satify the six legal hours required by §1101.455 of the Act. **MCE HOURS MUST BE COMPLETED WITHIN THE TWO YEAR PERIOD PRECEDING THE FILING OF THIS APPLICATION.**

   MCE course providers will submit to the Commission the documentation that you completed a course. The recording of course completion credit for a licensee may take up to fifteen (15) days after course completion. TREC recommends that you wait at least fifteen (15) days after the MCE course completion to file the application. You must submit course completion documentation to obtain MCE credit for core real estate courses, state bar courses or out of state courses. These may be mailed or faxed to (512) 465-3989.

   **If MCE has NOT been timely completed, any license issued to you will be placed in an inactive status.**

   If this application is for a license in an INACTIVE status, there is no MCE requirement. You may return to active status after applicable MCE requirements have been completed and submit a Salesperson Sponsorship Form (if a salesperson or a "Request to Return to Active Status" form ia a broker and pay the appropriate fee.

(3) **Fingerprint Requirements:** If the applicant does not have fingerprints on file with the Department of Public Safety (DPS) for TREC, the applicant must get fingerprinted and satisfy the statutory requirement for honesty, trustworthiness and integrity. **Each licensee is required by law to have fingerprints on file with the Department of Public Safety (DPS) for TREC. Fingerprints on file for other agencies will not be accepted**. The license will issue once all licensing requirements are met and TREC receives confirmation from DPS that the applicant's fingerprints are on file. For directions on how to download the FAST pass and make an appointment to get fingerprints taken go to http://www.trec.state.tx.us/fastpass. The digital fingerprinting

process may take up to 10 days, so plan accordingly. An applicant must pay a license application fee to TREC AND a fingerprint fee to L-1 for DPS. The applicant must present a completed FAST Pass at the time of fingerprinting.

Applicants that have already been fingerprinted for TREC will be required to pay a fee for a background check with each renewal.

**An applicant must satisfy education requirements, pass the examination and get fingerprinted (if required) within six months after the date the application is filed with TREC or the application will expire.**

(4) **Default of Student Loan:** If you have defaulted on a student loan with the Texas Guaranteed Student Loan Corporation (TG) and are not currently making payments under a repayment agreement, contact the **Texas Guaranteed Student Loan Corporation,** P.O. Box 83100, Round Rock, TX 78683-3100, Telephone: 1-800-252-9743**,** BEFORE filing an application. State law prohibits renewing a license after a licensee has defaulted on a student loan guaranteed by the Texas Guaranteed Student Loan Corporation (TG) unless the licensee has entered into a repayment agreement with TG. An application or renewal may be rejected if this agency has received information from TG that the applicant has defaulted on a student loan.

(5) **License Expired more than two years: If your license has been expired for more than two years, an examination is required.** License examinations are administered by Psychological Services, Inc. (PSI). Once you are eligible to take the examination, you will receive notification that you may obtain a copy of the Candidate Information Brochure (CIB) to register for the exam. The CIB will provide all the information and instructions for making a reservation to take the examination. The CIB also contains study material and instructions about licensing.

(6) **You are not authorized to perform any act of a real estate licensee until an ACTIVE Texas Real Estate Commission license is in your possession, if you are a broker, or your broker's, if you are a salesperson**.

(a) A salesperson applicant must arrange for a Texas real estate broker holding an active license to sponsor the salesperson. **Applicants and inactive salespersons are not authorized to act as real estate agents.**

While an applicant is not required to have a sponsoring broker to file an application for a license, a sponsorship request form is included with the application materials. The sponsorship request may be filed along with the application. Once all licensing requirements have been satisfied, TREC will send an active salesperson license to the broker and salesperson, and the licensee may act for the broker on receipt of the license which is available to both brokers and salespersons electronically.

(b) An applicant may also file the application and arrange for sponsorship after TREC notifies the applicant that an inactive license has been issued. Once a broker holding an active license has mailed a request to TREC to act as the licensee's sponsor, the licensee may begin to act for the broker as a salesperson.

A broker applicant may not act as a real estate licensee until an ACTIVE Texas Real Estate Commission license is in the applicant's possession.

**You must complete education, fingerprinting and if necessary, examination requirements within six months of filing this application or the application will expire.**

(7) Once you receive your license, go to the TREC web site and register with the new system. You can access this webpage (https://mylicense.state.tx.us) via the "my license" button at the top of www.trec.state.tx.us. You only have to do this once. To register, click the "Register here to set up a User ID and Password" link at the bottom of the homepage and follow the instructions using the security token that wll be provided to you with your license.

**PRIVACY NOTICE**

**In accordance with Chapter 559, Government Code, the following notice about certain information laws and practices is given.**

**(1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.**
**(2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.**
**(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.**

**Texas Real Estate Commission**
**P.O. Box 12188**
**Austin, Texas 78711-2188**
www.trec.state.tx.us

APPLICATION FOR:

# LATE RENEWAL OF REAL ESTATE SALESPERSON OR BROKER (BY INDIVIDUAL) LICENSE

| FEE | REGISTER NUMBER | AMOUNT SALES | AMOUNT BROKER | MONEY TYPE |
|---|---|---|---|---|
| If License has been expired **more than one year** | | $180.00 | $587.00 | |
| Subsequent Background Check Fee *(if previously fingerprinted for TREC)* | | $19.25 | $19.25 | |
| Paper Filing Fee | | $20.00 | $20.00 | |

THIS AREA FOR TREC USE ONLY

**License #**

**DO NOT WRITE ABOVE THIS LINE**

***NOTE: ALL INFORMATION MUST BE TYPED OR PRINTED IN INK***

1.Applicant's Full Name:

Last _____ First _____ Middle _____

2. TREC License Number _____

3. Expiration Date _____

4. License Type: ☐ Salesperson ☐ Broker

5. I am applying for an ☐ Inactive Salesperson or ☐ Active Salesperson License

☐ Active Broker License. (check one box only)

TREC required education must be posted before an active late renewed license can issue.

(Salespersons Sponsorship Form-3 required for late renewal of an active salesperson license)

6. Date of Birth: _____ Month Day Year

7. Sex: (check one) ☐ M ☐ F

8. Ethnic Group: ☐ Black ☐ White ☐ Hispanic ☐ Asian ☐ Other (specify): _____

9.Applicant's Permanent Mailing Address and Contact Information: (Post Office Box may be used)

Number, Street and Apt. No. _____

City _____ State _____ Zip Code _____ Area Code _____ Phone Number _____

FAX Number: _____ Area Code Phone Number _____ E-mail Address

This document is available on the TREC website at www.trec.state.tx.us

10. Business Address (Fixed Office)*: **DO NOT PROVIDE A PLACE OF BUSINESS ADDRESS IF YOU ARE RENEWING A SALESPERSON LICENSE OR YOU ARE A BROKER REQUESTING INACTIVE STATUS. THE PLACE OF BUSINESS ADDRESS MUST BE A FIXED* STREET ADDRESS, NOT A P.O. BOX.**

Number, Street and Apt. No.

City | State | Zip Code | Area Code | Phone Number

FAX Number: Area Code | Phone Number | E-mail Address

11. Have you been licensed as a real estate salesperson or broker in a state **other than Texas** within the last five (5) years? ☐ Yes ☐ No

***If the answer is YES, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf.***

12. (a) Have you ever had a professional or occupational license in this state or any other state suspended, canceled or revoked, or ever surrendered such a license? ☐ Yes ☐ No

(b) Have you ever had an application for a professional or occupational license disapproved or denied in this state or any other state? ☐ Yes ☐ No

(c) Are there any disciplinary hearings or investigations pending against any professional or occupational licenses you hold? ☐ Yes ☐ No

***If the answer to (a), (b), or (c) is YES, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf.***

13. Are there any unpaid judgments against you? ☐ Yes ☐ No

***If the answer is YES, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf.***

14. (a) Have you ever been convicted of a criminal offense? (Include all felonies and misdemeanors other than minor traffic tickets.) ☐ Yes ☐ No

(b) Have you ever been placed on parole, probation or community supervision (also known as deferred adjudication) regardless of whether the case was dismissed or you were discharged? ☐ Yes ☐ No

(c) Are there any criminal charges pending against you? ☐ Yes ☐ No

***If the answer to (a), (b), or (c) is YES, you must complete the applicable sections of the Background History Form located at http://www.trec.state.tx.us/pdf/forms/miscellaneous/BackgroundHistory.pdf.***

15. Have you ever acted, or attempted to act, as a real estate broker or salesperson or appraiser in this state or in any other state at a time when not properly licensed? (Include all periods in which you acted either before obtaining a license or after a license may have expired.) ☐ Yes ☐ No

16. Are you currently in default on a student loan guaranteed by the Texas Guaranteed Student Loan Corporation? ☐ Yes ☐ No

17. Business name(s) to be assumed by brokers only (if any):

18. List below all names (maiden, aliases, nicknames, etc.) by which you have been known.

_____ _____

_____ _____

_____ _____

19. Attach photocopies of transcripts or course completion certificates with this application to satisfy the education requirements. Retain the original documents for your personal files. The documents that are submitted with this application will not be returned to the applicant.

## IMPORTANT INFORMATION - PLEASE READ CAREFULLY

FEES

$180.00 Salesperson Application Fee as follows:
- $140.00 TREC Application Fee
- $40.00 Real Estate Research Center at Texas A&M University

$587.00 Application Fee as follows:
- $147.00 TREC Application Fee
- $40.00 Real Estate Research Center at Texas A&M University
- $400.00 General Revenue

$19.25 Subsequent Background Check Fee (required for applicants previously fingerprinted for TREC.

$10.00 Recovery Fund Fee. If not previously paid.

$20.00 Applications submitted on paper that may be filed electronically at the TREC website will need to include a processing fee.

**ALL FEES LISTED ABOVE ARE NONREFUNDABLE**

ONLY FEES PERTAINING TO THIS APPLICATION SHOULD ACCOMPANY THE APPLICATION. **ALL REQUIRED FEES MUST BESUBMITTED AT THE TIME OF FILING AN APPLICATION.** AN APPLICATION RECEIVED WITHOUT THE APPROPRIATE FEES WILL BE REJECTED AND RETURNED. If mailed, fees should be submitted in the form of **ONE CASHIERS CHECK, PERSONAL CHECK OR MONEY ORDER** payable to the Texas Real Estate Commission.

## NOTE

State law prohibits renewing a license after a licensee has defaulted on a student loan guaranteed by the Texas Guaranteed Student Loan Corporation (TG) unless the licensee has entered into a repayment agreement with TG. YOU SHOULD CONTACT TG BEFORE FILING THIS APPLICATION if you have defaulted on a student loan. An application or renewal may be rejected if this agency has received information from TG that the applicant has defaulted on a student loan. The Texas Guaranteed Student Loan Corporation can be contacted at:

**Texas Guaranteed Student Loan Corporation**
**P.O. Box 83100**
**Round Rock, TX 78683-3100**
**Telephone: 1-800-252-9743**

# STATEMENT OF APPLICANT

I certify that I am eighteen (18) years of age or older; that I am a citizen of the United States or a lawfully admitted alien; and that I am a legal resident of Texas. I certify that I have examined this application and the answers given are true, correct and complete. I understand that providing answers that are not true, correct, and complete is grounds for disapproval of this application or revocation of my license. I authorize the Texas Real Estate Commission to conduct any investigations of me which it deems prudent. I understand that information revealed in an investigation may be cause for disapproval of the application even though other requirements for a license have been met and that if an investigation is necessary, it may not be conducted until I have passed the examination. I further understand that information submitted in conjunction with this application may become a public record. If granted a license, I will abide by the provisions of The Real Estate License Act and the Rules of the Texas Real Estate Commission.

I understand that the contents of the qualifying examination are confidential and that revealing questions and answers to another applicant or to any person associated with a school or examination preparation course is grounds for disapproval of this application or revocation of my license. If I am asked to reveal the contents of an examination, I will not do so.

☐ I CERTIFY THAT I WILL NOT PERFORM ANY ACT OF A REAL ESTATE SALESPERSON UNTIL AN ACTIVE TEXAS REAL ESTATE COMMISSION LICENSE CERTIFICATE IS IN MY SPONSORING BROKER'S POSSESSION.

☐ I CERTIFY THAT I WILL NOT PERFORM ANY ACT OF A REAL ESTATE BROKER UNTIL AN ACTIVE TEXAS REAL ESTATE COMMISSION LICENSE CERTIFICATE IS IN MY POSSESSION.

Date Signed _____ Signature of Applicant _____

***IMPORTANT INFORMATION***
***PLEASE READ THIS CAREFULLY***

1. Only fees pertaining to THIS APPLICATION should accompany this application.

2. Please ensure the following:
   a. all information is printed in ink or typewritten;
   b. all requested information is provided;
   c. all questions have been answered;
   d. all required signatures and dates of signing are in place, (**do not** use signature stamps);
   e. all education requirements have been met; and
   f. all fee(s) are enclosed.

**IF ALL REQUIREMENTS FOR A LICENSE ARE NOT MET WITHIN <u>SIX (6) MONTHS</u> OF THE FILING DATE, THE APPLICATION TERMINATES.**

**Texas Real Estate Commission**
**P.O. Box 12188**
**Austin, Texas 78711-2188**
www.trec.state.tx.us

# BACKGROUND HISTORY FORM

NOTE: You may type information into this form and it will display, but you will need to print and mail the form along with copies of documents to TREC when completed. Information entered into this form can only be saved if you are able to print and save the form as a PDF.

The Commission must review your background in connection with certain "Yes" answers given on your application before a decision on your application can be made. Please complete Sections 1, 2 and 3 and any other applicable section. Be sure to provide complete, legible copies of any documentation needed. Be specific and provide exact details. Attach a separate form for each additional license, judgment, pending lawsuit or crime that you need to report. Attach additional pages for explanations that require more space.

**1.Full Name:**

Last First Middle

**2. Address and Contact Information: (Post Office Box may be used)**

Number, Street and Apt. No. or P.O. Box

City State Zip Code Area Code Phone Number

E-mail Address Date of Birth: Month Day Year

**3. EMPLOYMENT HISTORY:** Provide employment history for the last five (5) years to the present date. Explain any periods of unemployment for more than thirty (30) days. If additional space is needed, attach a separate sheet of paper to complete your answer.

| FROM | | TO | | Employer | City, State | Position/Duties |
|---|---|---|---|---|---|---|
| Month | Year | Month | Year | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

This document is available on the TREC website at www.trec.state.tx.us

**4. OUT OF STATE REAL ESTATE LICENSE:**

Issuing State: _____ Date Issued: _____

Status: ☐ Active ☐ Inactive ☐ Expired ☐ Other _____

Action Taken on License (if applicable): ☐ Revoked ☐ Surrendered ☐ Suspended ☐ Terminated

☐ Other _____

Effective Date of Action: _____

Explanation of circumstances leading to any action taken:

_____

_____

_____

_____

_____

**Documentation Needed:** Submit license history signed by State licensing agency.

**5. OTHER OCCUPATIONAL/PROFESSIONAL LICENSES:** Type of License: _____

Issuing State: _____ Date Issued: _____

Status: ☐ Active ☐ Inactive ☐ Expired ☐ Other _____

Action Taken on License (if applicable): ☐ Revoked ☐ Surrendered ☐ Suspended ☐ Terminated

☐ Other _____

Effective Date of Action: _____

Explanation of circumstances leading to any action taken:

_____

_____

_____

_____

**Documentation Needed:** Submit license history signed by State licensing agency.

**6. OUTSTANDING JUDGMENTS/PENDING CIVIL LAWSUITS**

Status: ☐ Pending Lawsuit ☐ Final Judgment ☐ Judgment Appealed

Explanation of circumstances leading to judgment/lawsuit and any payment plan for outstanding judgment:

_____

_____

_____

**Documentation Needed:** Submit copies of all petitions, responses and judgments.

**7. CRIMINAL HISTORY**

Style and Cause Number: _____

Initial Charge: _____ ☐ Misdemeanor ☐ Felony

Ultimate Charge: _____ ☐ Misdemeanor ☐ Felony

Title of Court: _____ County of Court: _____

Plea: ☐ Guilty ☐ Not Guilty ☐ Nolo Contendere ☐ Other _____

Date crime committed _____ Date sentenced: _____

Disposition (check all that apply: ☐ Adjudicated Guilty ☐ Adjudicated Not Guilty ☐ Probation ☐ Shock Probation ☐ Incarceration: _____ term ☐ Deferred Adjudication ☐ Deferred Prosecution ☐ Restitution Ordered ☐ Community Service Ordered

Explanation of circumstances leading to criminal charges:

_____

_____

_____

Regarding parole, community supervision or probation:
Have you been released from any of the above: ☐ Yes ☐ No Date of release: _____
Have you ever violated the terms of any of the above: ☐ Yes ☐ No

Have you had your parole, community supervision or probation revoked: ☐ Yes ☐ No

Date of Revocation: _____

Explanation of circumstances leading to revocation and changes made to your sentence, if any:

_____

_____

_____

**Documentation Needed**: Submit copies of all indictments, information, charges, judgments, orders, motions to revoke and parole, probation/community supervision release.

**8.UNLICENSED ACTIVITY**

Explanation of circumstances leading to unlicensed real estate activity:

_____

_____

_____

_____

## *IMPORTANT INFORMATION - PLEASE READ THIS CAREFULLY*

Please ensure the following:

a. all information is printed in ink or typewritten;
b. all requested information is provided; and
c. all questions have been answered.

**IF ALL REQUIREMENTS FOR A LICENSE ARE NOT MET WITHIN SIX (6) MONTHS OF THE FILING DATE, THE APPLICATION TERMINATES.**

**Texas Real Estate Commission**
**P.O. Box 12188**
**Austin, Texas 78711-2188**

# CHANGE OF DESIGNATED OFFICER OR MANAGER

**DO NOT WRITE ABOVE THIS LINE**

| FEE | REGISTER NUMBER | AMOUNT | $ TYPE | LICENSE NUMBER |
|---|---|---|---|---|
| Processing Fee | | $20.00 | | |

**A $20.00 fee MUST accompany this application.**
**The fee must be a SINGLE REMITTANCE.**

Name of Corporation or LLC

TREC License Number

Name of Current Designated Officer or Manager and Office Held

TREC License Number

Name of ***NEW*** Designated Officer or Manager and Office Held

TREC License Number

**Authorization**

**BOTH SIGNATURES REQUIRED**

Corporation President or Limited Liability Company Manager

Printed Name

Signature

Date

***NEW*** Designated Officer or Manager and Office Held

(Must be president, vice-president, secretary or treasurer for corporation or manager for LLC)

Printed Name and Office Held

Signature

Date

This document is available on the TREC website at www.trec.state.tx.us

**PRIVACY NOTICE**

**In accordance with Chapter 559, Government code, the following notice about certain information laws and practices is given.**

**(1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.**

**(2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.**

**(3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.**

**Agenda Item 16:**

Discussion and possible action to approve changes to school, provider, course and instructor forms, and miscellaneous education related forms

**SUMMARY**

Remove the agency 1-800 number from the following forms:

**MCE & SAE Student Forms**

MCE 10-2 – MCE Credit Request for an Out of State Course

MCE 12-2 – Individual MCE Elective Credit Request for State Bar Course

MCE 15-0 – Individual MCE Elective Credit Request for Professional Designation Course

ED4-2 – Top of Instructions page for Instructor Application-Core, Legal Update, and Ethics Courses.

ED 7-1 – Top Coversheet for Instructor Manual Guidelines for Core Real Estate and Real Estate Related Courses.

**STAFF RECOMMENDATION**

Approve the changes to the forms as requested.

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to change the school, provider, course and instructor forms, and miscellaneous education related forms as requested.

Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188
512-459-6544 or 1-800-250-8732 (TREC)

# Mandatory Continuing Education
# MCE CREDIT REQUEST FOR AN OUT OF STATE COURSE

File this form for each course for which you are requesting MCE credit.
You may only receive up to nine hours of elective credit for an out of state course.

Student's Name

Last First MI

Texas Real Estate License Number

License Number from Other State

Permanent Mailing Address

Street City State Zip

Course Title

Course Completion Date

Total Number of Hours Awarded

1. When you took this course, were you licensed in the other state? ❑ Yes ❑ No
2. When you took the course, was it approved for continuing education in the other state? ❑ Yes ❑ No
3. Was this course a correspondence course? ❑ Yes ❑ No
4. Was the course offered by an accredited college or university? ❑ Yes ❑ No
5. Was this course at least one hour in length? ❑ Yes ❑ No
6. Have you included course completion documentation? ❑ Yes ❑ No
7. Was this course completed during the current license period? ❑ Yes ❑ No

I represent that all information submitted with this request is accurate.

Signature Date

THIS BOX IS FOR COMMISSION USE ONLY

You were awarded hours of Texas MCE credit.

To award credit, courses must have been taken during the proper time frame and must meet all MCE.



This document is available on the TREC website at www.trec.state.tx.us

**Agenda Item 17:**

Discussion and possible action to approve Non-Realty Items Addendum

**SUMMARY**

This form was previously submitted as part of the amendments to §537

**STAFF RECOMMENDATION**

Approve the form as requested.

**MOTION**

MOVED, that the Commission does hereby approve the Non-Realty Items Addendum as requested.

EQUAL HOUSING OPPORTUNITY

# NON-REALTY ITEMS ADDENDUM

TO CONTRACT CONCERNING THE PROPERTY AT

_____

(Address of Property)

**A.** For an additional sum of $_____and other and good valuable consideration, Seller shall convey to Buyer at closing the following personal property (specify each item carefully, include description, model numbers, serial numbers, location, and other information):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

**B.** Seller represents and warrants that Seller owns the personal property described in Paragraph A free and clear of all encumbrances.

**C.** Seller does not warrant or guarantee the condition or future performance of the personal property conveyed by this document.

| | |
|---|---|
| Buyer | Seller |
| Buyer | Seller |

The form of this contract has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (http://www.trec.state.tx.us) TREC No. OP-?.

**Agenda Item 18**

Discussion and possible action to approve fiscal year 2011 budget

**SUMMARY**

See attached.

**STAFF RECOMMENDATION**

Staff recommends the approval of the fiscal year 2011 budget as submitted.

# Texas Real Estate Commission
## FY2011 Budget

| Expenditure Category | Budgeted FY2011 | 5% Budget Reduction | Revised Budget FY2011 |
|---|---|---|---|
| Salaries & Wages | $4,095,601 | ($178,056) | $3,917,545 |
| Other Personnel Costs | 150,420 | | 150,420 |
| Benefit Replacement Pay | 22,529 | | 22,529 |
| Professional Fees & Services | 58,907 | (16,000) | 42,907 |
| Consumables | 55,800 | (900) | 54,900 |
| Utilities | 40,800 | | 40,800 |
| Travel | 67,300 | (8,600) | 58,700 |
| Office Rent | 426,845 | | 426,845 |
| Equipment Rental | 33,900 | | 33,900 |
| Registration & Memberships | 14,250 | (3,000) | 11,250 |
| Maintenance & Repairs | 31,777 | | 31,777 |
| Reproduction & Printing | 16,199 | (6,144) | 10,055 |
| Contract Services | 261,808 | (247,304) | 14,504 |
| Postage | 136,400 | (57,580) | 78,820 |
| Supplies & Equipment (Non-capitalized) | 35,182 | (10,000) | 25,182 |
| Communication Services | 49,700 | (30,600) | 19,100 |
| Other Operating Expenses | 56,213 | (40,000) | 16,213 |
| DPS Criminal History Background Checks | 3,000 | | 3,000 |
| FBI Criminal History Background Checks | 1,449,525 | | 1,449,525 |
| Texas Online Fees | 300,000 | | 300,000 |
| Contingency Reserve | 162,173 | | 162,173 |
| Master Lease Program Payments | 14,700 | | 14,700 |
| Capital Expenditures - Imaging | 174,941 | | 174,941 |
| Capital Expenditures - Computer System | 104,862 | | 104,862 |
| **Total Expenditures** | **$7,762,832** | **($598,184)** | **$7,164,648** |

Other Operating Expenses

| | | | |
|---|---|---|---|
| **Method of Finance:** | | | |
| General Revenue per GAA | $7,271,001 | ($598,184) | $6,672,817 |
| Appropriation Adjustments: | | | |
| Benefit Replacement Pay | 22,529 | | $22,529 |
| Imaging - UB from Prior Year | 174,940 | | $174,940 |
| Computer System - UB from Prior Year | 104,862 | | $104,862 |
| **Total General Revenue** | **7,573,332** | **(598,184)** | **6,975,148** |
| Appropriated Receipts (non-RSC), Est. | 180,000 | | $180,000 |
| Appropriated Receipts (RSC) | 5,500 | | $5,500 |
| Real Estate Recovery Fund | 3,500 | | $3,500 |
| Real Estate Inspection Recovery Fund | 500 | | $500 |
| **Total Appropriation Authority** | **$7,762,832** | **($598,184)** | **$7,164,648** |

| | | | |
|---|---|---|---|
| **Budgeted FTEs** | **91.4** | **(6.0)** | **85.4** |

## Description of Expense Categories

| | |
|---|---|
| Salaries & Wages | Salaries of exempt & classified employees |
| Other Personnel Costs | Compensatory per diem, lump sum payments, longevity, and unemployment compensation |
| Benefit Replacement Pay | Benefit payment paid to employees who have been with the state since 8/31/1995. Appropriated to the Comptroller's office, budget is transferred to TREC to cover payments. |
| Professional Fees/Services | Employee assistance program, internal auditor, residential service company audits and exams, computer programming, and temporary employees |
| Consumables | Paper, pens, toner cartridges, etc. |
| Utilities | Local and long distance phone service, dedicated circuits, telecommunications maintenance and service charges, telecommunications parts & supplies, paper shredding. |
| Travel | Travel for board members, advisory committees, and employees |
| Office Rent | Office lease payments |
| Equipment Rent | Lease of copiers, postage meter, and folder inserter |
| Registration & Memberships | Membership dues, registration fees for conferences, training, attorney CLE |
| Maintenance & Repair | Maintenance contracts on computer hardware and software, miscellaneous repairs on office furniture, printers, etc. |
| Reproduction & Printing | Renewal notices, licenses, envelopes, business cards, etc. |
| Contract Services | Mail presort service, movers, court reporters, transcripts, subpoenas, security guards, computer code escrow fee |
| Postage | Meter, deposits to permit account, post office box rental, postage due account |
| Supplies & Equipment | Equipment which costs less than $5,000 |
| Communication Services | Internet connection services, electronic subscriptions, Tex-AN charges for toll-free lines and internet service |
| Other Operating Expenses | Certified copies, freight and delivery service, attorney state bar dues, and miscellaneous other expenses |
| DPS Criminal History Checks | $1 per license application and renewal for criminal history background check (Texas) |
| FBI Criminal History Checks | FBI criminal history background checks |
| Texas Online Fees | Funds the internet portal for online transactions |
| Master Lease Program Payments | Payments to Texas Public Finance Authority for capital equipment financed through that agency |
| Capital Expenditures | Equipment which costs $5,000 or more. |

# Texas Real Estate Commission
## FY2011 Revenue Forecast

| REVENUE CODE | TITLE | 2008-09 FEE RATE | 2010 FEE RATE | FY2011 FEE RATE | FY08 Actual | | FY09 Actual | | FY2010 Actual | | FY2011 Projected | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | COUNT | AMOUNT | COUNT | AMOUNT | COUNT | AMOUNT | COUNT | AMOUNT |
| 0001 | Broker Original Application | 75 | 75 | 105 | 2,872 | 215,400 | 2,618 | 196,350 | 2,582 | 193,650 | 2,500 | 262,500 |
| 0002 | Sales Original Application | 75 | 75 | 105 | - - - - - | 989,975 | 10,391 | 779,325 | 10,999 | 824,925 | 10,675 | 1,120,875 |
| 0004 | Branch Office Fee | 20 | 20 | 20 | 727 | 14,540 | 631 | 12,620 | 556 | 11,120 | 600 | 12,000 |
| 0007 | Change Fee | 20 | 20 | 20 | 3,949 | 78,980 | 3,857 | 77,140 | 3,637 | 72,740 | 100 | 2,000 |
| 0009 | Change of Sponsor | 20 | 20 | 20 | 23,111 | 462,220 | 21,427 | 428,540 | 19,263 | 385,260 | 10,200 | 204,000 |
| 0015 | Broker Renewal (TREC) | 60 | 68 | 68 | 19,331 | 1,159,860 | 18,249 | 1,094,940 | 22,147 | 1,328,820 | 18,230 | 1,239,640 |
| 0017 | Sales Renewal (TREC) | Varies | Varies | Varies | - - - - - | 2,697,905 | - - - - - | 2,511,181 | - - - - - | 2,755,220 | - - - - - | 2,767,804 |
| 0018 | Branch Office Renewal | 20 | 20 | 20 | 775 | 15,500 | 791 | 15,820 | 554 | 11,080 | 560 | 11,200 |
| 0019 | Right-of-Way Application | 80 | 80 | 80 | 872 | 69,760 | 803 | 64,240 | 712 | 56,960 | 690 | 55,200 |
| 0020 | MCE Instructor Original Application | 25 | 25 | 25 | 641 | 16,025 | 445 | 11,125 | 380 | 9,500 | 400 | 10,000 |
| 0021 | Instructor Original Application | 25 | 25 | 25 | 184 | 4,600 | 146 | 3,655 | 255 | 6,375 | 200 | 5,000 |
| 0026 | School File Original Application | 400 | 400 | 400 | 5 | 2,000 | 10 | 4,000 | 12 | 4,800 | 10 | 4,000 |
| 0027 | School File Annual Fee | 200 | 200 | 200 | 54 | 10,800 | 44 | 8,800 | 47 | 9,400 | 45 | 9,000 |
| 0028 | Moral Character Determination | 25 | 25 | 25 | 229 | 5,725 | 238 | 5,950 | 310 | 7,750 | 275 | 6,875 |
| 0029 | Residential Service Company Act | 3,500 | 3,500 | 3,500 | 26 | 91,000 | 26 | 91,000 | 26 | 91,000 | 26 | 91,000 |
| 0030 | RSC Evidence/Schedule Fee | 250 | 250 | 250 | 118 | 29,500 | 116 | 29,000 | 112 | 28,000 | 116 | 29,000 |
| 0035 | Education Core Renewal Fee | 25 | 25 | 25 | 89 | 2,225 | 73 | 1,825 | 169 | 4,225 | 75 | 1,875 |
| 0043 | MCE Deficiency Fee | 200 | 200 | 200 | 1,303 | 260,600 | 861 | 172,200 | 871 | 174,200 | 860 | 172,000 |
| 0044 | Duplicate License Fee | 20 | 20 | 20 | 178 | 3,560 | 207 | 4,140 | 100 | 2,000 | 50 | 1,000 |
| 0050 | Designated Office Change | 20 | 20 | 20 | 385 | 7,700 | 362 | 7,240 | 329 | 6,580 | 170 | 3,400 |
| 0052 | Right-of-Way Renewal | 80 | 80 | 80 | 853 | 68,240 | 978 | 78,240 | 1,030 | 82,400 | 970 | 77,600 |
| 0054 | Stepdown Application | 75 | 75 | 75 | 23 | 1,725 | 47 | 3,525 | 62 | 4,650 | 50 | 3,750 |
| 0056 | Broker Late Renewal | Varies | Varies | Varies | - - - - - | 108,585 | - - - - - | 91,470 | - - - - - | 96,084 | - - - - - | 94,320 |
| 0057 | Sales Late Renewal | Varies | Varies | Varies | - - - - - | 456,630 | - - - - - | 384,530 | - - - - - | 387,592 | - - - - - | 388,700 |
| 0058 | Criminal History Background Check | 19.25 | 19.25 | 19.25 | - - - - - | - - - - - | 13,824 | 266,112 | 48,897 | 941,272 | 61,039 | 1,175,001 |
| 0062 | Transcript Evaluation | 30 | 30 | 0 | - - - - - | 547,170 | 15,675 | 470,240 | 16,640 | 499,200 | 0 | 0 |
| 0065 | Education MCE Renewal Fee | 25 | 25 | 25 | 16 | 400 | 17 | 425 | 70 | 1,750 | 72 | 1,800 |
| 0067 | Late Renewal/Late Fee | Varies | Varies | Varies | - - - - - | 182,520 | - - - - - | 303,570 | - - - - - | 336,217 | - - - - - | 320,000 |
| 0068 | Timeshare Renewal/Late Fee | Varies | Varies | Varies | - - - - - | 6,325 | - - - - - | 11,075 | - - - - - | 7,675 | - - - - - | 9,600 |
| 0069 | Inspector Original Application | Varies | Varies | Varies | - - - - - | 31,685 | - - - - - | 25,535 | - - - - - | 27,520 | - - - - - | 29,225 |
| 0071 | Inspector Renewal | Varies | Varies | Varies | - - - - - | 72,425 | - - - - - | 97,695 | - - - - - | 70,010 | - - - - - | 95,000 |
| 0072 | Timeshare Application | Varies | Varies | Varies | - - - - - | 69,780 | - - - - - | 20,848 | - - - - - | 17,724 | - - - - - | 20,000 |
| 0073 | Timeshare Application Amendment | Varies | Varies | Varies | - - - - - | 63,097 | - - - - - | 51,919 | - - - - - | 34,449 | - - - - - | 35,000 |
| 0076 | Late MCE Reporting Fee | 250 | 250 | 250 | - - - - - | - - - - - | 192 | 48,000 | 254 | 63,500 | 210 | 52,500 |
| 0079 | Broker Request to go Active | 20 | 20 | 20 | 365 | 7,300 | 435 | 8,700 | 401 | 8,020 | 210 | 4,200 |
| 0082 | License History | 20 | 20 | 20 | 1,088 | 21,760 | 904 | 18,080 | 864 | 17,280 | 875 | 17,500 |
| 0091 | MCE Provider Application | 400 | 400 | 400 | 177 | 70,800 | 159 | 63,600 | 176 | 70,400 | 160 | 64,000 |
| 0092 | MCE Course Application (2 Year) | 100 | 100 | 100 | 1,348 | 134,800 | 1,414 | 141,400 | 1,499 | 149,900 | 1,450 | 145,000 |
| 0102 | Test Administration Fee | 5 | 5 | 5 | 24,419 | 122,095 | 18,010 | 90,050 | 20,839 | 104,195 | 18,500 | 92,500 |
| | **Total Fees by Fiscal Year** | | | | | **8,103,212** | | **7,694,105** | | **8,903,443** | | **8,634,065** |

11/5/2010

**Agenda Item 19:**

Discussion and possible action to approve real estate recovery trust account and real estate inspector recovery fund investment policies under the Public Funds Investment Act

**SUMMARY**

Presented yearly for commission approval.

**STAFF RECOMMENDATION**

Approve the real estate recovery trust account and real estate inspector recovery fund investment policies under the Public Funds Investment Act as requested.

**MOTION**

MOVED, that the Commission does hereby approve the real estate recovery trust account and real estate inspector recovery fund investment policies under the Public Funds Investment Act as requested..

# TEXAS REAL ESTATE COMMISSION
# REAL ESTATE RECOVERY TRUST ACCOUNT
# INVESTMENT POLICY

## OBJECTIVE

The investment objective of the Real Estate Recovery Trust Account #971 (The Fund) is to invest available cash in securities which provide both safety and liquidity to meet the ongoing needs of The Fund.

## INVESTMENT STRATEGIES

The investment strategy for The Fund is to maintain a 'Laddered' approach to portfolio management. By having a relatively even distribution of securities maturing each year, this helps to eliminate extreme interest rate exposure. The maximum allowable stated maturity of investments is ten years.

## PERMISSIBLE INVESTMENTS

Permissible investments include primarily, but are not limited to, Direct Obligations of the United States Treasury (i.e., Treasury Bill, Notes, and bonds). From time to time, Indirect Obligations of the Treasury or Agency Securities may be considered to be an appropriate investment (example, Federal National Mortgage Association - FNMA). This will be considered on a case by case basis. All investment transactions must be settled on a delivery versus payment basis. The method used to monitor the market price of acquired investments is the Wall Street Journal website.

(Approved at the December 13, 1999, November 6, 2000, December 3, 2001, November 4, 2002, December 1, 2003 December 6, 2004, December 5, 2005, December 4, 2006, February 25, 2008, December 15, 2008, December 14, 2009 and November 15, 2010 Commission meetings)

# TEXAS REAL ESTATE COMMISSION
# REAL ESTATE INSPECTION RECOVERY FUND
# INVESTMENT POLICY

## OBJECTIVE

The investment objective of the Real Estate Inspection Recovery Fund #988 (The Fund) is to place all funds collected for The Fund in the Treasury Operations of the Comptroller of Public Accounts to provide both safety and liquidity to meet the ongoing needs of The Fund.

## INVESTMENT STRATEGIES

The investment strategy for The Fund is to draw statutory interest from funds in the Treasury Operations of the Comptroller of Public Accounts. This will provide necessary resources to meet the obligations of The Fund.

## PERMISSIBLE INVESTMENTS

There are no permissible investments, all monies will be deposited with the Treasury Operations of the Comptroller of Public Accounts.

(Approved at the December 13, 1999, November 6, 2000, December 3, 2001, November 4, 2002, December 1, 2003, December 6, 2004, December 5, 2005, December 4, 2006, February 25, 2008, December 15, 2008, December 14, 2009 and November 15, 2010 Commission meetings)

**Agenda Item 20**

Discussion and possible action regarding Ethics Commission opinion EAO-492 (2010)

**SUMMARY**

**STAFF RECOMMENDATION**

**MOTION**

# TEXAS ETHICS COMMISSION

## ETHICS ADVISORY OPINION NO. 492

*October 21, 2010*

*Whether a member of the Texas Board of Professional Land Surveying may testify as an expert witness on whether a person had committed a violation of laws, rules, or standards within the jurisdiction of the board.* ***(AOR-556)***

The Texas Ethics Commission has been asked to consider whether a member of the Texas Board of Professional Land Surveying (TBPLS) may, as an expert witness in a court action, testify on whether a person had committed a violation of laws, rules, or standards within the jurisdiction of the TBPLS. The TBPLS is a state agency that regulates the profession of land surveying in Texas and has statutory authority to issue and revoke licenses, consider complaints, order probation, assess administrative penalties, and take other actions regarding the profession. *See generally* Chapter 1071, Occup. Code.

The requestor of the opinion states that members of the TBPLS are often requested to serve as expert witnesses in court actions and asks whether a member would violate section 572.051 of the Government Code by answering questions regarding whether surveyors involved in such court actions had committed violations of the board's rules or standards as evidenced by documents furnished to the court or depositions prepared for the court.

Section 572.051 of the Government Code states that a state officer or employee should not accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties. Gov't Code § 572.051(3).

In Ethics Advisory Opinion No. 410, we determined that a conflict of interest arises when a state board member teaches courses intended for prospective or current licensees. Ethics Advisory Opinion No. 410 (1999). Our opinion was consistent with Ethics Advisory Opinion No. 318, in which we addressed a member of a licensing board offering courses in a private capacity for board licensees and stated, "[t]he arrangement intertwines the private interest of the board member in promoting his professional expertise with the interest of the board in continuing education for its licensees." Ethics Advisory Opinion No. 318 (1996).

In our view, the service of a member of the TBPLS as an expert witness in the circumstances presented by the requestor would intertwine the member's private interest in promoting his professional expertise with the regulatory interests of the TBPLS. The act of testifying on whether a violation of a law or rule within the TBPLS's jurisdiction had occurred may also hamper the member's ability to render an independent judgment if the matter were subject to the TBPLS's administrative action. Therefore, in our opinion the proposed service by a member could reasonably be expected to impair the member's independence of judgment in the performance of the member's official duties as a member of the TBPLS.[1]

The requestor also asks whether any other laws under the jurisdiction of the Texas Ethics Commission would prohibit the proposed service as an expert witness. We note that a public servant may not accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties. Section 36.07(a), Penal Code. *See generally* Ethics Advisory Opinion No. 312 (1996). In addition, the Penal Code prohibits a public servant in an agency performing regulatory functions or conducting inspections or investigations from soliciting, accepting, or agreeing to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency unless an exception under section 36.10 of the Penal Code also applies to the benefit. Penal Code § 36.08(a). *See generally* Ethics Advisory Opinion No. 192 (1994).[2]

**SUMMARY**

A member of the Texas Board of Professional Land Surveying should not serve as an expert witness to testify on whether a person had committed a violation of laws, rules, or standards within the jurisdiction of the board.

---

[1] A member of the TBPLS also should not serve as an expert witness as proposed by the requestor if the member might reasonably expect that it would require or induce the member to disclose confidential information acquired by reason of the member's official position. Gov't Code § 572.051(a)(2).

[2] We note that Section 39.06 of the Penal Code prohibits a public servant from using or disclosing certain confidential information in some circumstances. *See* Penal Code § 39.06. We also note that Section 659.005(d) of the Government Code, a law outside of our jurisdiction, provides that a state officer who appears as an expert witness in a judicial proceeding or legislative hearing may accept compensation for the appearance only if the person is not also compensated by the state for the person's time in making the appearance and may accept reimbursement for travel expenses only if the expenses are not reimbursed by the state. *See* Gov't Code § 659.005. This opinion is not intended to interpret a law outside our jurisdiction.

**Agenda Item 21:**

Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of SOAH Docket NO. 329-10-3251; Texas Real Estate Commission v. Andrew K. Mills

**SUMMARY**

See attached.

**STAFF RECOMMENDATION**

See attached.

TEXAS REAL ESTATE COMMISSION

DOUGLAS E. OLDMIXON, ADMINISTRATOR

Standards & Enforcement Services
Direct Line: (512) 465-3960
Facsimile: (512) 465-3962

# MEMORANDUM

**To:** THE COMMISSION MEMBERS

**From:** KERRI T. GALVIN, DIRECTOR OF STANDARDS & ENFORCEMENT SERVICES

**Date:** OCTOBER 28, 2010

**Subject:** PROPOSAL FOR DECISION
IN THE MATTER OF
ANDREW K. MILLS

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-10-3251.REC. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for November 15, 2010, at 10:00 a.m. in the Commission Conference Room, Room 235, Texas Real Estate Commission Offices, 1101 Camino La Costa, Austin, Texas.

Kerri T. Galvin
Director of Standards & Enforcement Services

KTG:sm
Enclosure

cc: Douglas E. Oldmixon, Administrator

Loretta R. DeHay, General Counsel & Deputy Administrator

Devon V. Bijansky, Deputy General Counsel

Patricia Holder, Administrative Assistant

# State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

August 16, 2010

Douglas E. Oldmixon
Administrator
Texas Real Estate Commission
1101 Camino La Costa
Austin, Texas 78752

**INTER-AGENCY**

**RE: Docket No. 329-10-3251; Texas Real Estate Commission v. Andrew K. Mills**

Dear Mr. Oldmixon:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Sarah G. Ramos
Administrative Law Judge

SGR:cm
Enclosure
xc: Mary Winston & Aimee Cooper, Staff Attorneys, TREC, 1101 Camino La Costa, Austin, TX 78752 - **VIA INTER-AGENCY**
Andrew K. Mills, 3305 Trey Street, Kileen, TX 76542 - **VIA REGULAR MAIL**
Kerri Galvin, Director of Standards & Enforcement Services, TREC, 1101 Camino La Costa, Austin, TX 78752 - (with 1 CD(s); Certified Evidentiary Record) – **VIA INTER-AGENCY**

SOAH DOCKET NO. 329-10-3251.REC

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| **TEXAS REAL ESTATE COMMISSION,** **Petitioner** | § | **BEFORE THE STATE OFFICE** |
| | § | |
| | § | |
| **V.** | § | **OF** |
| | § | |
| **ANDREW K. MILLS,** **Respondent** | § | |
| | § | **ADMINISTRATIVE HEARINGS** |

# PROPOSAL FOR DECISION

Andrew K. Mills applied to the Texas Real Estate Licensing Commission (Commission) for a moral character determination, and the Commission's staff seeks denial of the application based on his criminal convictions. The Administrative Law Judge (ALJ) finds that Mr. Mills' application should be denied, primarily because he has served only one of his eight years of supervised release.

## I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

There are no contested issues of notice or jurisdiction. Those matters are discussed in the findings of fact and conclusions of law. The hearing on the merits was held on July 13, 2010, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, before ALJ Sarah G. Ramos. Attorneys Mary Winston and Aimèe Cooper represented Staff, and Mr. Mills represented himself. The record closed on July 20, 2010, which was the deadline established by the ALJ for Mr. Mills to file an additional documents.[1]

## II. DISCUSSION

### A. Background and Conviction

Mr. Mills was born January 8, 1969, and began driving a truck for a living in 1994. From July 2004 to July 2006, he worked as a driver for AKM Trucking. He owned his own truck and trained his co-driver.

[1] Mr. Mills did not file additional documents.

On the night of July 20, 2006, Mr. Mills allowed his co-driver to pick up a load in El Paso while Mr. Mills rested. Once a truck is loaded, a driver is supposed to check the load. But that night, Mr. Mills woke up about 3:00 a.m. after the truck was loaded, and he failed to check the load. He proceeded to drive the vehicle out of El Paso. As he approached a roadside checkpoint, police dogs reacted to his truck, and officers found a large amount of marijuana in the truck. On the advice of his attorney, Mr. Mills decided to accept responsibility and plead guilty to criminal charges because he owned the truck and trailer upon which the marijuana was found.

On September 28, 2006, in Cause No. EP-06-CR-1601 PRM(1) in the United States District Court, Western District of Texas, Mr. Mills pled guilty to:

> Count 1: Conspiracy to possess with intent to distribute a controlled substance, to-wit: marijuana > 100 kg, a violation of 21 USC 846 and 841; and
>
> Count 2: Possession [with] intent to distribute a controlled substance, to-wit: marijuana > 100 kg, a violation of 21 USC 841.

On December 15, 2006, Mr. Mills was sentenced to imprisonment for 51 months on each count, with the terms to be served concurrently. His imprisonment was to be followed by eight years of supervised released for each count, again, to be served concurrently. He was also assessed a $200 penalty. He was incarcerated until April 1, 2009, when he began supervised release. On February 4, 2010, Mr. Mills' probation officer wrote a letter to the Commission stating that he had no reported violations of his supervised release.

**B. Mr. Mills' Testimony and Written Statement**

While incarcerated, Mr. Mills took real estate, accounting, and other classes. He went to Alcoholics Anonymous meetings and completed a drug class to understand the problems his actions could have caused to others. He also took parenting classes. Mr. Mills said he has complied with all of the probation requirements. He testified that he has accepted the poor choices he made, has made significant changes in his life, and would very carefully follow the Commission's guidelines if he eventually receives a license.

Mr. Mills was married for 20 years and has three children. Now divorced, he has custody of his 17-year-old daughter. One daughter is married and has a child of her own. He is 42 years old and intends to stay in Killeen near his family. His mother, stepfather, and sister also live there.

While incarcerated, Mr. Mills worked on personal self-development and, with his employer at The Real Estate Marketplace in Killeen, he has continued to work on personal and professional growth. He said the mentoring and training have helped him to learn the value of people, and he wants to be helpful to others. Before he was incarcerated, his life focused on work. He said he understands that he needed to start over, and he has changed his entire lifestyle. He never goes to clubs or wears fancy clothes, and he spends his free time with or doing things for his family. In addition, Mr. Mills strives to be honest and keep his commitments; if he tells someone he will be somewhere at a certain time, he makes every effort to be on time. He wants his actions to speak louder than his words.

Mr. Mills began working for The Real Estate Marketplace in April 2009, first as a volunteer and later as an employee. The business has two primary components, a real estate agency and property management services. He has significant responsibilities for the property management aspects of the business; he also serves at the front desk where he provides customer service, and assists with other duties that are described in the following sections. He said his most rewarding moments at The Real Estate Marketplace have been when he helped persons in very difficult circumstances, such as those who had been abused but did not have sufficient resources to get a rental property. He has sought his employers' help in determining if accommodations can be made for those persons, such as waiving a deposit or spreading the deposit payment over some months. The two persons that Mr. Mills has helped in this way have been good renters and have paid their rent on time.

## C. Employer's Testimony and Letter of Recommendation

Ron "Chip" Franks, co-owner of The Real Estate Marketplace, is a real estate broker. He supervises about 17 agents, 10 of whom are full-time agents. If Mr. Mills eventually becomes licensed, Mr. Franks would be his supervising broker. Mr. Franks testified that the company trusts Mr. Mills implicitly with its customers and clients. As a broker, Mr. Franks takes his job seriously and understands he is responsible for the agents who work with his company. He wants to see the work done properly and in a fiduciary manner.

Mr. Mills told Mr. Franks about his background before Mr. Franks hired him. Mr. Franks appreciated Mr. Mills' honesty and said that Mr. Mills showed courage and integrity for telling Mr. Franks the truth before being asked. The two men have worked together on a daily basis since April 2009, and Mr. Franks has found Mr. Mills to be a valuable person to the business. Mr. Franks said he has watched Mr. Mills more closely than other employees because of his background and has become convinced that Mr. Mills' criminal history would not detrimentally affect his ability to work as a real estate agent. Mr. Franks believes Mr. Mills will competently and honestly perform the tasks of a real estate agent.

As Mr. Franks has given Mr. Mills greater amounts of responsibility over time, Mr. Mills has proven reliable, hard-working, and diligent. Mr. Franks said Mr. Mills has significant responsibilities with property management at the company. He has keys to the properties that the business manages, completes the proper paperwork for repairs, and arranges for appropriate repair persons to do the work. According to Mr. Franks, Mr. Mills has done fine work and appears to have excellent skills in dealing with members of the public. On the real estate side of the business, Mr. Mills is responsible for checking leads of persons who may be looking for homes and distributing those leads to agents. Mr. Mills also takes photos and videos of homes and uploads them onto the business's website.

## D. Other Letters of Recommendation

Laura G. Franks, co-owner of The Real Estate Marketplace, said Mr. Mills has "absolutely gained [her] trust." She also has found him to be dependable and loyal. He

distributes leads to the agents, updates databases, assists with property management, and provides general customer service. He has had access to cash, checks, and keys to vacant property. With all that has been entrusted to him, Mr. Mills has proven his trustworthiness. Ms. Franks is aware of Mr. Mill's criminal convictions, but she said what he did in the past does not define who he is today.

Tammie Sherman, property manager with The Real Estate Marketplace, has known Mr. Mills since April 2009 and wrote that he is willing to do whatever is asked of him. She said he is a great asset to the company, and she depends on him to assist her with the property management aspects of the business. She is aware he was incarcerated but has found him to be truly sorry about his past and believes he is completely rehabilitated. Ms. Sherman also described Mr. Mills as a caring person and said he would be a great licensed agent.

Office manager of The Real Estate Marketplace, Erica Hill, wrote that Mr. Mills is one of the most determined individuals she had ever met—a true self-starter who puts "his all into everything that he does." She also said Mr. Mills is extremely honest, and real estate clients would be fortunate to have him as their agent.

**E. Arguments**

Staff argued that Mr. Mills failed to demonstrate good moral character. He presented no letters from persons that he had contact with before his imprisonment and has completed only the first of eight years on parole.

Mr. Mills believes he has demonstrated his trustworthiness. He also argued that the crimes for which he was convicted do not relate to the duties of a real estate salesperson.

**F. Analysis**

A person may not act as a real estate salesperson unless he is licensed by the Commission.[2] A real estate salesperson has a special obligation to exercise integrity in the discharge of the licensee's responsibilities,[3] and an applicant must "satisfy the commission as to the applicant's honesty, trustworthiness, and integrity."[4] A person who contemplates applying for a license in the future may request that the Commission determine whether his moral character complies with the Commission's standards regarding honesty, trustworthiness, and integrity.[5]

The ALJ finds that Mr. Mills has come very close to demonstrating the moral character required to obtain a real estate salesperson's license. He contributes significantly to the care of his family. He has made impressive strides in his work at The Real Estate Marketplace. The record shows only the two violations of law that related to one incident; he is not a repeat offender and plainly appears to have learned from his mistakes. Not only did he complete drug classes and attend Alcoholics Anonymous meetings, he has continued to better himself with Mr. Franks' mentoring. Mr. Franks, who is clearly aware of Mr. Mills' criminal background, is willing to sponsor Mr. Mills if he eventually becomes licensed. Finally, Mr. Mills has not violated the conditions of his supervised release. If Mr. Mills completes more of his supervised release with the same good conduct, he would likely meet this requirement of good moral character.

Yet, the ALJ finds that other factors weigh more heavily against the finding of good moral conduct at this time. The Code authorizes a licensing agency to disqualify a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the license occupation.[6] Pursuant to

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[2] TEX. OCC. CODE ANN. (Code) § 1101.351.

[3] 23 TEX. ADMIN. CODE § 531.2.

[4] Code § 1101.354(2).

[5] Code § 1101.353.

[6] Code § 53.021(a).

Code § 53.025, the Commission adopted Criminal Offense Guidelines (Guidelines) to assist in determining whether a criminal offense directly relates to the duties or responsibilities of an applicant for a real estate salesperson's license. The Guidelines provide that offenses involving moral turpitude directly relate to the duties and responsibilities of a real estate salesperson.[7] The crimes for which Mr. Mills has been convicted are crimes of moral turpitude.[8] Thus, Mr. Mills' crimes directly relate to the license he seeks and tend to "demonstrate inability to represent the interest of another with honesty, trustworthiness, and integrity."[9]

Furthermore, Mr. Mills' crimes were quite serious, particularly considering the amount of marijuana involved. Having a real estate salesperson's license would afford him other opportunities to attempt to conceal large amounts of drugs. Moreover, only five years has elapsed since Mr. Mills pled guilty to the offenses, it has been about 16 months since he was released from incarceration, and he has a significant period of supervised release to complete. Based on these factors, the ALJ finds that Mr. Mills needs to have a longer period of demonstrated good conduct before he can show that he has the requisite moral character to be a licensed real estate salesperson. Therefore, Mr. Mills' application for a good moral conduct determination should be denied at this time.

## III. FINDINGS OF FACT

1. On November 30, 2009, Andrew K. Mills fled an application for moral character determination with the Texas Real Estate Commission (Commission).

2. The Commission's Staff proposed disapproval of the application, and by letter dated March 9, 2010, Mr. Mills requested a hearing.

3. Staff sent a notice of hearing to Mr. Mills at his address of record on March 19, 2010.

4. The notice of hearing included the date, time, and location of the hearing; the legal authority for the proceeding; the basis for the determination; and a short, plain statement of the matters asserted.

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[7] 23 TEX. ADMIN. CODE § 541.1(a)(8).

[8] *Muniz v. State*, 575 S.W.2d 408, 413 (Tex. Civ. App.–Corpus Christi 1978, writ ref'd n.r.e.)

[9] 23 TEX. ADMIN. CODE § 541.1(a).

5. The hearing on the merits was held on July 13, 2010, before Administrative Law Judge Sarah G. Ramos at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Attorneys Mary Winston and Aimèe Cooper represented Staff. Mr. Mills represented himself. The record closed on July 20, 2010.

6. On September 28, 2006, in Cause No. EP-06-CR-1601 PRM(1) in the United States District Court, Western District of Texas, Mr. Mills pled guilty to:

   Count 1: Conspiracy to possess with intent to distribute a controlled substance, to-wit: marijuana > 100 kg, a violation of 21 USC 846 and 841; and

   Count 2: Possession [with] intent to distribute a controlled substance, to-wit: marijuana > 100 kg, a violation of 21 USC 841.

7. On December 15, 2006, Mr. Mills was sentenced to imprisonment for 51 months on each count, with the terms to be served concurrently. His imprisonment was to be followed by eight years supervised released for each count, again, to be served concurrently. He was also assessed a $200 penalty.

8. Mr. Mills was incarcerated until April 1, 2009, when he began supervised release.

9. Mr. Mills has not violated the requirements of his supervised release.

10. While incarcerated, Mr. Mills took real estate, accounting, and parenting classes. He went to Alcoholics Anonymous meetings and completed a drug class to understand the problems his actions could have caused to others.

11. Mr. Mills has accepted the poor choices he made, has made significant changes in his life, and intends to carefully follow the Commission's guidelines if he eventually receives a license.

12. Mr. Mills has close ties to his children and extended family; he strives to be honest and keep his commitments.

13. In April 2009, Mr. Mills began working for The Real Estate Marketplace in Killeen, Texas, first as a volunteer and later as an employee.

14. The Real Estate Marketplace has two primary components, a real estate agency and property management services.

15. Mr. Mills has significant responsibilities for the property management aspects of the business and he also serves at the front desk where he provides customer service. He distributes leads to real estate agents and takes photos and videos of homes for sale and uploads them onto the business's website.

16. The owners and supervisors at The Real Estate Marketplace trust Mr. Mills implicitly with their customers and clients. They have found him to be diligent, hard-working, honest, and trustworthy.

17. Mr. Mills' employer is a real estate broker who is willing to sponsor Mr. Mills as a real estate salesperson if he eventually receives a license.

18. Mr. Mills' crimes were quite serious, particularly considering the amount of marijuana involved.

19. Having a real estate salesperson's license would afford Mr. Mills other opportunities to attempt to conceal large amounts of drugs.

20. Only about five years has elapsed since Mr. Mills committed the offenses.

21. Mr. Mills was released from incarceration about 16 months ago, and he has a significant period of supervised released to complete.

## IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. TEX. OCC. CODE ANN. (Code) ch. 1101.

2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T CODE ANN. ch. 2003.

3. Notice of the hearing was provided in compliance with TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052.

4. A person may not act as a real estate salesperson unless he is licensed by the Commission. Code § 1101.351.

5. An applicant for a real estate salesperson license must satisfy the Commission as to his honesty, trustworthiness, and integrity. Code § 1101.354(2).

6. A person who contemplates applying for a license in the future may request that the Commission determine whether his moral character complies with the Commission's standards regarding honesty, trustworthiness, and integrity. Code § 1101.353.

7. A licensing agency may disqualify a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the license occupation. Code § 53.021(a).

8. Pursuant to Code § 53.025, the Commission adopted Criminal Offense Guidelines (Guidelines) to assist in determining whether a criminal offense directly relates to the duties or responsibilities of an applicant for a real estate salesperson's license.

9. The Guidelines provide that offenses involving moral turpitude directly relate to the duties and responsibilities of a real estate salesperson. 23 TEX. ADMIN. CODE § 541.1(a)(8).

10. The crimes for which Mr. Mills has been convicted are crimes of moral turpitude. *Muniz v. State*, 575 S.W.2d 408, 413 (Tex. Civ. App.–Corpus Christi 1978, writ ref'd n.r.e.)

11. Mr. Mills needs to have a longer time of demonstrated good conduct before he can show that he has the requisite moral character to be a licensed real estate salesperson.

12. Mr. Mills' application for a good moral conduct determination should be denied at this time.

**SIGNED August 16, 2010.**

**SARAH G. RAMOS**
**ADMINISTRATIVE LAW JUDGE**
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**Agenda Item 22:**

a. Executive session to discuss pending litigation pursuant to Texas Government Code §551.071

b. Discussion and possible action to authorize settlement of recovery fund claims

**SUMMARY**

Presented at meeting

**Agenda Item 23**

23. Discussion and possible action to schedule future meetings

**SUMMARY**

See attached.

**STAFF RECOMMENDATION**

Staff recommends May 16, 2011 and August 15, 2011 as possible meeting dates.

**Agenda Item 24**

24. Adjourn

# *Texas Real Estate Commission*

# November 15, 2010

November 10

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## November

**2** Election Day

**11** Veterans Day

**15** ***Commission Meeting***

**25** Thanksgiving

## December

**2** Hanukkah

**25** Christmas Holidays

**31** New Year's Eve

## January

**1** New Year's Day

**17** Martin Luther King, Jr.

## February

**2** Groundhog Day

**12** Lincoln's Birthday

**14** **Commission Mtg**

**21** President's Day

**22** Washington's Birthday

## March

**9** Ash Wednesday

**17** St. Patrick's Day

## April

**1** April Fools Day

**3** Daylight Savings--set ahead 1 hour

**17** Palm Sunday

**19** Passover

**22** Good Friday

## April

**24** Easter

## May

**1** May Day

**5** Cinco de Mayo

**8** Mother's Day

**21** Armed Forces Day

**30** Memorial Day (Observed)

## June

**2** Ascension Day

**12** Pentecost

**14** Flag Day

**19** Father's Day

**23** Corpus Christi

## July

**4** Independence Day

## September

**5** Labor Day

## October

**10** Columbus Day (Observed)

**30** Daylight Savings--set back 1 hour

**31** Halloween

May 11

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August 11

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September 11

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October 11

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