



**Materials for the February 14, 2011  
Meeting of the  
Texas Real Estate Commission  
Room 235  
Austin, Texas**

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

**February 14 2011 at 10:00 a.m.**

CALL TO ORDER

1. Call to order and pledges of allegiance
2. Discussion and possible action to excuse Commissioner absence(s), if any
3. Election of Officers
4. Discussion and possible action to appoint three Inspector Committee Members

MINUTES

5. Approval of minutes of November 15, 2010 Commission meeting

STAFF AND COMMITTEE REPORTS

6. Reports by administrator, general counsel, and division directors 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
7. Report by Texas Real Estate Inspector Committee

PUBLIC COMMENTS

8. General comments from visitors on non-agenda items

RULES FOR POSSIBLE ADOPTION

9. Discussion and possible action to
  - a. adopt the repeal of 22 TAC §535.154 concerning Advertising
  - b. adopt new 22 TAC §535.154 concerning Advertising
10. Discussion and possible action to adopt amendments to 22 TAC Subchapter T regarding Easement or Right of Way Agents as follows:
  - a. Amend §535.400 regarding Registration of Easement or Right-of-Way Agents
  - b. Amend §535.403 regarding Renewal of Registration
11. Discussion and possible action to adopt amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act as follows:

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.

- a. Amend §539.61 concerning Applications and Licensing
- b. Amend §539.121 concerning Examinations
- c. New Subchapter P and new §539.150 concerning Complaints

#### RULES FOR POSSIBLE PROPOSAL

12. Discussion and possible action to propose amendments to 22 TAC Chapter 533 regarding Practice and Procedure
13. Discussion and possible action to propose amendments to 22 TAC §535.217 regarding Contact Information

#### PENDING BUSINESS

14. Discussion and possible action on 22 TAC §535.148 regarding Receiving an Undisclosed Commission or Rebate
15. Discussion and possible action on legislative housekeeping measures and other legislative items
16. Discussion and possible action to approve modifications to Legislative Appropriations Request
17. Discussion and possible action to approve updates to required Legal and Ethics MCE courses
18. (a) Discussion and possible action regarding TREC Standard Contract Form. No. 20-9
  - (b) Discussion and possible action to take emergency rulemaking action to adopt amendments to the following rules and forms adopted by reference:
    - i. §537.20 concerning Standard Contract Form TREC No. 9-8,
    - ii. §537.28 concerning Standard Contract Form TREC No. 20-9,
    - iii. §537.30 concerning Standard Contract Form TREC No. 23-10,
    - iv. §537.31 concerning Standard Contract Form TREC No. 24-10,
    - v. §537.32 concerning Standard Contract Form TREC No. 25-7,
    - vi. §537.37 concerning Standard Contract Form TREC No. 30-8

#### NEW BUSINESS

19. Discussion and possible action to approve proposed 2.5% budget reduction
20. Discussion and possible action to approve updated policy for prioritization of complaint cases filed with the Standards and Enforcement Services Division.

## CONTESTED CASES

21. Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of:
  - a. SOAH Docket NO. 329-10-4249, REC., In the Matter of John Christopher Crawford
  - b. SOAH Docket NO. 329-10-5173, REC., In the Matter of Rene L. Hernandez
  - c. SOAH Docket NO. 329-11-0448, REC., In the Matter of Robin J. Muir
  - d. SOAH Docket NO. 329-11-0449.REC. In the Matter of Travis Matthew Grochoske

## 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.**

**Agenda Item 1:**

Call to order and pledges of allegiance

**SUMMARY**

TEXAS PLEDGE:

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

**Agenda Item 2:**

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

**SUMMARY**

Provides for the approved absences of commission members

**STAFF RECOMMENDATION**

Approve excused absence as presented.

**MOTION**

**MOVED,** that the absence(s) of \_\_\_\_\_  
for the following dates, \_\_\_\_\_  
is/are hereby excused.

**Agenda Item 3:**

Election of Officers

**SUMMARY**

Texas Occupations Code, Sec. 1101.056. OFFICERS. (a) The governor shall designate a commission member who is a licensed broker as presiding officer. The presiding officer serves in that capacity at the pleasure of the governor.

(b) At a regular meeting in February of each year, the commission shall elect an assistant presiding officer and secretary from its membership.

**STAFF RECOMMENDATION**

**MOTION**

**MOVED**, that \_\_\_\_\_ be vice-chair and \_\_\_\_\_ be secretary for the year of 2011.

## Agenda Item 4:

Discussion and possible action to appoint three Inspector Committee Members

### SUMMARY

Texas Occupations Code, S e c. 1102 051. COMMITTEE MEMBERSHIP. The Texas Real Estate Inspector Committee is an advisory committee appointed by the commission.

**§535.206. The Texas Real Estate Inspector Committee.** (a) The functions of the committee are as prescribed by Texas Occupations Code, Section 1102.058.

(b) The committee consists of nine members appointed by the commission as follows:

(1) six members who have been engaged in the practice of real estate inspecting as professional inspectors for at least five years before the member's appointment and who are actively engaged in that practice; and

(2) Three members who represent the public, who are not registered, certified, or licensed by an occupational or regulatory agency in the real estate industry.

(c) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(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 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.

### STAFF RECOMMENDATION

### MOTION

**Agenda Item 5:**

Approval of minutes of November 15, 2010 Commission meeting

**SUMMARY**

Provides for the approval of the minutes of the previous meeting.

**STAFF RECOMMENDATION**

Approve minutes as submitted.

**MOTION**

MOVED, that the minutes of the meeting of November 15, 2010 Commission be approved as submitted.

MINUTES OF THE MEETING OF THE  
TEXAS REAL ESTATE COMMISSION

November 15, 2010

Room 235, 1101 Camino La Costa

Austin, Texas

On Monday, November 15, 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. 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

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 August 9, 2010 Commission meeting. The Commission adopted the minutes as presented in the meeting materials by unanimous consent.

The Chairman moved to agenda item three, discussion and possible action to excuse commissioner absence(s), if any. Upon motion of Ms. Hensley, seconded by Mr. Day, the absences of Tom Mesa and Dona Scurry were excused.

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 status of the database conversion. He also reported on various speaking engagements since the last commission meeting, the new employees hired and current staff vacancies.

Lorie Deanda, Director of Reception and Communications Services introduced three new members of her staff, Sha'Nerry Showells, Edward Elizondo and Lori Hoskins. She presented the C1 report concerning Customer Service Statistics. Ms. Deanda stated that since the conversion it was taking longer to handle calls, but she expected this to improve once the computer customization piece was in place. Gwen Jackson, Director of Education and Licensing Services introduced two new employees, Christy Grimberg and

Andrea Guana. Ms. Jackson 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; the L3 report, concerning examination activity and the L4 report concerning the number of improved instructors.. Kerri Galvin, Director of Standards and Enforcement Services, presented the case status report, and the case age report. She reported that in February the reports would have different and more detailed information. Tom Watson, Director in Information and Technology Services, presented the I1 report concerning electronic outlet services statistics. Karen Alexander introduced a new employee Naisha Chapman. She presented the end of year budget report. There was discussion concerning the Benefit Replacement Fee portion of the budget and the Fingerprint and Subsequent Background Check Fee. She also reported on 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. There was discussion concerning projected payments from the Real Estate Recovery Trust Account.

Chairman Eckstrum moved to agenda item five, report by the Texas Real Estate Inspector Advisory Committee. Mr. Oldmixon, administrator, presented a brief report concerning the activities of the committee.

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 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 and (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, (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, and (xiii) Repeal §535.21, concerning Unimproved Lot Sales; Listing Publications; and (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 and (iv) Repeal §535.35, concerning Employees Renting and Leasing Employer's Real Estate and (d) Subchapter D. The Commission: (i) Amend §535.42, concerning Jurisdiction and Authority. Ms. DeHay presented these agenda items for discussion and possible action. She stated that no comments had been received. Bob Baker of Plano offered comments concerning the length of time a licensee should keep documents concerning a transaction as addressed under agenda item seven (b)(ii) in Section 535.2, concerning Broker Responsibility. Upon motion of Ms. Wukasch, seconded by Ms. Justice, the commission adopted the amendments and new rules under Subchapter A. concerning Definitions, Subchapter B. concerning General Provisions Relating to the Requirements to of Licensure, Subchapter C. concerning Exemptions to Requirements of Licensure and Subchapter D. concerning The Commission as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (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 and (vi) New §535.57, concerning Examination Requirements for a License. She presented the item for discussion and possible action. The differences between the rules as proposed and the rules 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. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the commission adopted the amendments and new rules with changes as presented at the meeting and with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (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, (iv) Repeal §535.66, concerning Payment of Annual Fee; Audits; Investigations and Enforcement Actions, (v) New §535.66, concerning Core Education Providers; Audits; Investigations; and Enforcement Actions, (vi) New §535.67, concerning Approval of Instructors, and (vii) New §535.68, concerning Additional Information related to an application. She presented the agenda item for discussion and possible action. 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. Upon motion of Mr. Alley, duly seconded by Mr. Arriaga, the commission adopted the amendments and new rules with changes as presented at the meeting and with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (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, and (iv) New §535.74, concerning Additional Information related to an application. 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. Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasch, the commission adopted the amendments and new rules with changes as presented at the meeting and with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (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, and (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 and (iii) Amend §535.123, concerning Inactive Broker Status; (j) Subchapter M. Non-residents: (i) Amend §535.131, concerning Unlawful Conduct; Splitting Fees and (ii) Amend §535.132, concerning Eligibility of Licensure. Upon motion of Ms. Hensley, duly seconded by Ms. Justice, the commission adopted the amendments and new rules without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (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) §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 and (xiv) Amend §535.161, concerning Failing to Provide Information. Staff recommended that the Commission adopt the amendments to the rules and new rules with the following changes: postpone making any changes to §535.154 and that the Commission not take final action to repeal existing §535.154. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the commission adopted the amendments and new rules as follows: §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, §535.149, concerning Lottery or Deceptive Trade Practice, (ix) §535.153, concerning Violating an Exclusive Agency, §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 without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay moved to agenda item seven, (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, (p) Subchapter S. Residential Rental Locators: (i) Amend §535.300, concerning Advertising by Residential Rental Locators. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the commission adopted the amendments and new rules to Subsections O. regarding Hearing on Suspension or Revocation of Licensure, P. regarding Penalty for Unlicensed Activities, Q. regarding Administrative Penalties and S. regarding Residential Rental Locators without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Ms. Bijansky moved back to agenda item seven (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, and (xvi) Amend §535.226, concerning Sponsorship of Apprentice Inspectors and Real Estate Inspectors. Five comments had been received. Upon motion of Ms. Wukasch, duly seconded by Mr. Arriaga, the commission adopted the amendments and new rules to Subsections R. regarding Real Estate Inspectors without changes to the proposed text and as presented at the meeting with technical and non-substantive changes as deemed necessary by staff.

Ms. DeHay clarified that the effective date for all items adopted under agenda item seven would be January 1, 2011.

Chairman Eckstrum moved to agenda item eight. discussion and possible action to adopt amendments to or take other action on 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 and (h) Amend §537.47 concerning Standard Contract Form TREC No. 40-4.

Ms. DeHay presented the agenda items for discussion and possible action to adopt. 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 except for the Farm and Ranch Form; 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.

Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasch the Commission approved the adoption of the amendments as proposed with changes to the proposal and as presented at the meeting with technical and non-substantive changes as deemed necessary

by staff with an effective date of March 1, 2011 with Ms. Wukasch voting against the motion. Bob Baker of Plano spoke against the change of the terms “Financing Approval” to “Credit Approval”.

Chairman Eckstrum moved to agenda item nine, discussion and possible action to propose amendments to 22 TAC §535.400 concerning Easement or Right-of-Way Agents. Ms. DeHay presented the agenda item for discussion and possible action. The Commission proposed 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. Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, the Commission proposed the amendments to §535.400 regarding Registration of Easement or Right-of-Way Agents; and §535.403 concerning Renewal of Registration as presented at the meeting with technical and non-substantive changes as deemed necessary by staff to be published in the *Texas Register*.

The Chairman moved to agenda item ten, discussion and possible action action to propose amendments to 22 TAC Chapter 537 as follows: (a) Amend §537.45 concerning Standard Contract Form TREC No. 38-2 and (b) Amend §537.46 concerning Standard Contract Form TREC No. 39-7. Ms. DeHay presented the agenda item for discussion and possible action. 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. Upon motion of Ms. Hensley, seconded by Ms. Justice, the Commission authorized staff 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 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.

Chairman Eckstrum moved to agenda item eleven, discussion and possible action 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, and (c) New Subchapter P concerning Complaints and new §539.150 concerning Complaints. Ms. DeHay presented the agenda items for discussion and possible action.

The amendments to §539.6 1 concerning Application and Licensing revises 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.

The amendments to §539.121 concerning Examinations 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.

New Subchapter P regarding complaints and new §539.150 concerning complaints 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.

Upon motion of Mr. Alley, duly seconded by Mr. Day, the Commission authorized staff to propose amendments to 22 TAC Chapter 539 regarding §539.61 concerning Applications and Licensing, §539.121 concerning Examinations, and New Subchapter P concerning Complaints and new §539.150 concerning Complaints with non-substantive corrections as staff may deem necessary or advisable, for proposal in the *Texas Register* and for public comment.

Chairman Eckstrum moved to agenda item twelve, discussion and possible action to adopt the review of 22 TAC Chapter 535. Upon motion of Mr. Day, duly seconded by Mr. Alley, the Commission authorized staff 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.

Chairman Eckstrum moved to agenda item thirteen, discussion and possible action on legislative housekeeping measures. Mr. Oldmixon presented the agenda item for discussion and stated that no action was needed on this agenda item.

Mr. Eckstrum moved to agenda item fourteen, discussion and possible action to approve changes to home inspector license application forms and miscellaneous inspector-related forms. Ms. Jackson presented the agenda item for discussion and possible action. The proposed changes are as follows: Update fees on applications to reflect incorporation of \$30 ed eval fee; Update references to certificate of insurance form (8-0 is no longer current form); Incorporate background history form (like broker/sales forms); Eliminate the fields, such as date of birth, that are not captured in Versa (like broker/sales forms); and Update header and formatting as necessary to match other forms. Upon motion of Ms. Wukasz, duly seconded by Mr. Alley, the Commission authorized staff to change the Inspector forms as requested.

Mr. Eckstrum moved to agenda item fifteen, discussion and possible action to approve changes to salesperson, broker, and easement and right of way application forms and miscellaneous related forms. Ms. Jackson referred to the meeting material for a detail of the changes. Upon motion of Ms. Hensley, duly seconded by Mr. Alley, the Commission authorized staff to approve changes to salesperson, broker, and easement and right of way application forms and miscellaneous related forms as requested.

Chairman Eckstrum moved to agenda item sixteen, discussion and possible action to approve changes to school, provider, course and instructor forms, and miscellaneous education related forms. Ms. Jackson presented the agenda item for discussion and possible action. The proposed changes are as follows: to remove the agency 1-800 number from 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, and ED 7-1 – Top Coversheet for Instructor Manual Guidelines for Core Real Estate and Real Estate Related Courses. Upon motion of Ms. Justice, duly seconded by Mr. Arriaga, the Commission approved the changes to the forms as requested. There was discussion concerning the course and instructor evaluation form.

The Chairman moved to agenda item seventeen, discussion and possible action to approve the Non-Realty Items Addendum. This form had originally been proposed for adoption at the August meeting, but the Broker-Lawyer Committee withdrew the proposal and suggested the form be approved for voluntary use. Upon motion of Mr. Alley, duly seconded by Ms. Hensley, the Commission approved the addendum for voluntary use.

Mr. Eckstrum moved to agenda item eighteen, discussion and possible action to approve fiscal year 2011 budget. Ms. Alexander presented the agenda item for discussion and possible action. There was discussion concerning the budget and future budget cuts. There was further discussion concerning moving expenses. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the fiscal year 2011 budget.

Chairman Eckstrum moved to agenda item nineteen, discussion and possible action to approve the real estate recovery trust account and real estate inspector recovery fund investment policies under the Public Funds Investment Act. Ms. Alexander presented the agenda item for discussion and possible action. Upon motion of Ms. Justice, duly seconded by Mr. Arriaga, the Commission approved the investment policies as submitted.

The Chairman moved to agenda item twenty, discussion and possible action regarding Ethics Commission opinion EAO-492 (2010). The item was presented by Ms. DeHay for informational purposes. The Ethics Commission had ruled that “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.” There was discussion concerning the ruling and its impact on members of the Commission.

Chairman Eckstrum moved to agenda item twenty-one, consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of Andrew K. Mills, SOAH Docket NO. 329-10-3251. Ms. Galvin presented the agenda item for consideration and possible action. Mr. Mills did not appear. Upon motion of Mr. Arriaga, duly seconded by Ms. Justice, the Commission approved the Proposal for Decision In the Matter of Andrew K. Mills, SOAH Docket NO. 329-10-3251.

The Chairman moved to agenda item twenty-two, recovery fund matters. Mr. Eckstrum announced an executive session beginning at 12:20 p.m. to discuss pending litigation pursuant to Texas Government Code §551.071. The open meeting resumed at 12:49 p.m. Ms. DeHay asked the Commission to return to agenda item seven (a)-(n) and (p). Staff was recommending an effective date of January 1, 2011 for all these items except (k)(vii) §535.148, concerning Receiving an Undisclosed Commission or Rebate, paragraph (e) which would have an effective date of March 1, 2011. Upon motion of Ms. Wukasch, seconded by Mr. Alley, the Commission approved the effective dates as requested.

Ms. Bijansky presented agenda item twenty-two (b), discussion and possible action to authorize settlement of recovery fund claims for consideration.

The following claims were submitted for approval:

RF10-018, Tara Griffin and Richard Samudia v. Mindy Guitterez, actual damages of \$29,398.19 and attorney fees in the amount of \$24,384.04. Upon motion of Mr. Arriaga, duly seconded by Mr. Day, the Commission authorized staff to negotiate for the best terms possible concerning both actual damages and attorney fees.

RF11-002, ALBAM Investments v. Brokerage Services Solutions, Inc., actual damages of \$8,543.10. Upon motion of Ms. Justice, duly seconded by Ms. Hensley, the Commission authorized staff to make payment as requested.

RF11-003, Robert Montes v. Paul Garza., actual damages of \$50,000. Upon motion of Mr. Day, duly seconded by Ms. Justice, the Commission authorized staff to make payment as requested.

RF11-004, Robert Robles and Diana Guerra v. Paul Garza., actual damages of \$50,000. Upon motion of Mr. Day, duly seconded by Ms. Hensley, the Commission authorized staff to make payment as requested.

RF11-008, Dipaoalo, LLC v. Prime Realtors Property Management, LLC and Michael Duane Cade, actual damages of \$35,124.58 and attorney fees in the amount of \$8,698.92. Upon motion of Mr. Alley, duly seconded by Ms. Justice, the Commission authorized staff to make payment as requested

The Chairman moved to agenda item twenty-four, discussion and possible action to schedule future meetings. After discussion, the next meetings are scheduled for February 14, 2011 and May 2, 2011 at 10:00 a.m.

The Chairman adjourned the meeting at 1:00 p.m.

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Patricia Holder, Secretary for the Meeting

APPROVED this the 14th day of February, 2011.

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John Eckstrum  
Chairman

ATTEST:

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Douglas E. Oldmixon  
Administrator

**Agenda Item 6:**

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



# February Commission Meeting Staff Reports

# Texas Real Estate Commission

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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

### Customer Service Statistics

January, 2011

		FY2011		FY2010
<b>RCS Measures</b>	<b>Current Month</b>	<b>YTD Total</b>		<b>Prior YTD Total</b>
Agency Incoming Calls (target - 400,000)	21,287	107,899		147,419

		FY2011		FY2010
<b>Communications Incoming Calls</b>	<b>Monthly Total</b>	<b>YTD Total</b>		<b>Prior YTD Total</b>
CO Lines	16,137	68,206		39,492
TREC 1-800	0	0		44,001
TALCB Local Line	557	2,593		507
TALCB 1-877	0	0		1,405
<b>Total</b>	<b>16,694</b>	<b>70,799</b>		<b>85,405</b>

		FY2011		FY2010
<b>Reception Walk Ins</b>	<b>Monthly Total</b>	<b>YTD Total</b>		<b>Prior YTD Total</b>
Licensing	863	3,862		967
Education	372	1,408		427
Inspector	36	109		18
Enforcement	14	77		36
TALCB Licensing	16	117		32
TALCB Enforcement	4	34		9
<b>Total</b>	<b>1,305</b>	<b>5,607</b>		<b>1,489</b>

		FY2011		FY2010
<b>Communications E-Mail</b>	<b>Current Month</b>	<b>YTD Total</b>		<b>Prior YTD Total</b>
E-mail Inquiries	6,986	30,752		2,903

C1 Report

# Licensing Services Division

## Fiscal Year Comparison

### Fiscal Year 2011 - Year-to-Date

	This YTD		Last YTD		Change	
	9/10 - 01/11		9/09 - 01/10		Count	Percent
<b>Applications Received</b>						
Broker Original Applications Received	1,121		1,090		-536	-49.17%
Sales Original Applications Received	4,880		4,323		-1,548	-35.81%
<b>Total Original Applications</b>	<b>6,001</b>		<b>5,413</b>		<b>-2,084</b>	<b>-38.50%</b>
Broker Reinstatement Applications Received	78		594		-516	-86.87%
Sales Reinstatement Applications Received	480		5,672		-5,192	-91.54%
<b>Total Reinstatement Applications Received</b>	<b>558</b>		<b>6,266</b>		<b>-5,708</b>	<b>-91.09%</b>
<b>Licenses Issued from Applications</b>						
Broker Licenses from Original Applications	548		1,053		-505	-47.96%
Sales Licenses from Original Applications	2,687		3,541		-854	-24.12%
<b>Total Licenses from Original Applications</b>	<b>3,235</b>		<b>4,594</b>		<b>-1,359</b>	<b>-29.58%</b>
Broker Licenses from Reinstatement Applications	50		638		-588	-92.16%
Sales Licenses from Reinstatement Applications	285		2,991		-2,706	-90.47%
<b>Total Licenses from Reinstatement Applications</b>	<b>335</b>		<b>3,629</b>		<b>-3,294</b>	<b>-90.77%</b>
<b>Renewal Activity</b>						
Broker Renewals and Percentage	9,244	99.46%	5,888	77.82%	3,356	21.64%
Salesperson Renewals and Percentage	22,815	98.77%	15,285	70.55%	7,530	28.22%
<b>Total Renewals from Broker and Sales</b>	<b>32,059</b>	<b>98.97%</b>	<b>21,173</b>	<b>72.00%</b>	<b>10,886</b>	<b>26.97%</b>

NOTE: Broker and sales reinstatement totals for this YTD are lower because they only include licenses expired > than 1 year. Licenses expired < than 1 year are now reflected in the totals for renewals.

## Licensing Services Division

### Licenses and Registrant Status

**January 2011**

#### Real Estate Licensees

	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	*Sep-Dec10	Jan 11
<b>Broker Licensees</b>										
Individual (Active)	34,153	34,191	34,249	34,283	34,261	34,247	34,229	34,248		33,639
Corporation (Active)	4,022	4,017	4,012	4,019	4,000	4,001	3,985	3,975		3,963
LLC (Active)	2,866	2,911	2,946	2,991	3,022	3,058	3,088	3,107		3,175
Non-resident (Active)	484	487	485	488	483	484	488	490		554
Partnership (Active)	2	2	2	2	2	2	2	2		1
<b>Total Active Status</b>	<b>41,527</b>	<b>41,608</b>	<b>41,694</b>	<b>41,783</b>	<b>41,768</b>	<b>41,792</b>	<b>41,792</b>	<b>41,822</b>		<b>41,332</b>
Inactive Status	1,677	1,665	1,648	1,617	1,623	1,614	1,614	1,613		1,587
<b>Total Brokers</b>	<b>43,204</b>	<b>43,273</b>	<b>43,342</b>	<b>43,400</b>	<b>43,391</b>	<b>43,406</b>	<b>43,406</b>	<b>43,435</b>		<b>42,919</b>
<b>Sales Licensees</b>										
Active Status	73,587	73,586	74,173	74,571	74,519	73,891	73,898	74,058		71,170
Inactive Status	27,242	27,196	26,954	26,684	26,567	27,184	27,113	26,905		25,741
<b>Total Sales</b>	<b>100,829</b>	<b>100,782</b>	<b>101,127</b>	<b>101,255</b>	<b>101,086</b>	<b>101,075</b>	<b>101,011</b>	<b>100,963</b>		<b>96,911</b>
Total Active	115,114	115,194	115,867	116,354	116,287	115,683	115,690	115,880		112,502
Total Inactive	28,919	28,861	28,602	28,301	28,190	28,798	28,727	28,518		27,328
<b>Total Brokers &amp; Sales</b>	<b>144,033</b>	<b>144,055</b>	<b>144,469</b>	<b>144,655</b>	<b>144,477</b>	<b>144,481</b>	<b>144,417</b>	<b>144,398</b>		<b>139,830</b>

#### Inspectors

	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	*Sep10-Dec10	Jan 11
<b>Inspector Licensees</b>										
Professional Inspectors(active)	2,329	2,323	2,328	2,339	2,323	2310	2290	2271		2096
Professional Inspectors(inactive)	995	997	995	991	976	968	957	951		771
Real Estate Inspectors(active)	105	103	106	105	106	101	95	97		92
Real Estate Inspectors(inactive)	34	34	34	34	32	33	34	33		21
Apprentice Inspectors(active)	56	63	62	68	67	71	72	72		60
Apprentice Inspectors(inactive)	21	19	19	20	17	17	13	15		15
<b>Total Inspectors</b>	<b>3,540</b>	<b>3,539</b>	<b>3,544</b>	<b>3,557</b>	<b>3,521</b>	<b>3,500</b>	<b>3,461</b>	<b>3,439</b>		<b>3,055</b>

#### Easement & Right-of-way Registrants

	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	*Sep10-Dec10	Jan 11
<b>ERW Registrants</b>										
Businesses	37	39	41	41	41	42	42	42		37
Individuals	1,710	1,686	1,659	1,643	1,631	1,667	1,683	1,705		1,749
<b>Total Registrants</b>	<b>1,747</b>	<b>1,725</b>	<b>1,700</b>	<b>1,684</b>	<b>1,672</b>	<b>1,709</b>	<b>1,725</b>	<b>1,747</b>		<b>1,786</b>

#### Total Licensees and Registrants

	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10	Jul 10	Aug 10	*Sep10-Dec10	Jan 11
<b>All Licensees &amp; Registrants</b>	<b>149,320</b>	<b>149,319</b>	<b>149,713</b>	<b>149,896</b>	<b>149,670</b>	<b>149,690</b>	<b>149,603</b>	<b>149,584</b>		<b>144,671</b>

\* Totals for this month are not available due to system conversion.

## Education & Licensing Services Division - TREC: L3 Report

### Examination Activity

#### Monthly Results: January 2011

	<u>Salesperson</u>	<u>Broker</u>	<u>R.E. Inspector</u>	<u>Prof. Inspector</u>
Examinations Passed	670	110	1	19
Examinations Failed	357	54	1	17
<b>Examinations Taken</b>	<b>1,027</b>	<b>164</b>	<b>2</b>	<b>36</b>
Applicants Examined	785	127	2	34
Passed on First Attempt	361	58	0	11
Examination Pass Rate	65.2%	67.1%	50.0%	52.8%
Applicant Pass Rate	85.4%	86.6%	50.0%	55.9%
First Attempt Pass Rate	46.0%	45.7%	0.0%	32.4%

#### Year-to-Date Results: September 2010 thru January 2011

	<u>Salesperson</u>	<u>Broker</u>	<u>R.E. Inspector</u>	<u>Prof. Inspector</u>
Examinations Passed	2,828	406	6	65
Examinations Failed	1,343	226	3	83
<b>Examinations Taken</b>	<b>4,171</b>	<b>632</b>	<b>9</b>	<b>148</b>
Applicants Examined	3,173	452	9	132
Passed on First Attempt	1,393	187	4	37
Examination Pass Rate	67.8%	64.2%	66.7%	43.9%
Applicant Pass Rate	89.1%	89.8%	66.7%	49.2%
First Attempt Pass Rate	43.9%	41.4%	44.4%	28.0%

## Education & Licensing Services Division - TREC: L4 Report

### Instructor Distribution

as of 2/10/2011

Approved Instructor Distribution	
MCE Electives Only	2,583
Core (can also teach MCE Electives)	1,327
MCE Legal	365
MCE Ethics	366
<b>Total Approved Instructors</b>	<b>4,641</b>

# Standards and Enforcement Services Division

## Case Status

As of January 2011

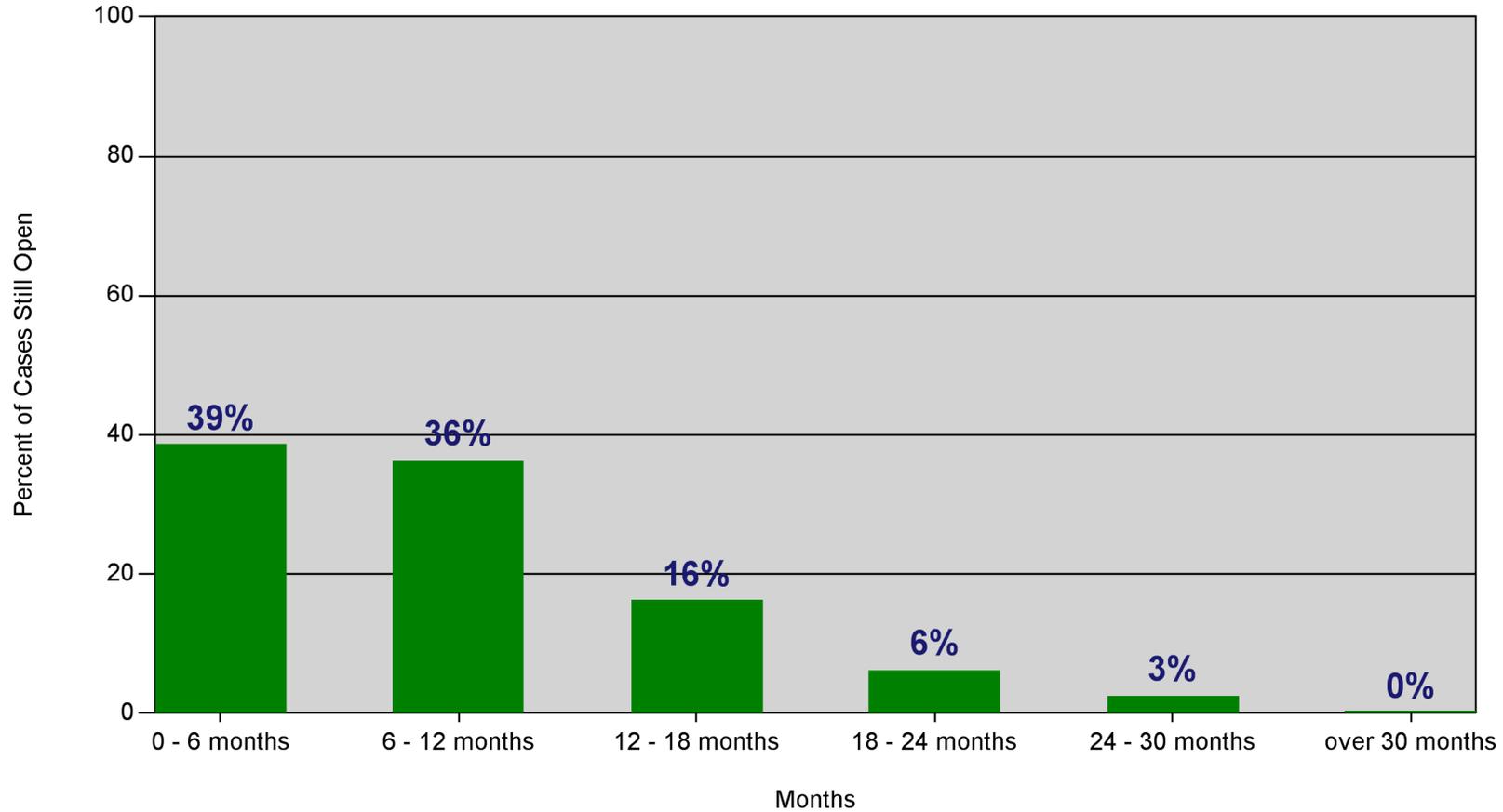
	Sep - 10	Oct - 10	Nov - 10	Dec - 10	Jan - 11	Feb - 11	Mar - 11	Apr - 11	May - 11	Jun - 11	Jul - 11	Aug - 11
<b>Received During Month</b>	<b>179</b>	<b>108</b>	<b>134</b>	<b>137</b>	<b>133</b>							
Broker/Sales	91	68	82	85	74							
Inspector	9	5	4	4	3							
Timeshare	2	2	0	1	4							
Unlicensed Activity	6	2	1	2	5							
Residential Service Company	8	2	8	10	1							
No Jurisdiction	37	20	21	22	18							
Application Investigation	15	6	3	7	23							
MCD Inquiry	3	2	14	1	0							
Other	8	1	0	3	3							
<b>Closed During Month</b>	<b>176</b>	<b>167</b>	<b>154</b>	<b>134</b>	<b>182</b>							
Complaint Withdrawn	2	9	5	5	1							
Cease & Desist Issued	1	0	0	2	6							
Disciplinary Action	48	33	26	22	32							
Failure to Go Forward	14	16	12	6	15							
Insufficient Evidence	27	13	32	24	48							
Matter Settled	6	9	8	21	20							
No Jurisdiction	21	28	26	23	27							
No Violation	3	6	9	11	16							
Application Investigation	8	19	11	6	6							
MCD Inquiries	6	2	4	6	3							
Other	28	12	11	5	5							
Open at Beginning of Month					984							
Received During Month					133							
Closed During Month					182							
<b>Open at End of Month</b>					<b>927</b>							
Received During Fiscal Year					691							
Closed During Fiscal Year					813							

# Standards & Enforcement Services Division - TREC: E2 Report

## Open Cases Aging Report

as of 2/11/2011

Open Case Age Report, percent of cases open



## Information Technology Services Division

### Electronic Information Outlet Statistics

As of January 2011

<b>World Wide Web</b>	<b>Latest Fiscal Quarter</b>	<b>Prior Yr Fiscal Quarter</b>	<b>Total Fiscal YTD</b>	<b>Total Prior Fiscal YTD</b>
Total Pages Viewed	8,119,950	6,097,970	14,972,745	12,023,766

<b>TREC E-Mail Notification List</b>	<b>Current Total</b>
Current Subscribers	232,804

<b>Online Transactions</b>	<b>Total Latest Fiscal Quarter</b>	<b>Online Latest Fiscal Quarter</b>	<b>Online Percent</b>	<b>Fiscal YTD Online Percent</b>	<b>Prior Fiscal YTD Online Percent</b>
<b>Applications</b> (Performance Measure: 70%)	<b>1424</b>	<b>46</b>	<b>3.2%</b>	<b>14.8%</b>	<b>81.4%</b>
Broker Application	94	3	3.2%	4.4%	85.3%
Salesperson Application	1238	42	3.4%	15.6%	86.5%
Corporate Application	92	1	1.1%	9.4%	22.3%
<b>Renewals</b> (Performance Measure 80%)	<b>10862</b>	<b>6433</b>	<b>59.2%</b>	<b>64.7%</b>	<b>88.8%</b>
Broker Renewals	2871	1765	61.5%	65.2%	89.2%
Salesperson Renewal	7110	4322	60.8%	65.7%	93.6%
Corporate Renewals	268	138	51.5%	66.9%	91.8%
Limited Liability Company Renewals	239	124	51.9%	69.9%	92.6%
Professional Inspector Renewals	289	47	16.3%	31.6%	26.5%
Real Estate Inspector Renewals	7	1	14.3%	27.3%	27.3%
Apprentice Inspector Renewals	0	0	0.0%	66.7%	0.0%
Easement ROW Business Renewals	0	0	0.0%	42.9%	11.1%
Easement ROW Individual Renewals	78	36	46.2%	63.8%	17.2%

**Staff & Support Services Division  
Agency Financial Statement**

**December 2010**

**THRU 4TH MONTH OF FISCAL YEAR 2011**

STRATEGIES	FY 2011 APPROPRIATION*	5% BUDGET REDUCTION	2.5% BUDGET REDUCTION	REVISED BUDGET	4/12 ANNUAL APPROPRIATION	FOUR MONTHS EXPENDITURES AND A/P	\$ VARIANCE OVER(-) OR UNDER**	% VARIANCE OVER(-) OR UNDER	ENCUMBRANCES
<b>Licensing</b>	\$ 3,236,173.61	\$ (363,238.00)	\$ (98,830.00)	\$ 2,774,105.61	\$ 924,701.87	\$ 742,109.47	\$ 182,592.40	19.75%	\$ 258,525.31
<b>Enforcement</b>	1,777,292.47	(73,036.00)	(31,323.00)	1,672,933.47	557,644.49	561,012.82	(3,368.33)	-0.60%	85,817.77
<b>Communication/Information</b>	863,884.00	(88,018.00)	(17,085.00)	758,781.00	252,927.00	252,657.72	269.28	0.11%	22,298.90
<b>Indirect Administration</b>	1,630,741.80	(73,892.00)	(34,170.00)	1,522,679.80	507,559.93	442,682.01	64,877.92	12.78%	209,338.73
<b>TOTAL</b>	<u>\$ 7,508,091.88</u>	<u>\$ (598,184.00)</u>	<u>\$ (181,408.00)</u>	<u>\$ 6,728,499.88</u>	<u>\$ 2,242,833.29</u>	<u>\$ 1,998,462.02</u>	<u>\$ 244,371.27</u>	10.90%	<u>\$ 575,980.71</u>

\* Total appropriations have been increased by \$22,529 for benefit replacement pay.

In the Licensing strategy, subscription fees in the amount of \$54,510 have been collected and remitted to the Texas Online vendor.

In the Licensing strategy, FBI criminal history background check fees in the amount of \$286,44C have been collected for payment to DPS.

\*\* Some expenditures are paid at the beginning of the fiscal year, such as computer and software maintenance, worker's compensation premium, etc.

\*\*\* Legislative provision requires the encumbrance of all contractual obligations through the end of the fiscal year. This includes items such as office rent, other equipment leases, or other contractual obligations. Encumbrances are not included in the "Four Months Expenditures and A/P" column.

**Staff Services Division**  
**Real Estate Recovery Trust Account No. 971 Investments**  
**Current Securities**  
**December 2010**

Purchase Date	Par Value	Purchase Price	Beginning Market Value	Additions Changes	Ending Market Value	Accrued Interest	Description	Maturity Date
05/28/2009	200,000.00	200,750.00	200,125.00	(200,125.00)	0.00	0.00	U.S. T-Notes, 0.875%	12/31/2010
02/24/2006	100,000.00	102,000.00	101,000.00	(437.50)	100,562.50	1,875.00	U.S. T-Notes, 5.00%	02/15/2011
05/24/2005	300,000.00	318,421.88	310,031.25	(1,218.75)	308,812.50	5,625.00	U.S. T-Notes, 5.00%	08/15/2011
02/28/2007	100,000.00	99,750.00	104,156.25	(375.00)	103,781.25	375.00	U.S. T-Notes, 4.50%	11/30/2011
08/29/2007	200,000.00	205,000.00	210,937.50	(937.50)	210,000.00	3,656.25	U.S. T-Notes, 4.875%	02/15/2012
02/20/2009	200,000.00	222,000.00	213,062.50	(875.00)	212,187.50	791.67	U.S. T-Notes, 4.750%	05/31/2012
12/06/2007	100,000.00	104,750.00	106,750.00	(437.50)	106,312.50	1,640.63	U.S. T-Notes, 4.375%	08/15/2012
05/27/2008	100,000.00	101,062.50	105,843.75	(468.75)	105,375.00	281.25	U.S. T-Notes, 3.375%	11/30/2012
02/20/2009	200,000.00	219,250.00	214,937.50	(1,250.00)	213,687.50	2,906.25	U.S. T-Notes, 3.875%	02/15/2013
04/28/2010	200,000.00	217,625.00	219,500.00	(1,750.00)	217,750.00	3,187.50	U.S. T-Notes, 4.25%	08/15/2013
08/31/2010	200,000.00	221,375.00	220,312.50	(2,437.50)	217,875.00	3,000.00	U.S. T-Notes, 4.00%	02/15/2014
08/31/2010	100,000.00	112,406.25	111,843.75	(1,500.00)	110,343.75	1,593.75	U.S. T-Notes, 4.25%	08/15/2014
<b>Totals</b>	<b>\$ 2,000,000.00</b>	<b>\$ 2,124,390.63</b>	<b>\$ 2,118,500.00</b>	<b>\$ (211,812.50)</b>	<b>\$ 1,906,687.50</b>	<b>\$ 24,932.30</b>		

	Current Month	Cumulative Totals
<b>Receipts:</b>		
License's Remittances to Recovery Fund	\$ 18,460.00	\$ 6,276,530.08
Interest Realized	125.00	6,015,512.56
Repayments to Recovery Fund (Principal and Interest)	2,193.87	1,110,909.75
Administrative Penalties	2,483.34	844,770.00
<b>Total Received</b>	<b>\$ 23,262.21</b>	<b>\$ 14,247,722.39</b>
<b>Disbursements:</b>		
Investments Purchased (Offset by Matured Security)	\$ (200,750.00)	1,923,640.63
Accrued Interest Purchased	0.00	532.61
Payments from Recovery Fund	86,374.69	11,473,074.64
Rider Disbursements	0.00	13,932.99
<b>Total Disbursed</b>	<b>\$ (114,375.31)</b>	<b>\$ 13,411,180.87</b>
<b>Totals</b>	<b>\$ 137,637.52</b>	<b>\$ 836,541.52 *</b>
	(Current Month)	
Reserved for Investment		0.00
Reserved for Potential Payments Within 90 Days		(754,500.00)
<b>Balance</b>		<b>\$ 82,041.52</b>

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

*Karen Alexander*

Karen Alexander, Investment Officer

*Barbara C Kolb*

Barbara Kolb, Alternate Investment Officer

\* Reconciled Balance includes revenue of \$17,480.39 which was in the Trust & Suspense fund pending transfer as of 12/31/10 and \$200,875 for a matured security and interest.

## Staff Services Division

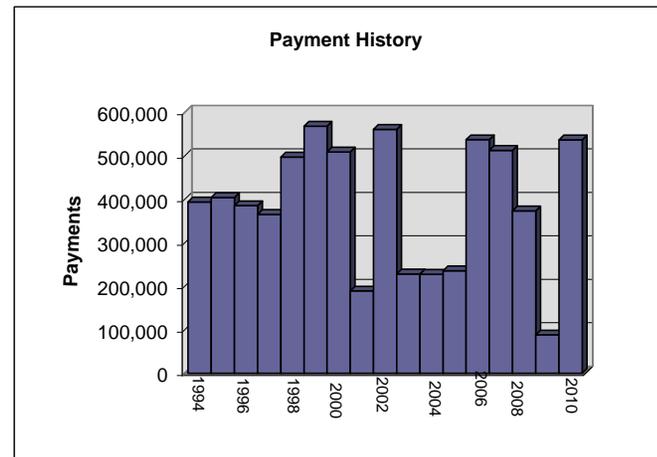
# Real Estate Recovery Trust Account No. 971 Investments Payments and Repayments

December 2010

Month-Year	Payment Total	Repayment Total	Admin Penalties Total	Rider Disbursements	Payments FY2011-To-Date	Number of Payments
December 2009	117,623.29	2,119.20	2,908.33	99.89		
January 2010	50,000.00	1,582.18	1,582.18	0.00		
February 2010	31,786.14	1,867.61	4,583.33	57.80		
March 2010	73,847.53	1,984.41	2,283.33	43.00		
April 2010	27,465.00	7,795.06	11,458.33	94.70		
May 2010	0.00	1,876.98	2,708.33	0.00		
June 2010	0.00	1,705.53	6,208.33	0.00		
July 2010	20,627.43	589.70	98,808.38	0.00		
August 2010	23,684.38	1,674.70	6,388.33	93.10		
September 2010	35,610.61	346.61	4,158.33	0.00	35,610.61	1
October 2010	0.00	3,349.26	4,278.33	0.00	0.00	0
November 2010	0.00	(1,664.48)	5,908.33	0.00	0.00	0
December 2010	86,374.69	2,193.87	2,483.34	0.00	86,374.69	2
	<b>467,019.07</b>	<b>25,420.63</b>	<b>153,757.20</b>	<b>388.49</b>	<b>121,985.30</b>	<b>3</b>

Payment History		
Fiscal Year	# of Payments	Total Payments
thru 1993	345	4,734,258.62
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
2010	20	536,637.13
<b>Total</b>	<b>647</b>	<b>\$11,351,089.34</b>

**Potential Payments\***  
Next 3 Months **754,500.00**



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

## Staff Services Division

### Real Estate Inspection Recovery Fund No. 0988

December 2010

	Monthly Activity			Payment History		
	Beginning Balance	Current Month	Cumulative Totals	Fiscal Year	Number of Payments	Total Payments
<b>Beginning Balance</b>	\$ 636,685.22	\$	\$ 636,685.22	1991	2	\$ 4,309.26
<b>Receipts:</b>				1992	0	0.00
Licensees' Remittances to Recovery Fund		\$ 700.00		1993	2	15,000.00
Interest Realized		514.23		1994	5	31,473.40
Repayments		115.83		1995	4	25,668.83
Administrative Penalties		0.00		1996	2	7,500.00
<b>Total Received in Current Month</b>		<u>0.00</u>	<b>\$ 1,330.06</b>	1997	1	7,500.00
<b>Disbursements:</b>				1998	4	30,000.00
Payments from Recovery Fund		\$ 0.00		1999	1	7,500.00
Cash Transfer to General Revenue		0.00		2000	6	45,000.00
Rider Disbursements		0.00		2001	0	0.00
<b>Total Disbursed in Current Month</b>		<u>0.00</u>	<b>\$ 0.00</b>	2002	2	15,000.00
<b>Total</b>			<b>\$ 638,015.28</b>	2003	1	7,500.00
<b>Reserved for Payment within 90 Days</b>			<b>(4,266.00)</b>	2004	4	32,523.96
<b>Fund Balance</b>			<u><u><b>633,749.28</b></u></u>	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	2	16,205.00
				2011 YTD	0	0.00
				<b>Total</b>		<b>\$ 348,584.95</b>

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

Karen Alexander

Karen Alexander, Investment Officer

Barbara C Kolb

Barbara Kolb, Alternate Investment Officer

\*Reconciled balance includes revenue of \$3,565.63 which was in the Trust & Suspense fund pending transfer as of 12/31/10.

**Agenda Item 9(a):**

Discussion and possible action to

- a. adopt the repeal of 22 TAC §535.154 concerning Advertising

**SUMMARY**

The repeal is necessary because the subject addressed in the section is covered in new amendments to Subchapter N 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.

**STAFF RECOMMENDATION**

Adopt the repeal as proposed

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit repeal of 22 TAC §535.154 concerning Advertising, 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 9(a)

~~§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. ]~~

**Agenda Item 9(b):**

Discussion and possible action to:

- b. adopt new 22 TAC §535.154 concerning Advertising

**SUMMARY**

New §535.154 replaces existing §535.154. Subsection (a) provides a definition of “advertisement;” subsection (b) clarifies what types of communications are not considered advertisements for purposes of the Act and Rules. Subsection (c) requires salespersons and brokers to clearly and conspicuously include the broker’s name in all advertising and permits the use of a broker’s assumed name if it has been filed with the commission. If the broker’s name includes the name of a salesperson, the advertisement must include another assumed name of the broker that does not include the salesperson’s name or the name of the broker’s designated broker. Subsection (d) provide a laundry list of types of advertising that are considered deceptive and misleading; subsection (e) requires brokers to file assumed names with the commission; subsection (f) requires an advertisement to contain a designation such as broker or agent; subsection (g) prohibits advertising that implies that a salesperson is the person responsible for the operation of a real estate brokerage business, or causes someone to believe that an unlicensed person is personally engaged in real estate brokerage; subsection (h) permits a business entity to do business in the name in which it was chartered or registered at the Office of the Secretary of State with certain exceptions; subsection (i) prohibits a licensee from using a copyrighted trade name unless the licensee has the authority to use the name; subsection (j) addresses use of advertisements on the Internet; subsection (k) addresses electronic communications; subsection (l) addresses road signs; subsection (m) addresses advertisements that contain an offer to rebate a portion of a licensee’s commission; subsection (n) addresses advertising that recommends or promotes the use of a service provider; subsection (o) prohibits licensees from advertising information regarding service providers that ranks the providers unless the ranking is based on disclosed objective criteria; subsection (p) prohibits licensees from advertising that a licensee offers, sponsors, or conducts commission approved courses unless the licensee is approved to offer the courses.

The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules.

**STAFF RECOMMENDATION**

Adopt the new rule as proposed

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the adoption of §535.154, regarding Advertising 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 9(b)*

§535.154. Advertising.

(a) For the purposes of this section, an "advertisement" is a written or oral statement or communication by or on behalf of a licensee which induces or attempts to induce a member of the public to use the services of the licensee or service provider. The term "advertisement" includes, but is 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. The provisions of this section apply to all advertisements by or on behalf of a licensee unless the context of a particular provision indicates that it is intended to apply to a specific form of advertisement.

(b) The following information is not considered an advertisement or advertising:

(1) a communication from a licensee to a member of the public after the member of the public agreed for the licensee to provide services, provided the first communication from the licensee contains the information required by this section; or

(2) real estate information, including listings, available to the public on a licensee's website, extranet or similar site that is behind a firewall or similar filtering software which requires a password or registration to access that information.

(c) An advertisement must clearly and conspicuously contain the name of the broker, either a business entity or an individual. For purposes of this section, the broker, or a

salesperson sponsored by the broker, may use the broker's assumed name instead of the name in which the broker is licensed, if the assumed name is registered with the commission under subsection (e). An advertisement may not contain an assumed name unless a broker has registered that assumed name with the commission. If the broker's name or its assumed name includes a salesperson's name, the advertisement must include another assumed name of the broker that does not include a salesperson's name, or the designated agent's name.

(d) For purposes of this section and §1101.652(b)(23) of the Act, deceptive or misleading advertising includes, but is not limited to, the following:

(1) advertising that is inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies;

(2) advertising a property that is subject to an exclusive listing agreement without the permission of the listing broker and without disclosing the name of the listing broker unless the listing broker has expressly agreed to waive disclosure;

(3) failing to remove an advertisement about a listed property within a reasonable time after closing or termination of a listing agreement, unless the status is included in the advertisement;

(4) an advertisement by a salesperson which identifies the salesperson as a broker; or

(5) advertising a property in a manner that creates a reasonable

likelihood of confusion regarding the permitted use of the property.

(e) A broker, individually or as the designated officer, manager or partner of a business entity licensed as 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 an assumed name in business other than the name in which the person is licensed.

(f) An advertisement placed by a licensee must include a designation such as "agent," "broker" or a trade association name that serves clearly to identify the advertiser as a real estate agent.

(g) A broker or salesperson may not place an advertisement that in any way:

(1) implies that a salesperson is the person responsible for the operation of a real estate brokerage business; or

(2) causes a member of the public to believe that a person not authorized to conduct real estate brokerage is personally engaged in real estate brokerage.

(h) Except as provided by subsections (c) and (g) of this section, a business entity licensed as a real estate broker may do business in the name in which it was chartered or registered by the Office of the Secretary of State.

(i) A licensee may not utilize a copyrighted trade name unless the licensee has legal authority to use the name.

(j) A real estate licensee placing an advertisement on the Internet, electronic bulletin board or the like must include on each page on which the licensee's advertisement appears any

information required by this section and §1101.652(b)(23) of the Act. For purposes of this subsection, "page" means each html document of a website, which may include several screens of information that are viewed by scrolling down to the end of the document.

(k) A real estate licensee placing an advertisement by using an electronic communication, including but not limited to email and email discussion groups, text messages, and social networking websites must include in the communication and in any attachment which is an advertisement, the information required by this section and §1101.652(b)(23) of the Act. For purposes of advertising on social networking websites that limit the number of characters in a communication and the required information would consume more than 10% of the available character limit, a licensee may include a direct hyperlink containing the words "TREC DISCLOSURE" which links to the information required by this section and §1101.652(b)(23) of the Act.

(l) An advertisement placed where it is likely to attract the attention of passing motorists or pedestrians must contain language that clearly and conspicuously identifies the person publishing the advertisement as a real estate broker or agent. This subsection does not apply to signs placed on or providing directions to 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 Act.

(m) An advertisement containing an offer to rebate 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.

(n) 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.

(o) A licensee may not advertise information regarding service providers that ranks such providers unless the ranking is based on disclosed objective criteria.

(p) A licensee may not advertise that such licensee offers, sponsors, or conducts commission approved courses in conjunction with an approved school or other approved organization unless the licensee is approved by the Commission to offer such courses.

**Agenda Item 10(a)-(b):**

Discussion and possible action to adopt amendments to 22 TAC Subchapter T regarding Easement or Right of Way Agents as follows:

- a. Amend §535.400 regarding Registration of Easement or Right-of-Way Agents
- b. Amend §535.403 regarding Renewal of Registration

**SUMMARY**

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.

The reasoned justification for the rules is an enhanced application and renewal processes for Easement or Right-of-Way Agents.

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 Subchapter T regarding Easement or Right-of-Way; §535.400 regarding Registration of Easement or Right-of-Way Agents; and §535.403 concerning Renewal of Registration without 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*.

**Agenda Item 10 (a)-(b)**

**§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.]~~

~~[(b)]~~ An individual desiring to be registered by the commission as an easement or right-of-way agent must file an application on form ERW 1-3 [with] approved by the commission. If the applicant is a business, the applicant must file form 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.

~~(b)~~~~(e)~~ After the commission has accepted an application for filing, the commission shall process the application and promptly issue a certificate of registration, request any information required to complete the registration, or advise the applicant that the application has been terminated or disapproved, as the case may be.

~~(c)~~~~(d)~~ The commission shall assign a registration number to each registrant and shall provide each registrant with a certificate of registration. Each registration issued by the commission is valid until the last day of the month one year from the day the registration was issued. Each registrant shall display the certificate of registration issued by the commission in a prominent location in the registrant's place of business, as required by the Act, §1101.507. If the registrant maintains more than one place of business, the registrant shall display either the certificate or a copy of the certificate in each place of business.

~~(d)~~~~(e)~~ The commission may terminate an application with written notice to the applicant for failure to submit information or documentation within 60 days after the commission makes written request for the information or documentation.

~~(e)~~~~(f)~~ The commission may disapprove an application for registration with written notice to the applicant if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines) or the applicant has

engaged in conduct prohibited by the Act. Provided a timely written request for a hearing is made by the applicant in accordance with the Act, §1101.364, an applicant whose application for registration has been disapproved is entitled to a hearing. The hearing on the application will be conducted in accordance with the provisions of the Act, §1101.364, and Chapter 533 of this title (relating to Practice and Procedure).

**§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.]~~

~~(e)~~ 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 mailing 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.

~~(c)~~ ~~(d)~~ An application for renewal will be deemed to have been timely filed if it shows a postmark on or before the expiration date of the registration. When the last day of the renewal period falls on a non-business day, renewal applications also will be deemed to have been timely filed if received or postmarked no later than the first business day following the last day of the renewal period. "Non-business" days are Saturday, Sunday and any other day upon which the commission offices are closed due to a

state holiday designated in the General Appropriations Act or by other law.

**(d) [(e)]** Renewals by registrants who are on active duty in the United States armed forces or who are subject to the provisions of the Texas Education Code, §57.491, concerning certain student loans also will be governed by §535.92 of this title (Relating to Miscellaneous Provisions Concerning License Renewals).

**Agenda Item 11(a):**

Discussion and possible action to adopt 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**

The 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.

The reasoned justification for the amendments is enhanced consumer protection for purchasers of residential service contracts.

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 22 TAC §539.61 concerning Applications and Licensing 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 11(a)*

**§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](http://www.trec.state.tx.us).

(b) (No change.)

**(c) An application for residential service company license or an application to approve evidence of coverage/schedule of charges in section 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 adopt amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act as follows:

- b. Amend §539.121 concerning Examinations

**SUMMARY**

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.

The reasoned justification for the amendments is enhanced consumer protection for purchasers of residential service contracts.

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 §539.121 concerning Examinations without 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*.

***Agenda Item 11(b)***

**§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 ~~three~~five 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 adopt amendments to 22 TAC Chapter 539 regarding Provisions of the Residential Service Company Act as follows:

- c. New Subchapter P and new §539.150 concerning Complaints

**SUMMARY**

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.

The reasoned justification for the amendments is enhanced consumer protection for purchasers of residential service contracts.

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 new Subchapter P and new §539.150 concerning Complaints without changes to the proposed text and 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 11(c)*

**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 propose amendments to 22 TAC Chapter 533 regarding Practice and Procedure

**SUMMARY**

The proposed amendment to §533.1 amends the definition of “last known mailing address” to “mailing address” to be consistent with other TREC rules. The proposed amendment to §533.3 clarifies that the Notice of Alleged Violation required by Occupations Code §1101.703 will be mailed to the respondent’s mailing address.

**STAFF RECOMMENDATION**

Approve the amendments for proposal to the *Texas Register*

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §533.1, regarding Definitions; and §533.3, regarding Filing and Notice, 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*.

## Agenda Item 12

**§533.1. Definitions.** The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) - (12) (No Change.)

(13) [~~Last Known~~] Mailing Address--The [~~permanent~~] mailing address as provided to the commission by a Licensee and maintained as required by 22 TAC §§535.96 and 535.217 or as provided to the commission by an [~~or~~] Applicant or as shown in the commission's records for a Respondent who is not a license holder. The mailing address for a Respondent that holds an active salesperson license shall be the mailing address of the salesperson's sponsoring broker as shown in the commission's records.

(14) – (22) (No Change.)

### **§533.3. Filing and Notice**

(a) The commission shall provide notice to all parties in accordance with the APA §2001.052, Chapters 1101 and 1102, Texas Occupations Code, and the following:

(1) If, after investigation of a possible violation and the facts surrounding that possible violation, the commission determines that a violation has occurred, the commission may issue a written Notice of Alleged Violation.

(2) The Notice of Alleged Violation shall be sent to the Respondent's [~~last known~~] mailing address by certified or registered mail.

(3) The Notice of Alleged Violation shall include:

(A) a brief summary of the alleged violation(s);

(B) a statement of the amount of the penalty and/or sanction recommended; and

(C) a statement of the right of the Respondent to a hearing.

(4) The commission shall base the recommendation on the factors set forth in this chapter.

(b) – (d) (No Change.)

(e) If a real estate salesperson is a respondent, the commission also will notify the salesperson's sponsoring broker of the hearing. Such notice need not be provided by certified or registered mail. If an apprentice inspector or real estate inspector is a respondent, the commission also will notify the sponsoring professional inspector of the hearing.

(f) Any document served upon a party is prima facie evidence of receipt if it is directed to the party's [~~last known~~] mailing address. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of nondelivery.

**Agenda Item 13:**

Discussion and possible action to propose amendments to 22 TAC §535.217 regarding Contact Information

**SUMMARY**

The proposed amendment to §535.217 amends the title of the rule to add “Mailing Address and Other” and deletes the term “permanent” from the rule to make it consistent with other TREC rules.

**STAFF RECOMMENDATION**

Approve the amendments for proposal to the *Texas Register*

**MOTION**

MOVED, that staff is hereby authorized, on behalf of this Commission, to submit the amendments to §535.217 regarding Contact Information 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*.

***Agenda Item 13***

***§535.217 Mailing Address and Other 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~~] the mailing address, the last known mailing address for the licensee will be deemed to be the licensee's [~~permanent~~] mailing address.

**Agenda Item 14:**

Discussion and possible action on 22 TAC §535.148 regarding Receiving an Undisclosed Commission or Rebate

**SUMMARY**

The form adopted by reference in §535.148 contained phrase “for services provided to buyers and sellers”. This phrase needs to be deleted from the form.

**STAFF RECOMMENDATION**

Approve staff modifications to RSC-1, Disclosure of Relationship with Residential Service as presented.

**MOTION**

MOVED, that Commission does hereby approve the modifications to RSC-1, Disclosure of Relationship with Residential Service as presented by staff and as previously submitted to *Texas Register*.



# DISCLOSURE OF RELATIONSHIP WITH RESIDENTIAL SERVICE COMPANY

**RESIDENTIAL SERVICE CONTRACTS.** A residential service contract is a product under which a residential service company, for a fee, agrees to repair or replace certain equipment or items in a property. Co-payments typically apply to most service calls. Residential service companies are licensed and regulated by the Texas Real Estate Commission. The extent of coverage and the cost of coverage will vary. Before buying a residential service contract, the buyer should read the contract and consider comparing it with the extent of coverage and costs from several other residential service companies. You may obtain a list of the residential service companies licensed in Texas at <http://www.trec.state.tx.us> as well as a copy of their respective contracts. **YOU MAY CHOOSE ANY COMPANY.**

**THE PURCHASE OF A RESIDENTIAL SERVICE CONTRACT IS OPTIONAL.** The TREC promulgated residential contract forms contain a paragraph in which the parties may negotiate whether the seller will reimburse the buyer the cost of a residential service contract. The choice of the residential service company and extent of coverage lies with the buyer. **NEITHER A BROKER/SALESPERSON NOR A SELLER MAY CONDITION THE SALE OF A PROPERTY ON THE BUYER'S PURCHASE OF A RESIDENTIAL SERVICE CONTRACT.**

Other Broker/Salesperson will receive no compensation from a residential service company.

Listing Broker/Salesperson will receive no compensation from a residential service company.

Other Broker/Salesperson receives compensation from the following residential service company:

Listing Broker/Salesperson receives compensation from the following residential service company:

\_\_\_\_\_  
\_\_\_\_\_  
for providing the following services:  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
for providing the following services:  
\_\_\_\_\_  
\_\_\_\_\_

The compensation is not contingent upon a party to the real estate transaction purchasing a contract or services from the residential service company.

The compensation is the fee for the services that Listing Broker or Other Broker, either directly or through an agent, provides to the company. As required by the Real Estate Settlement Procedures Act and HUD Regulation X, any fees paid to a settlement services provider are limited to the reasonable value of services actually rendered.

Other Broker's Name \_\_\_\_\_ License No. \_\_\_\_\_

Listing Broker's Name \_\_\_\_\_ License No. \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

The undersigned acknowledges receipt of this notice:

Buyer \_\_\_\_\_

Seller \_\_\_\_\_

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>) RSC 1.

## **Agenda Item 15:**

Discussion and possible action on legislative housekeeping measures and other legislative items

### **SUMMARY**

Each of the following bills has a hyperlink to the text of the bill in PDF format.

[HB 177](#) by Jackson – Requires occupational licensing agencies to verify employment eligibility for employment in the United States of a person applying for or renewing an occupational license.

*Filed 11/8/2010*

[HB 666](#) by Villarreal – Requires the Comptroller to conduct a study to examine the impact that requiring disclosure of the sales price of real property would have on the property tax system, property tax revenues, and the allocation of property tax burdens among taxpayers.

*Filed 1/14/2011*

[HB 937](#) by Harless; [SB 379](#) by Nichols – Repeals the requirement that inspectors have professional liability (errors and omissions) insurance to obtain or renew a license.

*Filed 1/20/2011; filed 1/26/2011*

### **STAFF RECOMMENDATION**

### **MOTION**

**Agenda Item 16:**

Discussion and possible action to approve modifications to Legislative Appropriations Request

**SUMMARY**

See attached documentation.

**STAFF RECOMMENDATION**

Approve the modifications to Legislative Appropriations Request for Fiscal Years 2012-2013 as presented.

**MOTION**

MOVED, that Commission does hereby approve the modifications to the Legislative Appropriations Request for Fiscal Years 2012-2013 as presented and as previously submitted by staff to the appropriate entities.

**FY2012-2013 Legislative Appropriations Request  
 Exceptional Items - TREC  
 Withdrawn January 26, 2011**

Priority	TREC	Description	FY2012	FY2013	Biennium	Estimated Fee Increase per Renewal
1	Professional Staff & Training (6 FTEs)	This item would replace the six employees who were laid off in FY2010 due to the 5% budget reduction, but at higher classifications with professional level skills. Included is a request for staff training in the amount of \$9,500. Positions to be funded include a Web applications developer, a Consumer Affairs Specialist, an Education Curriculum Specialist, a Budget Analyst, a mediator, and an administrative assistant for enforcement. For revenue purposes, benefits must be added to the appropriated amount to determine the fee increase.	401,280	350,650	751,930	6.80
2	Versa Software Customization	This item would provide funding for customizations on the new computer system developed in FY2010. It is only required if baseline amounts are reduced. Baseline amounts include capital projected related funding from the FY2010-11 biennium. Continuation of that funding would allow customization as required on the new system. Should that funding be removed from baseline, exceptional level funding will be required to make any changes to the computer program.	47,402	51,712	99,114	0.71
3	Software Upgrades & Training	Provide budget to purchase Microsoft Office 2010 and Microsoft Sharepoint Standard. Currently, TREC receives electronic documents from other state agencies which cannot be opened because our current software is outdated. Microsoft Sharepoint Standard would allow key staff members to share files and to post documents to the website. Staff training on the software is included in this request.	51,626	0	51,626	0.37
4	Conversion of Historical Files to Images	Continue conversion of historical files to images. This item is only required if baseline amounts are reduced. Baseline amounts include capital project related funding from the FY2010-11 biennium. Continuation of that funding would allow completion of the project to image master files. Should that funding be removed from baseline, exceptional level funding will be required to complete the project.	277,147	55,395	332,542	2.38
5	Salary Equity	TREC continues to compete with other state agencies on the basis of salary. Funding for salary equity would allow TREC to grant salary increases to bring employees to at least the first quartile within the pay range for each classification. For revenue purposes, benefits must be added to the appropriated amount to determine the fee increase.	147,700	147,700	295,400	2.71
6	PC Refresh	After the 5% budget reduction in FY2010-11, only \$2,000 annually is included in the PC Refresh budget. This will only allow for replacements for broken equipment. Funding of his item will allow scheduled replacement of obsolete equipment.	20,040	20,040	40,080	0.29
7	Mandatory Security Test & Remediation	DIR requires a controlled penetration study annually. Funding for this would provide for payment for the test and for subsequent remediation on issues identified.	16,000	16,000	32,000	0.23
<b>Total TREC</b>			<b>961,195</b>	<b>641,497</b>	<b>1,602,692</b>	<b>13.48</b>

**Texas Real Estate Commission & Texas Appraiser Licensing & Certification Board  
FY2011 Supplemental Appropriation Request**

	<b>One-time Costs</b>	
<b>Moving Expenses:</b>		
Office move	83,834	
Relocate or replace mobile shelving	6,752	
Disassemble/reinstall modular furniture	6,000	
Move copiers	1,125	
<b>Total Moving Expenses</b>		<b>97,711</b>
<b>Telephones:</b>		
Installation	2,220	
<b>Total Telephone Expenses</b>		<b>2,220</b>
<b>Data Equipment:</b>		
Rack	500	
Power Distribution Units	1,000	
Patch panels	500	
Switches	5,750	
Media converter	150	
Watchguard 820 mail/web filter to accommodate broader bandwidth	9,000	
Installation of internet service	450	
<b>Total Data Equipment</b>		<b>17,350</b>
<b>Furniture/Equipment:</b>		
Reception Area furnishings	3,350	
Conference Tables (2)	2,840	
Conference Room Chairs (36)	9,900	
Lateral Files (18)	13,120	
Fireproof Files (2)	830	
Breakroom - refrigerators, microwaves, ice machine, TV with mounting hardware	5,525	
Simplex locks for server room and storage room	1,000	
Safe	530	
		<b>37,095</b>
<b>Grand Total - One-time Moving Costs</b>		<b>154,376</b>
<b>Restoration of FY2011 5% Budget Reduction (partial) &amp; 2.5% Budget Reduction for Imaging - to Avoid Off-site Storage Costs</b>		<b>312,474</b>
<b>TOTAL REQUEST FOR SUPPLEMENTAL APPROPRIATIONS - FY 2011</b>		<b>466,850</b>

### **Agenda Item 17;**

Discussion and possible action to approve updates to required Legal and Ethics MCE courses

### **SUMMARY**

The Texas Real Estate Commission (TREC) recently adopted amendments to eight standard contract forms with a mandatory effective date of March 1, 2011. The amended forms include Form No. 9-8, Unimproved Property Contract; Form No. 20-9, One to Four Family Residential Contract (Resale); Form No. 23-10, New Home Contract (Incomplete Construction); Form No. 24-10, New Home Contract (Completed Construction); Form No. 25-7, Farm and Ranch Contract; Form No. 30-8, Residential Condominium Contract; Form No. 36-6, Addendum for Property Subject to Mandatory Membership in a Property Owners Association; and Form No. 40-4, Third Party Financing Addendum for Credit Approval. In addition, the commission approved Form OP-M, Non-Realty Items Addendum for voluntary use by licensees.

The Texas Real Estate Commission adopted a series of rule amendments and new rules under Chapter 535 of Title 22 of the Texas Administrative Code (the Rules). Along with substantive revisions, the amendments and new rules reorganize and streamline the chapter into a more logical order. The effective date of the amendments is January 1, 2011, unless the text of the rule provides a different effective date.

### **STAFF RECOMMENDATION**

Approve modifications to the required Legal and Ethics MCE course materials to address the recent amendments to the contract forms and recent amendments to Chapter 535.

### **MOTION**

MOVED, that Commission does hereby approve the modifications to the required Legal and Ethics MCE course materials to address the recent amendments to the contract forms and the recent amendments to Chapter 535 as presented by staff.

The Texas Real Estate Commission (TREC) recently adopted amendments to eight standard contract forms with a mandatory effective date of March 1, 2011. The amended forms include Form No. 9-8, Unimproved Property Contract; Form No. 20-9, One to Four Family Residential Contract (Resale); Form No. 23-10, New Home Contract (Incomplete Construction); Form No. 24-10, New Home Contract (Completed Construction); Form No. 25-7, Farm and Ranch Contract; Form No. 30-8, Residential Condominium Contract; Form No. 36-6, Addendum for Property Subject to Mandatory Membership in a Property Owners Association; and Form No. 40-4, Third Party Financing Addendum for Credit Approval. In addition, the commission approved Form OP-M, Non-Realty Items Addendum for voluntary use by licensees.

The amendments to Form No. 20-9, One to Four Family Residential Contract (Resale) are as follows: 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 Addendum for Credit Approval. The sentence regarding Seller's 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; the reference to "affidavit" in paragraph 6.C.(1) is changed to "T-47 Affidavit"; 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 added 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 amendments to Form No. 9-8, Unimproved Property Contract, are the same as those to Form No. 20-9 as described above, except for paragraph 2.

The amendments to Form TREC No. 23-10, New Home Contract (Incomplete Construction), are the same as those to Form No. 20-9, except for paragraph 2, paragraph 6.C.(1), paragraph 7.B., and paragraph 9.B.(5).

The amendments to Form No. 24-10, New Home Contract (Completed Construction), are the same as those to No. 20-9, except for paragraph 2, paragraph 6.C.(1), paragraph 7.B., and paragraph 9.B.(5).

The amendments to Form TREC No. 25-7, Farm and Ranch Contract, are the same as those to No. 20-9, except that the last page is not changed. In addition, paragraph 2.F. is revised to delete “mineral” and “royalty.”

The amendments to Form TREC No. 30-8, Residential Condominium Contract, are the same as those to Form 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 amendments to Form No. 36-6, Addendum for Property Subject to Mandatory Membership in a Property Owners Association are as follows: 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 amendments to Form No. 40-4 Third Party Financing Addendum for Credit Approval are as follows: The title of the form is changed; the references to “Financing Approval” are changed to “Credit Approval.” The reference to “Loan Fees” is changed to “Adjusted Origination Charges” in subparagraphs (1) and (2) of paragraph A, and paragraphs C and D. The note regarding HUD 92564-CN is deleted.

The Commission approved for voluntary use OP-M, Non-Realty Items Addendum to convey personal property related to a real estate transaction.

## SUMMARY OF AMENDMENTS TO CHAPTER 535

The Texas Real Estate Commission adopted a series of rule amendments and new rules under Chapter 535 of Title 22 of the Texas Administrative Code (the Rules). Along with substantive revisions, the amendments and new rules reorganize and streamline the chapter into a more logical order. The effective date of the amendments is January 1, 2011, unless the text of the rule provides a different effective date.

The following is a list of most of the substantive changes to the rules. The TREC website, [www.trec.state.tx.us](http://www.trec.state.tx.us), has comprehensive summaries and the text of the adopted amendments and new rules.

### **BROKER RESPONSIBILITY**

- Amendments to §535.2 clarify a broker's responsibilities to his or her sponsored salespersons, the public, and other brokers.
- A broker is required to advise a sponsored salesperson of the scope of the salespersons authorized activities under the act; clarifies that a broker is liable 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 sponsored salespersons and for all advertising done by 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 business records such as disclosures, commission agreements, work files, contracts and related addenda, property management contracts, appraisal related records, and sponsorship agreements 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; and

Records are properly maintained pursuant to records retention requirements in the rules.

- 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 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.

### **LICENSE REQUIRED/NOT REQUIRED**

- 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 §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.

### **CORPORATIONS AND LIMITED LIABILITY COMPANIES**

- Section 535.4 adds a new provision which clarifies 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 under the Act.
- Amendments to §535.53 clarify the requirements for obtaining and maintaining a broker license for a corporation or limited liability company, and new subsection (c) provides that if a corporation or limited liability company is dissolved with the Secretary of State the license becomes null and void.

### **EDUCATION AND EXPERIENCE**

- Section 535.54 provides that a bachelor's degree from an accredited college or university satisfies all of the "related" education requirements for a salesperson or broker license. A bachelor's degree does not satisfy the required "core" courses.
- 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. The new 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 experience requirements of the section could apply to reinstate an expired broker license. If applying more than 2 years after a license expired, one would need to retake the examination.
- The commission will not grant credit to a student who has taken a "core" course with substantially the same content as one taken within the previous two-year period.

## **SCHOOLS, COURSES & INSTRUCTORS – PRE-LICENSE EDUCATION**

- 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 courses be submitted to TREC for approval is deleted. No credit is earned for such courses.
- Schools are required to provide to students and maintain for commission review instructor and course evaluations for each course; schools must use, at a minimum evaluation criteria established by the commission.
- A school will be 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 in an electronically as long as the records are maintained in a common format that may be legibly and easily printed.
- Section 535.65(d) clarifies that a school may use published objective information such as pass rates in advertising.
- In section 535.67(b), the renewal term for “core” instructor approval is changed from five to two years.

## **PROVIDERS, COURSES & INSTRUCTORS - MCE PROVIDERS**

- In Section 535.71, the renewal term for MCE instructor approval is changed from five to two years.
- Under Section 535.71(z), alternative delivery method courses for required legal credit must be certified by a distance learning certification center that is acceptable to the commission.
- Subsection (i) of §535.71 requires a provider to make available to students and maintain for commission review instructor and course evaluation for each course; schools must use, at a minimum evaluation criteria established by the commission.
- Subsection (k) of §535.71 requires a provider 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.

## **VIOLATIONS**

- §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) requires 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.

- §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) authorizes an unlicensed person to share in the income earned by a licensed business entity 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) would prohibit contingent fee arrangements where the licensee accepts a fee that is contingent upon a party to the real estate transaction 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 will be required to use as of March 1, 2011 to disclose compensation for services provided to or on behalf of a residential service company.
- The Commission postponed taking any action on the proposed revisions to §535.154 concerning advertising. The commission will continue to seek recommendations from interested parties regarding §535.154. Similarly, the commission decided not to take final action to repeal existing §535.154 until such time that a decision is made on a provision to replace it.

#### **MISCELLANEOUS LICENSE PROVISIONS**

- Under §535.96, licensees would be required to notify the commission of the licensee's current email address, if any, and other contact information.
- New 535.94((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.
- Section 535.121 is amended to clarify that a salesperson's license becomes inactive if a broker notifies the commission in writing that the broker is terminating sponsorship of the salesperson.

#### **HOME INSPECTORS**

- The minimum passing score on the professional inspector examination was changed from 80% to 75%. (22 TAC §535.209)
- The maximum percentage of a classroom course that may be completed through field work was increased from 10 to 50%. (§535.213)
- Advertising rules were modified to clarify that text messages and messages through the internet (such as social networking websites) are "advertisements" if they are created or caused to be created by an inspector for the purpose of inducing a member of the public to use the inspector's services. These types of advertising must adhere to the usual advertising rules, but websites need only show the license

number of the inspector(s) placing the advertisements on a single main page (such as an “about us” page). (§535.221)

- Inspection reports must be delivered to the client within three days unless otherwise agreed to by the client. (§535.223)
- Inspection reports must contain the name and license number of each inspector who participated in performing the inspection, as well as the names of the sponsor of any participating real estate or apprentice inspector. (§535.223)
- Signatures of sponsoring inspectors are no longer required on reports. (§§535.223 and 535.224)
- Changes were made throughout the rules to reflect a greater emphasis on online transactions and electronic delivery of notices and license certificates.

Additional changes are coming effective September 1, 2011:

- Every real estate inspector and professional inspector (but not apprentices) will be required to take a 6-hour course in Standards of Practice/Ethics/Legal Update in order to renew the license. TREC is currently accepting applications for these courses from providers, and we anticipate that the courses will be available as soon as this winter or spring. (§535.212)
- Applicants seeking to become licensed as real estate inspectors or professional inspectors will be required to take a specific number of hours in each core subject matter area (plumbing, electrical, report writing, etc.). See the TREC website for more details about this requirement. (§535.212)

#### **RESIDENTIAL LOCATORS ADVERTISING**

- Section 535.300 clarifies that the definition of "advertisement" in §535.154 applies to rental locators.

**Agenda Item 18:**

Discussion and possible action regarding TREC Standard Contract Form. No. 20-9

**SUMMARY**

To be presented at meeting.

**STAFF RECOMMENDATION**

**MOTION**



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 \_\_\_\_\_ 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.

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.

(Address of Property)

- (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 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: \_\_\_\_\_

(Address of Property)

**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.

**BROKER INFORMATION**

_____ Other Broker Firm License No. represents <input type="checkbox"/> Buyer only as Buyer's agent <input type="checkbox"/> Seller as Listing Broker's subagent	_____ Listing Broker Firm License No. represents <input type="checkbox"/> Seller and Buyer as an intermediary <input type="checkbox"/> Seller only as Seller's agent
_____ Licensed Supervisor of Associate Telephone	_____ Licensed Supervisor of Associate Telephone
_____ Associate Telephone	_____ Listing Associate Telephone
_____ Other Broker's Address Facsimile	_____ Listing Broker's Office Address Facsimile
_____ City State Zip	_____ City State Zip
_____ Associate Email Address	_____ 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

**Agenda Item 19**

Discussion and possible action to approve proposed 2.5% budget reduction

**SUMMARY**

See attached.

**STAFF RECOMMENDATION**

Approve plan to reduce the budget by 2.5% of the general revenue and general revenue-dedicated appropriations for FY 2011 as presented.

**MOTION**

MOVED, that the Commission does hereby approve the plan as presented and previously submitted by staff to the appropriate entities to reduce the budget by 2.5% of the general revenue and general revenue-dedicated appropriations for FY 2011 pursuant to the request from Texas Leadership dated December 6, 2010.



STATE OF TEXAS

DAVID DEWHURST  
LIEUTENANT GOVERNOR  
P.O. Box 12068  
AUSTIN, TEXAS 78711-2068  
(512) 463-0001

RICK PERRY  
GOVERNOR  
P.O. Box 12428  
AUSTIN, TEXAS 78711-2428  
(512) 463-2000

JOE STRAUS  
SPEAKER OF THE HOUSE  
P.O. Box 2910  
AUSTIN, TEXAS 78768-2910  
(512) 463-3000

December 6, 2010

TO: State Agency Board/Commission Chairs  
State Agency Heads/Executive Directors  
Appellate Court Chief Justices  
Chancellors, Presidents and Directors of Institutions of Higher Education  
Legislative Agency Heads

Thank you for the thoughtful plans you submitted in response to our January 15, 2010, request to identify savings totaling 5 percent of your general-revenue-related appropriations for the 2010–2011 biennium. Since that time, sales tax receipts have improved; however, overall state revenue receipts for fiscal year 2010 came in \$2 billion below estimate. The sales tax has performed well in the first two months of fiscal year 2011 (more than 6 percent growth compared to 2010), but we still anticipate insufficient revenue to cover general revenue spending needs in the current biennium.

As we prepare for the upcoming legislative session, we respectfully ask that you identify additional strategies to slow spending in fiscal year 2011. While there is no need to update the plans you submitted in response to our previous request, we ask that you plan on additional savings equal to 2.5 percent of your original general revenue and general-revenue-dedicated appropriations for fiscal year 2011. While the same program exemptions identified in our January 2010 letter can be used to calculate your 2.5 percent target, we ask that you take a broad view across all programs and services to find savings opportunities. These and other savings you have identified for the current fiscal year will be realized through action the 82<sup>nd</sup> Texas Legislature takes in adopting a supplemental appropriations bill for fiscal year 2011.

Reduced spending in the current fiscal year puts state government in a better position to prepare for the budget reductions that will be necessary to balance the budget for the 2012–2013 biennium. And every dollar we save in fiscal year 2011 will alleviate the level of reductions necessary for the upcoming biennium.

The Texas economy remains strong and will rebound from the current difficult conditions. We appreciate your help now and during the legislative session to balance the budget while keeping state government effective and efficient.

Sincerely,

Handwritten signatures of Rick Perry, David Dewhurst, and Joe Straus. Rick Perry's signature is on the left, David Dewhurst's is in the middle, and Joe Straus's is on the right.

Rick Perry  
Governor

David Dewhurst  
Lieutenant Governor

Joe Straus  
Speaker of the House

**Texas Real Estate Commission & Texas Appraiser Licensing & Certification Board (#329)**  
**FY 2011 Proposed 2.5% GR/GR Dedicated Reduction**

1/26/2011

	FY2011		
	TREC	TALCB	Total
<b>Basis of Reduction</b>			
General Revenue per GAA	7,293,001	838,233	<b>8,131,234</b>
TX Online	(22,000)	22,000	<b>0</b>
GR Dedicated	0	120,000	<b>120,000</b>
Less Master Lease Purchase Payments	(14,700)		<b>(14,700)</b>
Total GR & GR Dedicated	7,256,301	980,233	<b>8,236,534</b>
<b>x 2.5% = GR/GRD Reduction</b>	<b>181,408</b>	<b>24,506</b>	<b>205,914</b>
<b>Proposed Reductions:</b>			
1. Postage Savings from using Electronic Mail	19,797	0	<b>19,797</b>
2. Contingency Reserve for Move	142,376	12,000	<b>154,376</b>
3. Imaging Project	19,235	12,506	<b>31,741</b>
<b>Total Proposed Savings</b>	<b>181,408</b>	<b>24,506</b>	<b>205,914</b>
TREC Percentage of Appropriation			205,914 TREC
TALCB Percentage of Appropriation			TREC Percentage of Appr Funds TALCB
<b>Amount Over/(Under) Needed</b>	<b>0</b>	<b>0</b>	<b>0</b>

**Agenda Item 20:**

Discussion and possible action to approve updated policy for prioritization of complaint cases filed with the Standards and Enforcement Services Division.

**SUMMARY**

See attached

**STAFF RECOMMENDATION**

Approve modifications to TREC Policy for Prioritization of Complaint Cases Filed with the Standards and Enforcement Services Division as presented.

**MOTION**

MOVED, that Commission does hereby approve the modifications to the TREC Policy for Prioritization of Complaint Cases Filed with the Standards and Enforcement Services Division as presented by staff.

TEXAS



# REAL ESTATE COMMISSION

## APPRAISER LICENSING & CERTIFICATION BOARD

### TREC Commissioners

John D. Eckstrum  
Chair

Avis G. Wukasch  
Vice-Chair

Adrian A. Arriaga  
Secretary

Troy C. Alley, Jr.

Tom C. Mesa, Jr.

Robert C. (Chris) Day

Jaime Blevins Hensley

Joanne Justice

Dona Scurry

Douglas E. Oldmixon  
Administrator

**TO:** Commission Members

**FROM:** Kerri Galvin, Director, Standards & Enforcement Services

**DATE:** February 14, 2011

**RE:** Policy regarding the prioritization of investigations of consumer complaints

In compliance with Section §1101.204(h), Texas Occupations Code, the Standards & Enforcement Services (SES) Division is directed to prioritize the investigation of consumer complaints utilizing the following criteria: "Level 1," the highest investigative priority, typically involves fraud, or misrepresentation which SES Staff determines involves loss of money or property of \$10,000 or more, personal safety issues, and unlicensed activity. "Level 2," medium priority, involves fraud or misrepresentation which SES Staff determines involves loss of money or property less than \$10,000, or negligence. "Level 3," lowest priority, involves technical violations. Within each priority level, the investigation will be initiated based on the date the complaint was received.

The content of each section of the Act is paraphrased for convenience.

- I. Degree of potential harm to a consumer: Prioritize as Level 1, 2 or 3. If the license holder named in the complaint is currently not actively engaged in real estate brokerage activity (e.g. expired more than 1 year, suspended or inactive) then the priority level is lowered one level.
- II. Potential for immediate harm to a consumer: Prioritize as Level 1, 2 or 3.
- III. Overall severity of the allegations: Prioritize on the basis of the statutory or rule violations:
  - a. **The following violations will be considered Level 1:**
    - i. §1101.351(a), unlicensed activity (all);
    - ii. §1101.652(a)(3), misrepresentation, dishonesty or fraud (\$10K or more);
    - iii. §1101.652(a)(9), failing to notify commission of final conviction information (all);
    - iv. §§1101.652(b)(2)-(6) (\$10K or more),  
(b)(2)-dishonest conduct, bad faith or untrustworthiness;  
(b)(3)-misrepresentation concerning a significant defect;  
(b)(4)-failing to disclose a defect known to the license holder;  
(b)(5)-false promise to influence party to enter into an agreement;  
(b)(6)-pursuing a continued and flagrant course of misrepresentation through an agent, advertising or otherwise;
    - v. §1101.652(b)(9), failing within a reasonable time to return money(\$10K or more);
    - vi. §1101.652(b)(13), undisclosed commission, rebate or direct profit(\$10K or more);

- vii. (b)(15)-sells property by means of a deceptive practice(\$10K or more);
- viii. §§1101.652(b)(19)-(21),
  - (b)(19)-offers property without the knowledge and consent of the owner(\$10K or more);
  - (b)(20)-offers property on terms not authorized by owner(\$10K or more);
- ix. §1101.652(b)(32), discrimination(all);
- x. §§1102.101-.103, inspection activity by unlicensed person; or
- xi. mortgage fraud (all).

**b. The following violations will be considered Level 2:**

- i. §1101.557(b), instruct another broker to violate §1101.652(b)(22), must inform principal of material information received, answer questions and present offers;
- ii. §1101.558(b), disclosure of representation;
- iii. §1101.559(a), acting as an intermediary;
- iv. §1101.652(a)(3), misrepresentation, dishonesty or fraud (less than \$10K);
- v. §1101.652(a)(7), failing to surrender documents;
- vi. §1101.652(b)(1), acting negligently or incompetently;
- vii. §§1101.652(b)(2)-(6) (less than \$10K),
- viii. §§1101.652(b)(7)-(8),
  - (b)(7)-failing to make clear who licensee represents;
  - (b)(8)-receives compensation from more than one party without full knowledge and consent of both parties;
- ix. §1101.652(b)(9), failing within a reasonable time to return money(less than \$10K);
- x. §§1101.652(b)(10)-(12),
  - (b)(10)-commingling money;
  - (b)(11)-pays a commission or fee to unlicensed person;
  - (b)(12)-no definite contract termination date;
- xi. §1101.652(b)(13), undisclosed commission, rebate or direct profit(\$10K or less);
- xii. §1101.652(b)(14)-(18),
  - (b)(14)-offers property by lottery;
  - (b)(15)- solicits, sells, or offers for sale real property by means of a deceptive practice (less than \$10K);
  - (b)(17)-guarantees future profits;
  - (b)(18)- places a sign on real property offering the real property for sale or lease without obtaining the written consent of the owner of the real property or the owner's authorized agent;
- xiii. §1101.652(b)(20)-(22)
  - (b)(20)- offers to sell or lease real property on terms other than those authorized by the owner of the real property or the owner's authorized agent(less than \$10K);
  - (b)(21)-induces a party to break a contract;
  - (b)(22), violates exclusive agency;
- xiv. §§1101.652(b)(24)-(25),
  - (b)(24)-falsifying invoice statement;
  - (b)(25)-publishes threat of legal action;
- xv. §§1101.652(b)(26)-(28),
  - (b)(26)-associating with unlicensed individual;
  - (b)(27)-aids another person in circumventing this chapter;
  - (b)(28)-fails or refuses to provide copy of document relating to transaction on request of a party;
- xvi. §§1101.652(b)(30)-(31),
  - (b)(30)-failure to deposit money as escrow agent;
  - (b)(31)-disburses money deposited in trust account before termination of transaction;

- xvii. §1101.654(a), practicing law without a license;
- xviii. §1102.301, negligence or incompetence by an inspector;
- xix. §§1102.302-304,
  - 302-employment contingent on inspection report;
  - 303-acting in conflicting capacities, i.e. inspector, broker, principal;
  - 305-agreeing to perform repairs or maintenance in connection with a real estate inspection;
- xx. 22 TAC §§535.227- 535.231, violation of Standards of Practice by an inspector; or
- xxi. allegations involving education providers.

**c. The following violations will be considered Level 3:**

- i. §1101.652(a)(8), receives compensation from more than one party without full knowledge and consent by all parties;
  - ii. §1101.652(b)(23), misleading advertising;
  - iii. §1101.652(b)(29), failing to advise about a title policy;
  - iv. §1101.558(c), failing to provide representation disclosure at first substantive dialogue;
  - v. 22 TAC §535.144(b), disposing of licensee's own property or that of a relative; or
  - vi. a complaint filed by a seller that alleges a violation of Chapter 1102.
- IV. Number of license holders involved: If 3 or more groups of license holders (LLC/Corp, D.O./broker & salesperson count as one group) are involved in the complaint the priority level is raised one level.
- V. Previous complaint history of the license holder: If the license holder had a previous disciplinary order in the last 10 years or 3 or more jurisdictional complaints filed in a 12 month period, a Level 2 or Level 3 priority is raised one level.

NOTE: Once a level 2 or 3 complaint has been on the investigators case list for more than six months, the level will be raised one level.

**Agenda Item 21 (a):**

Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of:

- a. SOAH Docket NO. 329-10-4249, REC., In the Matter of John Christopher Crawford

**SUMMARY**

See attached



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: JANUARY 24, 2011**

**Subject: PROPOSAL FOR DECISION  
IN THE MATTER OF  
JOHN CHRISTOPHER CRAWFORD**

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-10-4249.REC. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for February 14, 2011, 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  
October 28, 2010

Douglas E. Oldmixon  
Administrator  
Texas Real Estate Commission  
1101 Camino La Costa  
Austin, Texas 78752

**INTER-AGENCY**

**RE: Docket No. 329-10-4249.REC, Texas Real Estate Commission v. John Christopher Crawford Texas Real Estate Salesperson License No. 0455489**

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink, appearing to read "HB", written over the name "Hunter Burkhalter".

Hunter Burkhalter  
Administrative Law Judge

PB/slc  
Enclosure

xc: Virginia S. Fields, 1101 Camino La Costa, Austin TX 78752 – **VIA INTER-AGENCY**  
John Christopher Crawford, 5819 Hwy 6 South, Suite 140, Missouri City, TX 77459 - **VIA REGULAR MAIL**  
Kerri Galvin, Director of Standards & Enforcement Services, TREC, 1101 Camino La Costa, Austin, TX 78752 - (with 1 CD; Certified Evidentiary Record) – **VIA INTER-AGENCY**

**RECEIVED**

NOV 01 2010

REC ENFORCEMENT

10 NOV - 1 - PM 2: 58

ESTATE COMMISSION

TEXAS REAL

COMMISSION

Texas Real Estate Commission

300 West 15<sup>th</sup> Street Suite 502 Austin, Texas 78701 / P.O. Box 13025 Austin, Texas 78711-3025

512.475.4993 (Main) 512.475.3445 (Docketing) 512.475.4994 (Fax)

[www.soah.state.tx.us](http://www.soah.state.tx.us)

SOAH DOCKET NO. 329-10-4249.REC

TEXAS REAL ESTATE COMMISSION,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	
	§	OF
JOHN CHRISTOPHER CRAWFORD	§	
TEXAS REAL ESTATE SALESPERSON	§	
LICENSE NO. 0455489,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Real Estate Commission (Staff/Commission) brought this action against John Christopher Crawford (Respondent) seeking to revoke Respondent's real estate salesperson license, and seeking to impose administrative penalties against Respondent totaling \$30,000. The Administrative Law Judge (ALJ) recommends that Respondent's license be revoked and that he be assessed administrative penalties totaling \$13,000.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

The hearing on the merits convened at 9:00 a.m. on October 12, 2010, before ALJ Hunter Burkhalter. At 5:41 p.m. the previous evening, Respondent had filed a motion for continuance (his second) asking that the hearing be continued. Staff opposed the continuance motion. At the outset of the hearing on October 12, the ALJ considered Respondent's continuance motion and announced from the bench that it was denied because it was filed late and was not based on good cause.

Staff appeared at the hearing on the merits and was represented by Virginia Fields, Staff Attorney. Respondent did not appear, nor did anyone appear on his behalf. Staff offered competent evidence establishing jurisdiction and that appropriate notice of the hearing was provided to Respondent. Those matters are set out in the Findings of Fact and Conclusions of Law. Rather than requesting a default, Staff elected to proceed with the evidentiary hearing.

## II. REASONS FOR DECISION

### A. Applicable Law

Pursuant to the Real Estate License Act, TEX. OCC. CODE Ch. 1101, the Commission is empowered to establish standards of conduct and ethics for persons licensed by the Commission.<sup>1</sup> The Commission may revoke or suspend a license if the license holder engages in prohibited conduct, including:

- the license holder, “while acting as a broker or salesperson . . . acts negligently or incompetently;”<sup>2</sup>
- the license holder, “while acting as a broker or salesperson . . . engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness;”<sup>3</sup>
- the license holder, “while acting as a broker or salesperson . . . makes a false promise that is likely to influence a person to enter into an agreement when the license holder is unable or does not intend to keep the promise;”<sup>4</sup>
- the license holder, “while acting as a broker or salesperson . . . pursues a continued and flagrant course of misrepresentation or makes false promises through an agent or salesperson, through advertising, or otherwise;”<sup>5</sup>
- the license holder, “while acting as a broker or salesperson . . . fails to make clear to all parties to a real estate transaction the party for whom the license holder is acting;”<sup>6</sup>
- the license holder, “while acting as a broker or salesperson . . . fails within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person;”<sup>7</sup> and

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<sup>1</sup> TEX. OCC. CODE § 1101.151(b)(2).

<sup>2</sup> TEX. OCC. CODE § 1101.652(b)(1).

<sup>3</sup> TEX. OCC. CODE § 1101.652(b)(2).

<sup>4</sup> TEX. OCC. CODE § 1101.652(b)(5).

<sup>5</sup> TEX. OCC. CODE § 1101.652(b)(6).

<sup>6</sup> TEX. OCC. CODE § 1101.652(b)(7).

<sup>7</sup> TEX. OCC. CODE § 1101.652(b)(9).

- the license holder, "while acting as a broker or salesperson . . . commingles money that belongs to another person with the license holder's own money."<sup>8</sup>

Staff contends that Respondent's actions at issue in this case violated all of the above-cited provisions.<sup>9</sup>

In addition to license revocation, the Commission may also impose administrative penalties upon a person who commits any of the violations listed above. Such penalties cannot exceed \$5,000 per violation and must be calculated by considering a variety of factors and be consistent with a schedule of penalties adopted by Commission rule.<sup>10</sup>

#### B. Evidence

Staff called two witnesses, Opral Wisham and Linda Simpson. Staff also entered Exhibits C -1, C-1A, C-2, C-2A, C-3 though C-24, and C-26 through C-31 in the record. On May 24, 2010, Staff served a set of Requests for Admissions (RFAs) on Respondent. Because Respondent never provided answers to those RFAs, Staff moved at the outset of the hearing to have the RFAs deemed admitted. The ALJ granted that request.

Respondent holds a Commission-issued Texas real estate salesperson licence, license number 455489 (the license). The license was first issued to Respondent effective May 19, 1997. Since that time, the license has been sporadically in effect, with numerous periods of time during which the license was not in effect. For example, the license was effective from March 25, 2008 through March 31, 2009, not in effect April 1, 2009 through July 15, 2009, and then in effect from July 16, 2009 through the present date.<sup>11</sup> On May 21, 2010, however, the Commission temporarily

<sup>8</sup> TEX. OCC. CODE § 1101.652(b)(10).

<sup>9</sup> Staff's First Amended Petition also alleged a violation of TEX. OCC. CODE § 1101.652(a)(3). At the hearing, however, Staff announced that it was withdrawing that allegation.

<sup>10</sup> TEX. OCC. CODE §§ 1101.701, 1101.702.

<sup>11</sup> Ex. C-2A.

suspended the license, pursuant to Tex. Occ. Code § 1101.662, based upon the allegations at issue in this case.<sup>12</sup>

Opral Wisham lives in Houston, Texas. She testified that, in the spring of 2009, she wanted to purchase real estate in the Houston area to own as rental property. She retained the services of a real estate agent, Talbert Davis, to assist her in finding and purchasing such property, and he had shown her several properties. In early May of that year, while Ms. Wisham was out of town on vacation, Mr. Davis called her to report that he had a possible deal for the purchase of a condominium. Because she was interested in purchasing the condominium, Mr. Davis instructed her to wire transfer \$20,000 into a Chase bank account held in the name of Talbert Davis. Ms. Wisham testified that Mr. Davis informed her that he would then transfer the funds to a title company as escrow for the purchase of the condo. Mr. Davis explained that the condo was being refurbished, but when the work was complete, the real estate transaction would close within 30 days. At that time, Ms. Wisham's name "would be on the provisions section of the contract"<sup>13</sup> and she would be listed as a partial owner of the condominium.

In a letter Ms. Wisham wrote to the Commission when she filed her complainant against Respondent, she described the deal she thought she was investing in as follows: "On May 11, 2009, I wired \$20,000 to Talbert Davis for what was described as a real estate investment to purchase property. The contract would include my loan amount to be paid back in the special provisions."<sup>14</sup>

When she returned to Houston from her vacation, Ms. Wisham went to Mr. Davis and asked to see the contract or other documentation relevant to her pending purchase. Mr. Davis did not show her a contract. He assured her there was no need for her to sign anything, but that she "would be in the provisions" and she would be a partial owner of property when the deal closed. Later, when Ms. Wisham again asked to see a copy of the contract, he showed her one, but it was not for the

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<sup>12</sup> Exs. C-2A, C-4.

<sup>13</sup> It is not clear what Ms. Wisham meant by this.

<sup>14</sup> Ex. C-12, p. 000146.

purchase of a condominium. Instead, it was an unsigned contract for the purchase of a single family home located on Fernwood Ct. in Houston, Texas (the Fernwood House). Ms. Wisham's name was not on the contract.

Mr. Davis also informed Ms. Wisham that Respondent was the real estate agent representing the seller of the Fernwood House. After additional questioning, Mr. Davis told her that Respondent was in fact the owner of the Fernwood House. At this point, Ms. Wisham "became very afraid." Ms. Wisham knows Respondent socially. She is adamant that she would never knowingly do business with Respondent.

As time passed, the home purchase never closed. Eventually, Ms. Wisham told Mr. Davis that she was no longer interested in the deal and demanded a refund of her money. According to Ms. Wisham, Mr. Davis then made multiple attempts to call Respondent and get her money back. Initially, Respondent did not return Mr. Davis' calls. Eventually, Respondent promised that Ms. Wisham's money would be refunded, but explained that it would take 10 days for the refund to occur. The refund, however, never occurred, and Ms. Wisham remains \$20,000 poorer.

Ms. Wisham reported what had happened to Gary Steuernagel, at Delta Realty. Mr. Steuernagel was the real estate broker for whom Respondent worked. Mr. Steuernagel told Ms. Wisham to file a complaint with the Commission. She did so on August 24, 2009, lodging a complaint against both Respondent and Mr. Davis.<sup>15</sup> When she did so, she wrote a letter explaining the transaction history. A copy of that letter is in the record of this case.<sup>16</sup> According to that complaint letter, Ms. Wisham and Mr. Davis became alarmed when they learned that her \$20,000 had been transferred into Respondent's personal account rather than an escrow account held by a title company. According to Ms. Wisham, on June 5, 2009, Respondent provided assurances, via email, that her \$20,000 was safe and that "he had back up funds if he needed to refund me."<sup>17</sup>

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<sup>15</sup> Ex. C-30.

<sup>16</sup> Ex. C-12, pp. 000146-47.

<sup>17</sup> This testimony is corroborated by a June 5, 2009 email from Respondent to Mr. Davis in which Respondent

Linda Simpson is the mother of Talbert Davis. According to Ms. Simpson, Mr. Davis is a licensed real estate agent. She conceded that, on May 11, 2009, Ms. Wisham wire-transferred \$20,000 into the joint account she holds with her son. According to Ms. Simpson, on the same date, Mr. Davis then transferred the money into an account jointly owned by Ms. Simpson and her husband. On May 12, 2010, in accordance with instructions from her son, Ms. Simpson wire-transferred the \$20,000 out of the joint account with her husband into an account owned by Respondent.

Documents produced by the Commission corroborate the witness's testimony. Those documents show that, on May 11, 2009, Ms. Wisham had \$20,000 wired from her bank account into a Chase bank account co-owned by Talbert Davis and Linda Simpson.<sup>18</sup> Mr. Davis transferred the money into another account held by Mr. and Ms. Simpson, and then she wired the money to Respondent's account on May 12, 2009.<sup>19</sup> Respondent provided to Mr. Davis instructions on how to have the money wire transferred into his account.<sup>20</sup>

Respondent's bank records show receipt of the money in his account at InvesTex Credit Union on May 12, 2009. Immediately prior to that, there was a total of \$34.27 in the account. The account records demonstrate that, following the wire transfer, Respondent made a number of withdrawals from the account to pay for expenses such as Cricket Communication, Verizon Wireless, Gexa Energy (presumably a utility bill), as well as numerous cash withdrawals. These types of withdrawals were made throughout the remainder of May, as well as the months of June and July, 2009.<sup>21</sup>

On the contract that Ms. Wisham was given by Mr. Davis for the sale of the Fernwood House, the seller is identified as John Crawford and the buyer is identified as Eric Jackson.

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states: "Our file with the Investor is still going just running slow but her funds are safe and I have back up funds to cover her if we need to get her squared off before to long." [sic] Ex. C-18, p. 000184.

<sup>18</sup> Exs. C-12, C-16.

<sup>19</sup> Exs. C-12, C-15, C-16.

<sup>20</sup> Ex. C-12, p. 000150.

Ms. Wisham's name is not mentioned in the contract and it is unsigned.<sup>22</sup> Documents in the record indicate that Respondent has been the owner of the Fernwood House since January 21, 2005.<sup>23</sup>

A long string of text messages between Mr. Crawford and Mr. Davis are also included in the exhibits of this case. Those text messages, which occur over the period from June 3 through August 3, 2009, depict an increasingly anxious and frustrated Mr. Davis repeatedly asking whether and when the refund of Ms. Wisham's \$20,000 will take place. They also feature increasingly evasive answers from Mr. Crawford. A few excerpts:

- from Davis on July 13: "How soon will she get her money"
- from Crawford, same date: "They send by draft check it takes 8-10 days from the time the request is made check will be sent reg us fed mail"
- from Davis on July 13: "is there a way for u to fax us a copy of the request from the bank . . . Just want proof that the transaction was requested on the day u stated it was requested for all we know u'r prolonging the situation again to buy more time"
- from Crawford same date: ". . . i am not sure what it would be but ill see today and get back with you later."
- from Respondent on July 21: "Hey ill have an update today for you as to when check is here call you when I can"
- from Davis, same date: ". . . We need some answers today"
- from Respondent, same date: ". . . i am not sure if check is even here that's what I stated ill speak in detail with you when i am free sir"
- from Respondent on July 22: "Check didn't show up today but I did call bank to get details it takes ten full days to arrive"

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<sup>21</sup> Ex. C-26 .

<sup>22</sup> Ex. C-12, p. 000149.

<sup>23</sup> Exs. C-20, p. 000203; C-29, p. 000313.

- from Davis on July 29: "Y can't u answer my call or tell whether or not u have her check. She is going to trec and calling her attorney today and I will provide her with ur borrower info"
- from Davis on July 29: "She is calling ur broker as well"
- from Crawford, same date: "That is third party disclosure youll be in trouble stop making threats and calm dwn."
- from Davis, same date: "This must have been a real estate scam u r performing and its very sad u r holding someone money we are going to put an end to all this lying"<sup>24</sup>

On July 30, 2009, Mr. Davis sent an email to Respondent which reads, in part, as follows:

John, I am honestly tired of calling you and explaining the importance of my investor's 20,000 that was given to you. It was agreed on May 11, 2009 that you would accept my investor on a deal for the borrower in exchange for a 10,000 dollar profit. You assured us that the money was going to be protected and wouldnt be used at any given point. It appears that the money must have been used due to lack of knowledge to whether or not it could have been refunded asap three weeks ago.

... My client want her funds returned to her on Monday, or she is prepared to have a talk with you and your broker next week. . . .

Originally, you wanted me to represent the buyer, but to my unknown knowledge you changed deals without the consent of the investor or myself. You had know right to take me off one deal or transfer funds without the consent of all parties, this was very unprofessional and deceptive.<sup>25</sup>

Mr. Davis followed up with another email to Respondent on July 31, 2009:

Mr. Crawford

I have sent you a notice regarding the 20,000 that is due unto my investor. You have not responded to my request sir. . . . I feel like there is some fraudulent and dishonest activity occurring sir. Please clear up this manner by Monday or we will proceed to

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<sup>24</sup> Ex. C-17, pp. 000173-179. All quotes are SIC.

<sup>25</sup> Ex. C-18, p. 000187, SIC.

notify the broker and then the Texas Real Estate Commission. . . . In addition to my investors money, the agreement was that if she invested the money for the client, which was 20,000. She would make a rate of return of 30,000. We have no clue what's going on at this point, three months later. . . .<sup>26</sup>

Respondent admits that he provided bank wiring instructions to Mr. Davis on May 11, 2009, so that the \$20,000 could be wired into his account.<sup>27</sup> He also admits that he received the \$20,000 in his account on May 12, 2009, and that the money originated from Ms. Wisham.<sup>28</sup> Respondent further admits that he failed to remit or properly account to Ms. Wisham the \$20,000.<sup>29</sup>

Also admitted in the record were investigative reports prepared by Commission investigator Kay Daniel. In those reports, Ms. Daniel summarizes interviews she held with various individuals involved in the transactions at issue in this case. On December 3, 2009, Ms. Daniels interviewed Respondent. According to her notes from that interview, Respondent told her that he never had any plans to sell the Fernwood House. Instead, Respondent said that the sales contract for the Fernwood House was prepared by Mr. Davis (without Respondent's knowledge or involvement) in order to make Ms. Wisham believe that her money was going toward a real estate purchase.<sup>30</sup> Respondent acknowledged that \$20,000 was wired into his account by Talbert Davis, and that this money was to be used for an "investment." Respondent insisted that, at the time, he believed the money originated with Mr. Davis. He did not know until later that the money had come from Ms. Wisham. Finally, Respondent admitted that he spent portions of the \$20,000 for his own personal use.<sup>31</sup>

On November 18, 2009, Ms. Daniels interviewed Ms. Wisham. According to her notes from that interview, Ms. Wisham said that her friend, Mr. Davis, had told her of an investment whereby she could invest \$20,000 which would be held in a title company's escrow account. It was only after

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<sup>26</sup> Ex. C-18, pp. 000189-90, SIC.

<sup>27</sup> Petitioner's 1<sup>st</sup> Request for Admissions to Respondent, deemed admission No. 1.

<sup>28</sup> Petitioner's 1<sup>st</sup> Request for Admissions to Respondent, deemed admission No. 2.

<sup>29</sup> Petitioner's 1<sup>st</sup> Request for Admissions to Respondent, deemed admission No. 7.

<sup>30</sup> Ex. C-10, p. 000128.

<sup>31</sup> Ex. C-10, pp. 000129-30.

the fact that Mr. Davis told Ms. Wisham her money had been sent to Respondent.<sup>32</sup>

On November 10, 2009, Ms. Daniels interviewed Mr. Davis. According to him, Respondent told him that he needed \$20,000 for an investment in some unspecified condominiums. Because Mr. Davis knew Ms. Wisham was looking to invest in real estate, he contacted her about the deal. He told Ms. Wisham that if she invested \$20,000, she would recoup a \$10,000 profit at closing. Mr. Davis admitted that he obtained Ms. Wisham's \$20,000 and forwarded it to Respondent. He also admitted that there never was a contract prepared for any condominium. At some point, Mr. Davis apparently realized there was no actual condominium for sale so, "[s]ince there was no actual real estate involved, or any type of document for Wisham's investment Davis wrote up the offer for [the Fernwood House]." He did so because "he wanted to show Wisham how the deal might work when he and Wisham were 'brainstorming.'" The unsigned contract for the Fernwood House "was just an example of how a contract may look."<sup>33</sup>

### **C. ALJ's Analysis and Recommendation**

It is obvious that Ms. Wisham is the victim of wrongdoing by both Respondent and Mr. Davis.<sup>34</sup> The evidence demonstrates that there never was an actual condominium which Ms. Wisham was attempting to purchase. Rather, this appears to have been a crude and clumsy scheme to bilk Ms. Wisham out of her money.

#### **1. License Revocation**

As noted above, the Commission may revoke a license if the license holder, "while acting as a broker or salesperson," acts in a prohibited manner. In this case, Staff has proved that Respondent was "acting as a broker or salesperson." By law, one is deemed to have "acted as a broker or

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<sup>32</sup> Ex. C-11, pp. 000134-35.

<sup>33</sup> Ex. C-11, p. 000139.

<sup>34</sup> The evidence in the record demonstrates that Mr. Davis was the subject of a separate enforcement proceeding by the Commission.

salesperson" if, "with the expectation of receiving valuable consideration" the person "directly or indirectly performs or offers, attempts, or agrees to perform for another person any act described by Section 1101.002(1), as a part of a transaction or as an entire transaction."<sup>35</sup> Section 11.01.002(1) defines a "broker" as:

A person who, in exchange for a commission or other valuable consideration . . . performs for another person one of the following acts:

- (ii) offers to sell, exchange, purchase, or lease real estate;
- (viii) aids or offers or attempts to aid in locating or obtaining real estate for purchase or lease.<sup>36</sup>

In this case, the evidence clearly demonstrates that Respondent received \$20,000 in exchange for his offer to purchase or locate for purchase a condominium for Ms. Wisham or Mr. Davis.<sup>37</sup>

Moreover, the evidence proves that, as alleged by Staff, Respondent engaged in the types of conduct prohibited by TEX. OCC. CODE § 1101.652(b) (hereinafter, Section 1101.652(b)). All of these actions would justify license revocation under normal circumstances. Unfortunately for the Commission, however, this case does not involve normal circumstances. The great bulk of Respondent's actions at issue in this case occurred at a time when he was not a licensed real estate salesperson. Although Staff's First Amended Petition alleges that Respondent "was a Texas licensed real estate salesperson at all times relevant to this matter," the evidence produced by Staff demonstrates that this is not true. Instead, Respondent "was licensed as a Texas real estate salesperson from . . . March 25, 2008 to March 31, 2009; [and] . . . from July 16, 2009 to and including the present date."<sup>38</sup> In other words, Respondent was *not* a Texas licensed real estate

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<sup>35</sup> TEX. OCC. CODE § 1101.004.

<sup>36</sup> TEX. OCC. CODE § 1101.002(1).

<sup>37</sup> It is immaterial whether Respondent's offer was made solely to Mr. Davis or indirectly through Mr. Davis to Ms. Wisham. Likewise, it is immaterial that the offer was a sham and there never was an actual condominium for Ms. Wisham to purchase.

<sup>38</sup> Ex. C-2A.

salesperson from April 1, 2009 through July 15, 2009, the time period when most of the events in this case took place.

This is critical because Section 1101.652(b) empowers the Commission to revoke a license “if the *license holder*, while acting as a broker or salesperson,” engages in prohibited conduct.<sup>39</sup> In other words, the statute requires the Commission prove not only that Respondent (1) committed one or more of the listed prohibited acts; while (2) acting as a broker or salesperson; but also (3) that he *did so at a time when he was a license holder*. In this case, the evidence proves that Respondent was not a license holder during the time when most of the events in question occurred. For example, he was not a license holder when Ms. Wisham’s \$20,000 was transferred into his account on May 12, 2009. Accordingly, the ALJ concludes that any decision to revoke Respondent’s license cannot be based upon actions of his occurring before July 16, 2009. As such, the ALJ concludes that Staff failed to prove violations of Sections 1101.652(b)(1), (b)(5), and (b)(7).

Nevertheless, there are still sufficient grounds to justify revocation of Respondent’s license. First, Respondent admitted that he failed to remit or properly account to Ms. Wisham for the \$20,000 that was deposited in his personal account. That continued to be the fact after July 16, 2009, the date his real estate salesperson license was reinstated. This constitutes a clear violation of Section 1101.652(b)(9).

Second, the evidence clearly demonstrates that Respondent commingled money belonging to Ms. Wisham with his own money. Because those monies remained commingled after July 16, 2009, Staff proved a violation of Section 1101.652(b)(10).

Third, the emails between Respondent and Mr. Davis prove that, after July 16, 2009, Respondent continued to lie and mislead Mr. Davis as to the reimbursement of Ms. Wisham’s money. In those emails, he repeatedly suggests that Ms. Wisham’s refund will be delivered any day,

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<sup>39</sup> Emphasis added.

just as soon as the bank processes his request. In reality, it is obvious that Respondent never intended to refund the money. Thus, Staff proved that Respondent: (1) engaged in conduct that was dishonest and demonstrated untrustworthiness in violation of Section 1101.652(b)(2); and (2) pursued a continued and flagrant course of misrepresentation in violation of Section 1101.652(b)(6). Having concluded that Respondent violated the above-cited provisions, the ALJ recommends that his license be revoked.

## 2. Administrative Penalties

Additionally, Staff seeks the assessment of administrative penalties against Respondent totaling \$30,000. Staff arrived at this figure by alleging six violations and asking that the maximum possible penalty of \$5,000 be assessed per violation. Pursuant to TEX. OCC. CODE § 1101.701, the Commission is empowered to impose administrative penalties on one who violates any provision of Chapter 1101. Pursuant to TEX. OCC. CODE § 1101.702(a), the amount of the penalty may not exceed \$5,000 per violation. Pursuant to TEX. OCC. CODE § 1101.702(b), when assessing the penalty amount, the Commission must consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

Pursuant to TEX. OCC. CODE § 1101.702(c), the Commission is obligated to adopt a schedule of administrative penalties based on the Section 1101.702(b) factors listed above to ensure that the amount of a penalty imposed is appropriate to the violation. The Commission has done so by adopting the schedule of penalties found at 22 TEX. ADMIN. CODE § 535.191. In this case, the ALJ has found violations of TEX. OCC. CODE §§ 1101.652(b)(2), (b)(6), (b)(9) and (b)(10). Pursuant to 22 TEX. ADMIN. CODE § 535.191(d) and (e), the administrative penalty range for a violation of § 1101.652(b)(10) is \$500 to \$3,000, while the penalty range for violations of §§ 1101.652(b)(2),

(b)(6), and (b)(9) is \$1,000 to \$5,000 per violation. Thus, the maximum penalty amount that could be assessed against Respondent is \$18,000 (\$3,000 + (3 x \$5,000)).

Before penalties may be assessed, however, consideration must first be given to the factors listed in Section 1101.702(b), quoted above. The Commission's administrative penalty rule -- Section 535.191 -- asserts: "the administrative penalties set forth in this section take into consideration all of the criteria listed in § 1101.702(b) of the Texas Occupations Code." This assertion cannot, however, be completely accepted at face value, nor can it obviate the need to consider each of the Section 1101.702(b) factors on a case-by-case basis. For example, the schedule of penalties cannot take into account Section 1101.702(b) factors such as an individual violator's history of previous violations or his efforts to correct the violation. Moreover, the Commission's schedule of penalties merely identifies a potential range of penalties to be assessed. The actual penalty in any individual case can only be identified after review of the Section 1101.702(b) factors.

**a. The Section 1101.702(b) Factors**

**i. The seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts**

To a large extent, the Commission has already determined the seriousness of the violations when it adopted its schedule of penalties. For example, the Commission made a decision that a violation of § 1101.652(b)(10), with a penalty range between \$500 and \$3,000, is less serious than a violation of § 1101.652(b)(2), with a penalty range of \$1,000 to \$5,000. Nevertheless, the evidence demonstrates an extremely serious violation by Respondent. Perhaps most importantly, it demonstrates that Respondent is willing to use the privileges gained from his status as a licensed real estate salesperson to dupe unsophisticated members of the public.

**ii. The history of previous violations**

Because no evidence was provided on this factor, the ALJ will assume that Respondent has no previous violations.

**iii. The amount necessary to deter a future violation**

No evidence was provided on this factor. However, logic suggests that the need for deterrence is not great in this case. Because the ALJ is recommending that Respondent's license be revoked, it is less likely that he will work as a real estate salesperson in the future.

**iv. Efforts to correct the violation**

The evidence indicates that, rather than working to correct the violations, Respondent engaged in lengthy efforts to further and conceal his violations.

**v. Any other matter that justice may require**

As noted above, Respondent violated Section 1101.652(b)(2) by engaging in conduct this is dishonest, and Section 1101.652(b)(6) by pursuing a continued and flagrant course of misrepresentation. Because these two violations relate to essentially the same pattern of conduct, it would be inequitable to assess redundant penalties for the same actions.

Thus, having considered the Commission's schedule of penalties and the Section 1101.702(b) factors, the ALJ recommends that a total of \$13,000 in administrative penalties be assessed against Respondent, broken down as follows:

- a single penalty of \$5,000 for the violations of 1101.652(b)(2) and (b)(6);
- \$5,000 for the violation of Section 1101.652(b)(9); and
- \$3,000 for the violation of Section 1101.652(b)(10).

### **III. RECOMMENDATION**

Based upon the record in this case, the ALJ recommends that Respondent's license be revoked and that he be assessed administrative penalties totaling \$13,000.

**IV. FINDINGS OF FACT**

1. John Christopher Crawford (Respondent) holds a real estate salesperson license issued by the Texas Real Estate Commission (Commission), license number 455489 (the license).
2. The license was first issued to Respondent effective May 19, 1997. Since that time, it has been sporadically in effect, with numerous periods during which the license was not in effect.
3. Among other periods of time, the license was not in effect April 1, 2009 through July 15, 2009. The license was in effect after July 15, 2009.
4. In early May 2009, real estate salesperson Talbert Davis was working as the buyer's agent for Opral Wisham, who was looking to purchase rental property.
5. At that time, Respondent worked at Delta Realty.
6. Mr. Davis had previously worked with Respondent at Delta Realty, and they stayed in contact with each other after Mr. Davis left Delta Realty.
7. In early May 2009, Respondent contacted Mr. Davis, stating that he needed \$20,000 for an investment in an unspecified condominium.
8. In fact, there was no actual condominium for sale.
9. Mr. Davis contacted Ms. Wisham to explain a potential real estate deal whereby Ms. Wisham could purchase a condominium. He instructed Ms. Wisham to wire \$20,000 to his bank account, and that the money would then be transferred to an escrow account at a title company.
10. On May 11, 2009, Ms. Wisham did so, wiring \$20,000 to the bank account of Mr. Davis.
11. On May 11, 2009, Mr. Davis then transferred the \$20,000 into an account held by his mother and father.
12. On May 12, 2009, Mr. Davis' mother, Linda Simpson, wire transferred the \$20,000 into an account owned by Respondent.
13. Respondent provided Mr. Davis with instructions on how to have the \$20,000 transferred into his account.
14. Eventually, because Ms. Wisham was never shown an actual condominium and never signed any contract or other documentation related to a real estate transaction, she told Mr. Davis

she was no longer interested in purchasing property and she demanded a refund of her \$20,000.

15. In response to Mr. Davis' numerous attempts to get the money back, Respondent acted evasively and deceptively, on numerous occasions assuring, falsely, that the refund was being processed and that Ms. Wisham would get her money back.
16. Respondent never refunded the \$20,000 to Ms. Wisham and never intended to do so, despite making many promises that a refund would be made or was being processed.
17. Over the months of May, June and July 2009, Respondent spent portions of the \$20,000 for his own purposes.
18. Respondent received the \$20,000 in exchange for his false offer to purchase or locate for purchase a condominium.
19. Even after July 15, 2009, Respondent failed to remit or properly account to Ms. Wisham for her \$20,000 that was deposited into Respondent's account.
20. Respondent commingled money belonging to Ms. Wisham with his own money, a state of affairs that continued to exist after July 15, 2009.
21. Respondent repeatedly lied and deceived Mr. Davis and Ms. Wisham as to the reimbursement of Ms. Wisham, including after July 15, 2009.
22. On March 19, 2010, the staff of the Commission (Staff) issued a Notice of Alleged Violation to Respondent at Respondent's address of record, 5819 Hwy. 6 South, Suite 140, Missouri City, Texas, 77459.
23. On April 12, 2010, the Commission entered a Final Order revoking Respondent's license and assessing \$20,000 in administrative penalties against him.
24. On May 3, 2010, Respondent requested a rehearing on the Final Order.
25. On May 17, 2010, the Commission granted Respondent's request for a rehearing.
26. On May 19, 2010, the Commission entered an Order for Temporary Suspension of Real Estate Salesperson License in which the Commission temporarily suspended Respondent's license pending final resolution of the enforcement matter.
27. On May 21, 2010, Staff mailed a Notice of Hearing to Respondent at his address of record.
28. The notice of hearing contained a statement of the time, place, and nature of the hearing; a

statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

29. The hearing on the merits was held on October 12, 2010, before Administrative Law Judge (ALJ) Hunter Burkhalter in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff appeared and participated in the hearing. Respondent did not appear.

#### V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the licenses of real estate salespersons, pursuant to the TEX. OCC. CODE ch. 1101.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a contested case in this matter, including the preparation of a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, under TEX. GOV'T CODE ch. 2003.
3. Respondent received proper and timely notice of hearing as required by TEX. GOV'T CODE §§ 2001.051 and 2001.052.
4. Pursuant to TEX. OCC. CODE § 1101.652(b)(2), the Commission may revoke a license if the holder of the license, "while acting as a broker or salesperson . . . engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness."
5. Respondent's actions, as described in the above Findings of Fact, violated TEX. OCC. CODE § 1101.652(b)(2).
6. Pursuant to TEX. OCC. CODE § 1101.652(b)(6), the Commission may revoke a license if the holder of the license, "while acting as a broker or salesperson . . . pursues a continued and flagrant course of misrepresentation or makes false promises through an agent or salesperson . . . or otherwise."
7. Respondent's actions, as described in the above Findings of Fact, violated TEX. OCC. CODE § 1101.652(b)(6).
8. Pursuant to TEX. OCC. CODE § 1101.652(b)(9), the Commission may revoke a license if the holder of the license, "while acting as a broker or salesperson . . . fails within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person."

9. Respondent's actions, as described in the above Findings of Fact, violated TEX. OCC. CODE § 1101.652(b)(9).
10. Pursuant to TEX. OCC. CODE § 1101.652(b)(10), the Commission may revoke a license if the holder of the license, "while acting as a broker or salesperson . . . commingles money that belongs to another person with the license holder's own money."
11. Respondent's actions, as described in the above Findings of Fact, violated TEX. OCC. CODE § 1101.652(b)(10).
12. The Commission should revoke Respondent's license.
13. The Commission may assess administrative penalties against a license holder who violates any provision of TEX. OCC. CODE ch. 1101. TEX. OCC. CODE § 1101.701.
14. The amount of any administrative penalty imposed may not exceed \$5,000 per violation and shall be based on consideration of specified factors. TEX. OCC. CODE § 1101.702.
15. Pursuant to 22 TEX. ADMIN. CODE § 535.191(d) and (e), the administrative penalty range for a violation of TEX. OCC. CODE § 1101.652(b)(10) is \$500 to \$3,000 per violation, while the penalty range for violations of TEX. OCC. CODE §§ 1101.652(b)(2), (b)(6), and (b)(9) is \$1,000 to \$5,000 per violation.
16. Based upon consideration of the factors set forth in TEX. OCC. CODE § 1101.702, and the schedule of penalties set forth in 22 TEX. ADMIN. CODE § 535.191, it would be appropriate for the Commission to assess administrative penalties against Respondent totaling \$13,000, broken down as follows:
  - a single penalty of \$5,000 for the violations of TEX. OCC. CODE §§ 1101.652(b)(2) and (b)(6);
  - \$5,000 for the violation of TEX. OCC. CODE § 1101.652(b)(9); and
  - \$3,000 for the violation of TEX. OCC. CODE § 1101.652(b)(10).

SIGNED October 28, 2010.



HUNTER BURKHALTER

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

**Agenda Item 21 (b):**

Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of:

b. SOAH Docket NO. 329-10-5173, REC., In the Matter of Rene L. Hernandez

**SUMMARY**

See attached



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: JANUARY 24, 2011**

**Subject: PROPOSAL FOR DECISION  
IN THE MATTER OF  
RENE L. HERNANDEZ**

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-10-5173.REC. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for February 14, 2011, at 10:00 a.m. in the Commission Conference Room, Room 235, Texas Real Estate Commission Offices, 1101 Camino La Costa, Austin, Texas.

A handwritten signature in black ink that reads "Kerri T. Galvin" followed by a stylized flourish.

Kerri T. Galvin  
Director of Standards & Enforcement Services

KTG:sm  
Enclosure

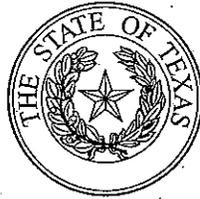
cc: Douglas E. Oldmixon, Administrator

Loretta R. DeHay, General Counsel & Deputy Administrator

Devon V. Bijansky, Deputy General Counsel

Patricia Holder, Administrative Assistant

# State Office of Administrative Hearings



TEXAS REAL  
ESTATE COMMISSION

10 NOV -2 PM 1:54

TREC ENFORCEMENT

Cathleen Parsley  
Chief Administrative Law Judge

November 1, 2010

Douglas E. Oldmixon  
Administrator  
Texas Real Estate Commission  
1101 Camino La Costa  
Austin, Texas 78752

**INTER-AGENCY**

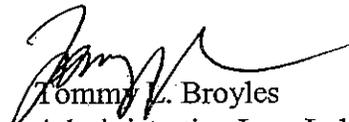
**RE: Docket No. 329-10-5173.REC; Texas Real Estate Commission v. Rene L. Hernandez**

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](http://www.soah.state.tx.us).

Sincerely,

  
Tommy L. Broyles  
Administrative Law Judge

TLB/lb  
Enclosure

xc: Beverly S. Rabenberg, Assistant Director, Texas Real Estate Commission, 1101 Camino La Costa, Austin TX 78752 – **VIA INTER-AGENCY**  
Charles W. Cromwell, Attorney at Law, 101 N. Shoreline Blvd., Suite 303, Corpus Christi, TX 78401 – **VIA REGULAR MAIL**  
Kerri Galvin, Director of Standards & Enforcement Services, TREC, 1101 Camino La Costa, Austin, TX 78752 - (with 1 - CD; Certified Evidentiary Record) – **VIA INTER-AGENCY**

**RECEIVED**

NOV 03 2010

TEXAS REAL ESTATE  
COMMISSION,  
Petitioner

v.

RENE L. HERNANDEZ,  
Applicant

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

### PROPOSAL FOR DECISION

Staff of the Texas Real Estate Commission (Staff/Commission) brought action against Rene L. Hernandez (Applicant) to deny his application for a real estate salesperson license (Application) for having failed to disclose pending criminal charges at the time of his application and for being convicted of a crime that directly relates to the duties and responsibilities of the licensed occupation. Staff asserts that Applicant's actions have demonstrated that he is unable to represent the interest of another person with honesty, trustworthiness, and integrity. The ALJ agrees with Staff and recommends denial of the Application.

#### I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened September 9, 2010, before Administrative Law Judge (ALJ) Tommy L. Broyles in the William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff was represented by Beverly S. Rabenberg, Attorney. Applicant was represented by Charles W. Cromwell, Attorney. The record was held open to allow Applicant to file a letter from his probation officer. The record closed on October 8, 2010.

## II. DISCUSSION

### A. Background

On September 22, 2009, Applicant filed an application for licensure as a real estate salesperson. In his application, he answered “no” when asked, “[A]re there any criminal charges pending against you?”<sup>1</sup> Previously, on November 20, 2008, in the U.S. District Court, Southern District of Texas, Corpus Christi Division, Applicant was indicted for conspiring with others, “to conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, then well knowing that the financial transactions involved the proceeds of some form of unlawful activity, that is, the distribution of controlled substances, which property involved in the financial transactions represented the proceeds of a specified unlawful activity . . . .”<sup>2</sup> A second count was later added alleging that Applicant caused a domestic financial institution to file a currency transaction report containing a misstatement of fact and did so while in violation of another law.<sup>3</sup>

On November 18, 2009, a couple of months after filing his Application, Applicant pled guilty to filing a false currency transaction report and the remaining counts were dismissed.<sup>4</sup> He was then sentenced to probation for a term of five years and assessed a penalty of \$2,100.

Based on Applicant’s failure to disclose pending criminal charges at the time of his application and for his later conviction of a crime that directly relates to the duties and responsibilities of a licensed agent, Staff denied the Application. On June 24, 2010, Applicant requested and was granted a hearing before a SOAH ALJ.

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<sup>1</sup> TRC Ex. C-8.

<sup>2</sup> TRC. EX. C-15.

<sup>3</sup> TRC Ex. C-17.

<sup>4</sup> TRC Ex. C-18 and C-19.

**B. Legal Standards**

TEX. OCC. CODE ANN. (Code) ch. 53 provides a framework for agencies to deal with licensees who have criminal convictions. First, an agency must determine whether a conviction relates to the Applicant's occupation.<sup>5</sup> If a conviction relates to the occupation, the agency must then determine whether the conviction affects the Applicant's fitness to perform the duties and discharge the responsibilities of the licensed occupation. Additionally, the Commission adopted criminal conviction guidelines.<sup>6</sup> The guidelines provide that crimes involving fraud, offenses against public administration, and offenses involving moral turpitude are directly related to the duties and responsibilities of a real estate salesperson. Prior to licensure, Applicant must also demonstrate his honesty, trustworthiness, and integrity, pursuant to 22 TEX. ADMIN. CODE § 535.52 and Code § 1101.354.

**C. Evidence, Argument, and Recommendation**

Staff submitted 19 exhibits consisting of jurisdictional documents, Mr. Hernandez' application, four certified copies of correspondence between the parties, several Federal indictments against Applicant, the transcript of Applicant's arraignment, and the U.S. District Court's Judgment. Staff also provided copies of the applicable statutes and rules. Applicant testified and offered two exhibits concerning previous cases before the Texas Real Estate Commission. After the hearing, Applicant filed an updated letter from his probation officer that was entered into the record.

During the hearing, Applicant testified that he simply made an honest mistake while completing the Application. He explained that when completing the Application, he understood that "everything was done already" and that no charges were pending. He had already pled guilty so he answered "no," indicating that no further charges were pending. Because he made an honest mistake and because he expects to be released from probation in short order, Applicant urges his Application be granted.

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<sup>5</sup> Code § 53.022.

<sup>6</sup> 22 TEX. ADMIN. CODE § 541.1.

The ALJ does not find the greater weight of evidence to support Applicant's claims of a mere mistake. In a January 2010 letter sent to Staff, Applicant also explained his inaccurate answer on the Application but made different claims. In the letter, Applicant stated, "[S]ince I did not now know the court laws and my case was pending I felt that I shouldn't label myself as a bad person with a conviction . . ." He continued that, "[I] can honestly say I was definitely not trying to be deceitful to the TREC in my application I just felt the court judgment was still pending." So, on the one hand Applicant argues the court judgment was still pending while, on the other hand, Applicant stated that he thought the matter was complete, that there were no charges pending.

Moreover, there were two questions on the Application. One dealt with pending criminal charges and the other with convictions. Applicant answered "no" to both. Whether Applicant thought his charges were pending or that he had pled guilty so he was convicted with no charges pending, a reasonable and honest person would have answered "yes" to one or the other.

The evidence further reveals other areas where Applicant has changed his testimony, claiming later that he did not know or did not understand important information. At a minimum, the record reflects that Applicant must get more exact with his statements. While he testified at hearing that he would have been found not guilty had he the financial resources to proceed to hearing, when asked by the Federal District Court, "[A]re you pleading guilty because you are guilty?" He answered, "yes." Applicant does not understand that his representations to the finance person at his dealership, suggesting that a customer was his "friend," at least contributed to a financial report being completed with a misstatement. Even on rather mundane things like how long he has been working for his current employer, a Volkswagen dealership, his testimony changed from 12 months to 3 months within a matter of minutes. Moreover, while Applicant testified that he had paid his \$2000 fine, a September 28, 2010 letter from his probation officer indicates all monetary penalties were not paid in full until September 16, 2010, a week after the evidentiary hearing.

Applicant is presently serving five years of probation, which began on November 18, 2009.<sup>7</sup> Applicant testified that his probation officer would provide written evidence that Applicant would be

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<sup>7</sup> The record remained open for Applicant to submit a letter from his probation officer. That September 28, 2010 letter is marked at A-3 and entered into the record. Accordingly, the record closed on October 4, 2010.

released from probation in short time and would not have to serve the full five years. This statement too did not come to fruition. Rather, his probation officer merely stated that Applicant's probationary period would expire on November 17, 2014 and that Applicant continues to demonstrate an acceptable level for cooperation.

The ALJ concludes that there are too many "misunderstandings" by Applicant to attribute them to mere unfortunate events. Rather, the ALJ finds Applicant has failed to establish the requisite honesty, trustworthiness, and integrity necessary to hold a real estate salesperson license.

### III. FINDINGS OF FACT

1. Rene L. Hernandez (Applicant) applied to the Texas Real Estate Commission (Commission) for a real estate salesperson license on September 22, 2009.
2. In the Application, Applicant answered "no" when asked, "[A]re there any criminal charges pending against you."
3. In the Application, Applicant answered "no" when asked, "[H]ave you ever been convicted of a criminal offense? (include all felonies and misdemeanors other than traffic tickets.)"
4. On November 20, 2008, in Criminal Number C-08-761 in the United States District Court, Southern District of Texas, Corpus Christi Division, Applicant was indicted on several counts, including conspiracy to conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, then well knowing that the financial transactions involved the proceeds of some form of unlawful activity, that it, the distribution of controlled substances, which property involved in the financial transactions represented the proceeds of a specified unlawful activity.
5. A Superseding Indictment was filed on February 11, 2009, alleging that Applicant did knowingly, and for the purposes of evading the reporting requirements of Section 5313(a) of Title 31, USC, and the regulations promulgated thereunder, cause or attempt to cause a domestic financial institution, as defined in 31 U.S.C. § 5313 containing a misstatement of fact, and did so while in violation of another law of the United States, to wit: Title 18, USC, sections 1956(a)(1) and (h), as alleged in Count Two of the Superseding Indictment.
6. On November 18, 2009, in a case styled *United States of America vs. Rene Luis Hernandez, III*, Case No. 2:08CR00761-S-010, following a plea of guilty, Applicant was convicted of filing a false currency transaction report, in violation of the United States Code (USC).
7. Applicant was sentenced to 5 years probation and ordered to pay a \$100.00 assessment as well as a \$2,000 fine.

8. Applicant remains on probation.
9. Applicant's indictments and conviction is for a crime relating directly to the duties and responsibilities of the licensed occupation.
10. Applicant's conviction involves fraud and demonstrates Applicant's inability to represent the interest of another with honesty, trustworthiness and integrity.
11. Applicant's failure to be truthful on the Application and while testifying reflects negatively on Applicant's honesty, trustworthiness, and integrity.
12. Based on Applicant's conviction referred above, on his failure to answer questions in the Application truthfully, and on his conflicting statements and testimony reflect negatively on Applicant's honesty, trustworthiness, and integrity.
13. Applicant failed to prove he currently has the fitness required to perform the duties and discharge the responsibilities of a real estate salesperson.
14. Staff gave notice to Applicant by letter dated June 15, 2010, of its proposed denial of the Application.
15. Applicant timely requested a hearing.
16. On July 9, 2010, Staff mailed notice of administrative hearing to Applicant.
17. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
18. The hearing on the merits was held September 9, 2010. All parties appeared and participated in the hearing. At Applicant's requests, the record was held open for submission of an additional exhibit.
19. The record closed on October 8, 2010.

#### IV. CONCLUSIONS OF LAW

1. The Texas Real Estate Commission has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN. ch. 1101.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T. CODE ANN. ch. 2003.

3. Proper and timely notice was provided to Applicant pursuant to the Administrative Procedure Act, TEX. GOV'T. CODE ANN. ch. 2001.
4. Based on the Commission's Criminal Conviction Guidelines crimes involving fraud, offenses against public administration, and offenses involving moral turpitude are directly related to the duties and responsibilities of a real estate salesperson. 22 TEX. ADMIN. CODE §541.1.
5. Applicant's criminal convictions directly relate to the licensed occupation, pursuant to TEX. OCC. CODE ANN. § 53.022.
6. Applicant failed to demonstrate that he is currently fit for licensure, pursuant to TEX. OCC. CODE ANN. ch. 53.
7. Applicant failed to demonstrate honesty, trustworthiness, and integrity to hold a license, as contemplated by TEX. OCC. CODE ANN. § 1101.354 and 22 TEX. ADMIN. CODE § 535.52.
8. Based upon the foregoing Findings of Fact and Conclusions of Law, Applicant's application for licensure as a real estate salesperson should be denied.

**SIGNED November 1, 2010.**

  
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**TOMMY L. BROYLES**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**Agenda Item 21 (c):**

Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of:

- c. SOAH Docket NO. 329-11-0448, REC., In the Matter of Robin J. Muir

**SUMMARY**

See attached

TEXAS



REAL ESTATE COMMISSION

DOUGLAS E. OLDMIXON, ADMINISTRATOR

Standards & Enforcement Services

Direct Line: (512) 465-3960

Facsimile: (512) 465-3962

**MEMORANDUM**

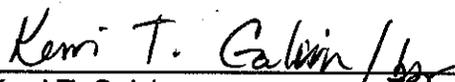
**To: THE COMMISSION MEMBERS**

**From: KERRI T. GALVIN, DIRECTOR OF STANDARDS & ENFORCEMENT SERVICES**

**Date: JANUARY 24, 2011**

**Subject: PROPOSAL FOR DECISION  
IN THE MATTER OF  
ROBIN J. MUIR**

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-11-0448.REC. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for February 14, 2011, at 10:00 a.m. in the Commission Conference Room, Room 235, Texas Real Estate Commission Offices, 1101 Camino La Costa, Austin, Texas.

  
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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

January 10, 2011

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Texas Real Estate Commission

Douglas E. Oldmixon  
Administrator  
Texas Real Estate Commission  
1101 Camino La Costa  
Austin, Texas 78752

**INTER-AGENCY**

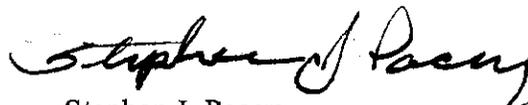
**RE: Docket No. 329-11-0448.REC; Texas Real Estate Commission v.  
Robin J. Muir**

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](http://www.soah.state.tx.us).

Sincerely,

  
Stephen J. Pacey  
Administrative Law Judge

SJP/Ls  
Enclosure

xc: Aimee Cooper, Staff Attorney, TREC, 1101 Camino La Costa, Austin TX 78752 – **VIA INTER-AGENCY**  
Robin J. Muir, 254 S. Timbercreek Dr., Amarillo, TX 79118 - **VIA REGULAR MAIL**  
Kerri Galvin, Director of Standards & Enforcement Services, TREC, 1101 Camino La Costa, Austin, TX 78752 - (with 1 CD; Certified Evidentiary Record) – **VIA INTER-AGENCY**

SOAH DOCKET NO. 329-11-0448.REC

TEXAS REAL ESTATE COMMISSION,  
Petitioner

v.

ROBIN J. MUIR,  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

Staff of the Texas Real Estate Commission (Staff/Commission) seeks to revoke Robin J. Muir's (Respondent) real estate broker's license because in 2010, he pled guilty to the felony offense of Misapplication of Fiduciary Property. The Administrative Law Judge (ALJ) recommends that the Commission revoke Respondent's license.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

A hearing in this matter convened and the record closed on November 10, 2010. Staff was represented by attorney Aimee Cooper. Respondent appeared *pro se*. There were no disputed issues of notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

**II. DISCUSSION**

The basic facts of the issue in this case are relatively simple. On or about May 20, 2010, Respondent entered a plea of guilty in the 47<sup>th</sup> District Court of Potter County, Texas, to the first degree felony offense of Misapplication of Fiduciary Property. The district court entered an Order of Deferred Adjudication and ordered that Respondent be placed on Community Supervision for a term of 10 years; submit to confinement in the Potter County jail for a term of thirty days on weekends; pay \$100,000 in restitution; complete 400 hours of community service; and pay other fees and court costs. At the hearing, Respondent testified that he did plead guilty to this felony charge.

Prior to the criminal proceeding, a judgment was entered against Respondent in the United States Bankruptcy Court for the Northern District of Texas Amarillo Division. The jury held against Respondent on claims of breach of contract, actual fraud, theft and breach of fiduciary duty relating to his failure to remit real estate commissions in the sum of \$428,247.00. The facts concerning Respondent's conduct that is the basis of these cases is rather opaque because the facts were not fully developed at the hearing. Apparently, Respondent was employed by Hastings Entertainment, Inc. (Hastings), where, as a broker, he would receive a commission for representing his employer, Hastings in real estate transactions. The commissions were remitted to Respondent because of his real estate broker's license. It was Hastings understanding that the commissions would be rebated from Respondent to it. Respondent indicated that there was no written agreement to do so; therefore he was not obligated to rebate the commissions.

### III. ARGUMENT

#### A. Staff

Staff asserted that Respondent's license should be revoked because Respondent violated TEX. OCC. CODE (Code) § 1101.652(a)(1) which states:

(a) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder:

- (1) enters a plea of guilty or nolo contendere to or is convicted of a felony or a criminal offense involving fraud, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence.

Staff argued that Respondent pled guilty to a felony involving fraud, consequently, revocation is proper. Staff asserted that Respondent failed to sufficiently demonstrate that he currently has the honesty, trustworthiness, and integrity required to hold his broker's license. Staff pointed out that under the Commission's rules, the criminal offense for which Respondent pled guilty is directly

related to the duties and responsibilities of the occupation of a real estate licensee.<sup>1</sup> Staff further contended that Respondent commission of this offense tends to demonstrate his inability to represent the interests of another with the necessary honesty, trustworthiness, and integrity. Consequently, Staff argued that his license should be revoked.

#### **B. Mr. Muir**

Mr. Muir acknowledged his guilty plea at the hearing, but said that he did so because he felt trapped. Respondent argued that he had no money after the bankruptcy and when the District Attorney gave him the ultimatum of going to jail or pleading guilty, he entered the guilty plea. Respondent also collaterally attacked both the bankruptcy action and the criminal judgment.

Respondent concluded his testimony by saying that the real estate industry is the only work he has ever done and is his sole source of income. He said that he should be allowed to keep his license because he did nothing wrong.

### **IV. ANALYSIS AND RECOMMENDATION**

Respondent pled guilty to a serious felony. He was placed on deferred adjudication. The Commission may revoke a license if a licensee enters a plea of guilty or nolo contendere to a felony in which fraud is an essential element.<sup>2</sup> Misapplying fiduciary funds is classified as an offense involving fraud.<sup>3</sup> Therefore, the Commission may revoke his license as a result of the guilty plea.

The type of offense for which Respondent has pled guilty, according to the Commission's rules, may be analyzed to determine whether it is directly related to the duties and responsibilities of a real estate professional. The factors used to determine whether the crime is directly related to the occupation are: the nature and seriousness of the crime; the relationship of the crime to the purposes for requiring a license; the extent to which a license might offer an opportunity to engage in further criminal activity of the same type; and the relationship of the crime to the ability, capacity, or fitness

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<sup>1</sup> 22 TEX. ADMIN. CODE §§ 541.1(a) and (b).

<sup>2</sup> TEX. OCC. CODE ANN. § 1101.652(a)(1).

required to perform the duties of the licensed occupation.<sup>4</sup> The crime to which Respondent pled guilty is extremely serious. Given that the offense of Misapplication of Fiduciary Property is classified as fraud by the penal code, having a real estate broker's license would offer additional opportunities to engage in further similar criminal activity.

Moreover, Respondent shows no remorse and portrays himself as the victim. He did not indicate that there were any underlying mitigating circumstances. The Commission's rules require the consideration of mitigating circumstances.<sup>5</sup> He offered no evidence of any rehabilitation.

For the reasons stated above, the preponderance of the evidence presented does not establish that Respondent currently possesses the honesty, trustworthiness, and integrity necessary to hold a real estate brokers license at this time. Accordingly, the ALJ recommends revocation of his license.

#### V. FINDINGS OF FACT

1. On May 20, 2010, in the 47<sup>th</sup> District Court of Potter County, Texas cause number 61,693-A, Robert J. Muir (Respondent) pled guilty to the first degree felony of Misapplication of Fiduciary Property in an amount greater than \$200,000. On that same date, the Court withheld a finding of guilt, deferred further proceedings, and placed Respondent on community supervision for a period of ten years, subject to various terms and conditions.
2. Respondent's guilty plea to Misapplication of Fiduciary Property demonstrates that he is not currently able to represent the interests of others with honesty, trustworthiness, and integrity.
3. In a letter dated August 16, 2010, Commission Staff (Staff) notified Respondent of its proposed revocation of his license.
4. Respondent timely requested a hearing on the proposed revocation.
5. On October 11, 2010, Staff sent Respondent a notice of hearing.
6. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

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<sup>3</sup> TEX. PENAL CODE § 32.45.

<sup>4</sup> 22 TEX. ADMIN. CODE § 541.1(b).

<sup>5</sup> 22 TEX. ADMIN. CODE § 541.1(c).

7. A hearing was held in this matter on November 10, 2010. All parties appeared and participated in the hearing. The record closed the same date

## VI. CONCLUSIONS OF LAW

1. The Texas Real Estate Commission (Commission) has jurisdiction over the licenses of real estate brokers, salespersons, and inspectors, pursuant to the TEX. OCC. CODE ANN. ch. 1101.
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a contested case in this matter, including the preparation of a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, under TEX GOV'T CODE ANN. ch. 2003.
3. Respondent received proper and timely notice of hearing as required by TEX GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The Commission may revoke a real estate salesperson's license for pleading guilty to a felony involving fraud pursuant to TEX. OCC. CODE ANN. § 1101.652(a)(1).
5. Based on the above Findings of Fact and Conclusions of Law, Respondent's license should be revoked.

**SIGNED January 10, 2010.**

  
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**STEPHEN J. PACEY**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**Agenda Item 21 (d):**

Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of:

- d. SOAH Docket NO. 329-11-0449.REC. In the Matter of Travis Matthew Grochoske

**SUMMARY**

See attached

TEXAS



REAL ESTATE COMMISSION

DOUGLAS E. OLDMIXON, ADMINISTRATOR

Standards & Enforcement Services  
Direct Line: (512) 465-3960  
Facsimile: (512) 465-3962

MEMORANDUM

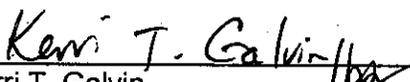
**To: THE COMMISSION MEMBERS**

**From: KERRI T. GALVIN, DIRECTOR OF STANDARDS & ENFORCEMENT SERVICES**

**Date: JANUARY 24, 2011**

**Subject: PROPOSAL FOR DECISION  
IN THE MATTER OF  
TRAVIS MATTHEW GROCHOSKE**

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-11-0449.REC. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for February 14, 2011, at 10:00 a.m. in the Commission Conference Room, Room 235, Texas Real Estate Commission Offices, 1101 Camino La Costa, Austin, Texas.

  
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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

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DEC 30 2010

Texas Real Estate Commission

December 29, 2010

Douglas E. Oldmixon  
Administrator  
Texas Real Estate Commission  
1101 Camino La Costa  
Austin, Texas 78752

INTER-AGENCY

RE: Docket No. 329-11-0449.REC; Texas Real Estate Commission v.  
Travis Matthew Grochoske

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Stephen J. Pacey".

Stephen J. Pacey  
Administrative Law Judge

SJP/Ls  
Enclosure

cc: Aimee Cooper, Staff Attorney, 1101 Camino La Costa, Austin TX 78752 - VIA INTER-AGENCY  
Travis M. Grochoske, 13423 Tall Forest, Cypress, TX 77429 - VIA REGULAR MAIL  
Kerri Galvin, Director of Standards & Enforcement Services, TREC, 1101 Camino La Costa, Austin, TX 78752 - (with 1 CD; Certified Evidentiary Record) - VIA INTER-AGENCY

TEXAS REAL ESTATE  
COMMISSION

Petitioner

V.

TRAVIS MATTHEW GROCHOSKE

Applicant

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

### PROPOSAL FOR DECISION

The staff (Staff) of the Texas Real Estate Commission (Commission) has proposed to deny the application of Travis Matthew Grochoske (Applicant) for an Inactive Real Estate Salesperson License. The Administrative Law Judge (ALJ) recommends denial of the application.

#### I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On November 10, 2010, ALJ Stephen J. Pacey convened the hearing at the State Office of Administrative Hearings, William P. Clements State Office Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff was represented by Aimée Cooper, staff attorney. Applicant did not appear and was not represented at the hearing. The record closed that same day.

After establishing that appropriate notice of the hearing was provided to Applicant and that the Commission has jurisdiction, Staff moved for a default. The default was granted in accordance with 1 TEX. ADMIN. CODE § 155.501, and the allegations were accepted as true. In accordance with the Findings of Fact and Conclusions of Law, the ALJ recommends that Applicant's application for a license as an inactive real estate salesperson be denied.

#### II. FINDINGS OF FACT

1. On October 29, 2008, Travis Matthew Grochoske (Applicant) filed an application with the Texas Real Estate Commission (Commission) for an Inactive Real Estate Salesperson License.
2. On or about September 8, 2009, the Commission's staff (Staff) sent a notice of proposed disapproval to Applicant.

3. The notice of proposed disapproval was sent to Applicant at: 13423 Tall Forest, Cypress, Texas 77429, by United States regular mail and by certified mail, return receipt requested. The address to which the notice was sent was the address provided by Applicant on his license application.
4. On or about September 24, 2009, Applicant requested a hearing.
5. On September 29, 2010, Staff sent a Notice of Hearing to Applicant at the address set forth above in Finding of Fact No. 3. Applicant received the notice on October 1, 2010.
6. The hearing notice contained a statement of the time, place, and nature of the hearing; a statement of legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
7. The hearing notice advised Applicant in large, boldface type that if Applicant failed to appear at the scheduled hearing, the Commission would request a default in which the factual allegations in the hearing notice would be deemed as true and the relief sought by the Commission would be granted without submission of additional proof.
8. The hearing convened November 10, 2010, before ALJ Stephen J. Pacey at the State Office of Administrative Hearings (SOAH), located at William P. Clements State Office Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff was represented by Aimée Cooper, staff attorney. Applicant did not appear and was not represented at the hearing.
9. Staff moved for a default, which was granted.
10. On or about May 31, 2006, in Cause No. 1061550 in the 176<sup>th</sup> District Court, in Harris County, Texas, Applicant pled guilty to the state jail felony offense of Theft, and was placed on deferred adjudication for a term of five years. Applicant was assessed a \$500 fine and placed on community supervision for a term ending on May 30, 2011.
11. Applicant has failed to demonstrate honesty, trustworthiness, and integrity.

### III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. TEX. OCC. CODE ch. 1101.
2. SOAH has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ch. 2003.
3. Proper and timely notice of the hearing was given to Applicant. TEX. GOV'T CODE ch. 2001; and 22 TEX. ADMIN. CODE § 533.3.
4. The allegations stated in the above Findings of Fact are deemed true. 1 TEX. ADMIN. CODE § 155.501.

5. To be eligible to receive a license as a real estate salesperson, a person must satisfy the Commission as to the applicant's honesty, trustworthiness, and integrity. TEX. OCC. CODE § 1101.354(2).
6. Applicant's application for a license as an inactive real estate salesperson should be denied.

SIGNED December 29, 2010.

  
\_\_\_\_\_  
STEPHEN J. PACEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**Agenda Item 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

**SUMMARY**

To be presented at the meeting.

**Agenda Item 23 and 24:**

Discussion and possible action to schedule future meetings

Adjourn

**SUMMARY**

See attached

# Texas Real Estate Commission

## February 14, 2011

May 11

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

### May

- 1** May Day
- 2** *Commission Meeting*
- 5** Cinco de Mayo
- 8** Mother's Day
- 21** Armed Forces Day

June 11

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

### June

- 2** Ascension Day
- 12** Pentecost
- 14** Flag Day
- 19** Father's Day
- 23** Corpus Christi

July 11

S	M	T	W	T	F	S
				1	2	
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

### July

- 4** Independence Day

August 11

S	M	T	W	T	F	S
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

### August

- 15** Tentative Commission Meeting

### September

- 5** Labor Day

September 11

S	M	T	W	T	F	S
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4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

### October

- 10** Columbus Day (Observed)
- 30** Daylight Savings--set back 1 hour
- 31** Halloween

### November

- 1** Election Day
- 11** Veterans Day
- 24** Thanksgiving

October 11

S	M	T	W	T	F	S
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

### December

- 25** Christmas Holidays
- 31** New Year's Eve

### January

- 1** New Year's Day
- 16** Martin Luther King, Jr.

### February

- 2** Groundhog Day
- 12** Lincoln's Birthday
- 20** President's Day
- 22** Ash Wednesday  
Washington's Birthday

### March

- 17** St. Patrick's Day

### April

- 1** Daylight Savings--set ahead 1 hour  
Palm Sunday  
April Fools Day
- 6** Good Friday
- 8** Easter

November 11

S	M	T	W	T	F	S
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13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

December 11

S	M	T	W	T	F	S
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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

January 12

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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February 12

S	M	T	W	T	F	S
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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29		

March 12

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11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April 12

S	M	T	W	T	F	S
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15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					