



**Materials for the August 1, 2011
Meeting of the
Texas Real Estate Commission
1700 N. Congress Ave., Room 170
Austin, Texas**

AGENDA FOR TEXAS REAL ESTATE COMMISSION (TREC) MEETING

Conference Room 170
Stephen F. Austin Bldg., 1700 N. Congress Avenue
Austin, Texas 78701

August 1, 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 vice-chair

MINUTES

4. Approval of minutes of May 2, 2011 Commission meeting

STAFF AND COMMITTEE REPORTS

5. 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
6. Report by Texas Real Estate Inspector Committee

PUBLIC COMMENTS

7. General comments from visitors on non-agenda items

RULES FOR POSSIBLE ADOPTION

8. Discussion and possible action to adopt amendments to 22 TAC, Subchapter Q §535.191 regarding Schedule of Administrative Penalties
9. Discussion and possible action to adopt amendments to 22 TAC, Subchapter R, §535.219 regarding Schedule of Administrative Penalties
10. Discussion and possible action to adopt amendments to 22 TAC Chapter 537 as follows:
 - a. §537.20 concerning Standard Contract Form TREC No. 9-9
 - b. §537.28 concerning Standard Contract Form TREC No. 20-10
 - c. §537.30 concerning Standard Contract Form TREC No. 23-11

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 512-936-3092.

- d. §537.31 concerning Standard Contract Form TREC No. 24-11
- e. §537.32 concerning Standard Contract Form TREC No. 25-8
- f. §537.37 concerning Standard Contract Form TREC No. 30-9

EMERGENCY RULES FOR POSSIBLE ADOPTION

11. Discussion and possible action to take emergency action to adopt amendments to 22 TAC Chapter 535 as follows:

- a. Subchapter B, §535.17 concerning Appraisals
- b. Subchapter C, §535.31 concerning Attorneys at Law
- c. Subchapter E, Requirements for Licensure as follows:
 - i. §535.50 concerning Definitions
 - ii. §535.51 concerning General Requirements
 - iii. §535.53 concerning Corporations and Limited Liability Companies
- d. Subchapter I, §535.93 concerning Late Renewals
- e. Subchapter J, §535.101 concerning Fees
- f. Subchapter M, §535.132 concerning Eligibility for Licensure
- g. Subchapter N, §535.141 concerning Initiation of Investigation

RULES FOR POSSIBLE PROPOSAL

12. Discussion and possible action to propose amendments to 22 TAC Chapter 535 as follows:

- a. Subchapter B §535.17 concerning Appraisals
- b. Subchapter C, §535.31 concerning Attorneys at Law
- c. Subchapter E, Requirements for Licensure as follows:
 - i. §535.50 concerning Definitions
 - ii. §535.51 concerning General Requirements
 - iii. §535.53 concerning Corporations and Limited Liability Companies
 - iv. §535.55 concerning Education Requirements for a Salesperson License
 - v. §535.56 concerning Education and Experience Requirements for a Broker License
- d. Subchapter F, §535.63 concerning Accreditation of Core Education Schools
- e. Subchapter G, Mandatory Continuing Education as follows:
 - i. §535.71 concerning Approval of Providers, Courses and Instructors
 - ii. §535.72 concerning Presentation of Courses, Advertising and Records

- f. Subchapter I, Licenses as follows:
 - i. §535.91 concerning Renewal Notices
 - ii. §535.93 concerning Late Renewal Applications
 - iii. §535.96 concerning Mailing Address and Other Contact Information
- g. Subchapter J, §535.101 concerning Fees
- h. Subchapter L, Termination of Salesperson's Association with Sponsoring Broker as follows:
 - i. §535.121 concerning Inactive License
 - ii. §535.122 concerning Reactivation of License
- i. Subchapter M, §535.132 concerning Eligibility for Licensure
- j. Subchapter N, §535.141 concerning Initiation of Investigation
- k. Subchapter R, §535.210 concerning Inspector Fees

PENDING BUSINESS

- 13. Discussion regarding legislative housekeeping measures and other legislative items
- 14. Discussion and possible action to adopt a code of conduct for members of advisory committees and working groups

NEW BUSINESS

- 15. Discussion and possible action to approve changes to TREC application forms to incorporate amendments to Texas Occupations Code Chapter 1101 under Senate Bill 747, 82nd Texas Legislature, Regular Session (2011)
- 16. Discussion and possible action on Broker Responsibility working group recommendations on experience requirements for a broker license
- 17. Discussion and possible action to approve amendments to the Seller's Disclosure of Property Condition Form, TREC No. OP-H
- 18. Discussion and possible action to appoint two members to the Broker Lawyer Committee
- 19. Discussion and possible action to approve annual internal audit report
- 20. Executive session to discuss personnel matters regarding the TREC administrator position under Texas Government Code, §551.074
- 21. Discussion and possible action on items considered in executive session
- 22. Discussion and possible action to establish policies related to self-directed semi-independent status, including:
 - a. Operating reserves
 - b. Technology replacement reserves
 - c. A target reserve balance in excess of which the agency may reduce fees

23. Discussion and possible action to adopt a budget

CONTESTED CASES

24. Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of SOAH Docket No. 329-10-3045.REC

RECOVERY FUND

25. 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

26. Discussion and possible action to schedule future meetings

27. 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

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 Commissioner absence(s), if any

SUMMARY Provides for excused absences for commission members not in attendance

MOTION **MOVED**, that the absence(s) of _____
for the August 1, 2011 Commission meeting is/are hereby excused.

Agenda Item
3: Election of vice-chair



Agenda Item 4:

Approval of minutes of May 2, 2011 Commission meeting

SUMMARY

Provides for the approval of the minutes as submitted to the Commission by staff.

**STAFF
RECOMMENDATION**

Approve minutes for May 2, 2011 Commission meeting.

MOTION

MOVED, that the Commission approves the minutes of the May 2, 2011 meeting of the Commission as submitted.

MINUTES OF THE MEETING OF THE TEXAS REAL ESTATE COMMISSION
May 2, 2011
Room 235, 1101 Camino La Costa Austin, Texas

On Monday, May 2, 2011, at 10:04 a.m. there was a duly posted regular meeting of the Texas Real Estate Commission (the "Commission"). Commissioner Wukasch led 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

Jaime Hensley

Joanne Justice

Dona Scurry

Avis Wukasch

The Chairman moved to agenda item two, discussion and possible action to excuse Commissioner absence(s), if any. Upon motion of Ms. Justice, duly seconded by Mr. Alley, the Commission excuses the absences of Chris Day and Tom Mesa.

Chairman Eckstrum moved to agenda item three, approval of minutes of February 14, 2011, Commission Meeting. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the minutes with a correction. The correction changed the spelling of former Commissioner Louise Hull Patillo's last name from "Padillo" to "Patillo."

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

Mr. 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, stated that this was the last meeting to be held in the Camino La Costa building. TREC would be moved to the Stephen F. Austin Building in mid-July and the

next meeting of the Commission was scheduled for August. He reported on the status of the appropriations bill dealing with supplemental funding for the move and imaging process. Mr. Oldmixon reported on the status of the online functions and general online access to the TREC website. There was discussion from the dais concerning a contingency plan for services during the move. Also discussed was how the public was being informed of the upcoming move and its effect on services.

Lorie DeAnda, Director of Reception and Communications Services (RCS) introduced a new employee in RCS, Jennifer Wheeler. She presented the C1 report concerning Customer Service Statistics. There was discussion concerning the volume of calls and the backlog of emails being handled by her division.

Gwen Jackson, Director of Education and Licensing Services (ELS) introduced a new employee in the Education Section, Stephanie Limon. She 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. Ms. Jackson stated that the low numbers in the L1 and L2 reports was due to new formulas being used to calculate the numbers and changes in the categories of the data being counted.

Kerri Galvin, Director of Standards and Enforcement Services (SES), introduced a new staff attorney, Brian Coats and two new legal assistants, Christina Madrigal, and Elizabeth Dorsey. She also introduced a new administrative assistant, Tessa Sowell who had transferred from the Education Section to SES. Ms. Galvin presented the case status report, and the case age report. Ms. Galvin explained the process used to prepare the case age report and the actual numbers the percentages represented

Tom Watson, Director in Information and Technology Services, presented the I1 report concerning electronic outlet services statistics. Mr. Watson stated utilization of the website was improving, but the number of end users was not yet at the level before the database conversion. There was discussion concerning the difficulties Ms. Justice experienced when trying to renew online. There was extensive discussion concerning the VERSA product, its deficiencies and the steps taken to correct the deficiencies. There was further discussion concerning the online efficiency and current and future usage of online functions.

Karen Alexander reported on the S1 report showing the financial status as of March 31, 2011. She moved to 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. There was additional discussion concerning how the fund is replenished and the process to reassess fees if the fund fell below the statutory requirement.

Ms. Hensley asked for clarification concerning the time required to process an application, the current goal concerning the time for processing applications and what steps were being taken to meet that goal.

Chairman Eckstrum stated that he felt the discussion concerning VERSA and online problems proved that a work session was needed for Commissioners and executive staff members. Mr. Oldmixon stated he would make sure he reinstated his weekly reports to Commissioners, as during the busy weeks during the session he had issued them on three week intervals. He asked that the Commissioners call him any time to discuss their concerns.

The Chairman moved to agenda item sixteen, discussion of the annual audit plan. Rene Gonzales presented the annual audit plan for discussion and possible action. Upon motion of Ms. Justice, duly seconded by Mr. Alley, the Commission approved the annual audit plan as submitted under the agenda item.

Mr. Eckstrum moved to agenda item seventeen, discussion and possible action to approve training for investment officers pursuant to Public Funds Investment Act, Texas Government Code, Section 2256.007(d). Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission authorized the training for investment officers pursuant to Public Funds Investment Act, Texas Government Code, Section 2256.007(d) attended by Karen Alexander and Barbara Kolb on February 18, 2011. Mr. Arriaga asked that the training be authorized prior to attendance in the future.

Chairman Eckstrum moved back to agenda item five, report by the Texas Real Estate Inspector Advisory Committee. Mr. Willcox, Chairman of the Committee, spoke briefly concerning the officers elected, Fred Willcox, Chairman, Brian Murphy, Vice-chair and Jill Frankel, Secretary. Appointments were made as follows: Brad Phillips was appointed as Chair of the Enforcement Subcommittee; Brian Murphy, Chair of the Standards of Practice Subcommittee; Curtis Carr, Chair of the Education Subcommittee and Jill Frankel, Chair of the Commentary Subcommittee. There was discussion concerning the Commentary that had been posted on the TREC website for comment.

Mr. Eckstrum moved to agenda item six, general comments from visitors on non-agenda items. No comments were offered.

The Chairman moved to agenda item seven, discussion and possible action to propose amendments to 22 TAC §535.191 regarding Schedule of Administrative Penalties. Ms. DeHay presented the agenda items for discussion and possible action. Section 535.191 would be amended to add additional provisions that apply to the schedule and to move an existing provision that should more appropriately fit under a different range. Upon motion of Mr. Alley, duly seconded by Mr. Arriaga, the Commission authorized staff, on behalf of the Commission, to submit the amendments to §535.191 regarding Schedule of Administrative Penalties, as presented at the meeting, with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register*.

Chairman Eckstrum moved to agenda item eight, discussion and possible action to propose amendments to 22 TAC §535.219 regarding Schedule of Administrative Penalties. Ms. Bijansky

presented the agenda item for discussion and possible action. The new rule establishes a penalty matrix for the assessment of administrative penalties for different violations of the statute and rules governing real estate inspectors. The matrix was drafted in accordance with Section 1102.403 of the Texas Occupations Code (relating to administrative penalties imposed against inspectors) and Subchapter O, Chapter 1101 (relating to administrative penalties assessed by the Commission). As such, the highest category of administrative penalties provides for a maximum penalty of \$5,000 per violation, and each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty. The rule was developed by the Texas Real Estate Inspector Committee's enforcement subcommittee and endorsed by the Committee. Fred Willcox, Texas Real Estate Commission Inspector Committee Chairman, spoke in favor of the proposal of the new rule. Mark Eberwine spoke in opposition of the proposal of the rule as currently drafted. Mr. Arriaga voted against the motion. Upon motion of Ms. Justice, seconded by Mr. Arriaga, the Commission authorized staff, to submit the amendments to §535.219 regarding Schedule of Administrative Penalties, as presented at this meeting, with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register*.

The Chairman moved to agenda item nine, amendments to 22 TAC Chapter 537 as follows: a. §537.20 concerning Standard Contract Form TREC No. 9-9; b. §537.28 concerning Standard Contract Form TREC No. 20-10; c. §537.30 concerning Standard Contract Form TREC No. 23-11; d. §537.31 concerning Standard Contract Form TREC No. 24-11; e. §537.32 concerning Standard Contract Form TREC No. 25-8 and f. §537.37 concerning Standard Contract Form TREC No. 30-9. Ms. DeHay presented the agenda item for discussion and possible action. The amendments propose to adopt by reference six revised contract forms for use by Texas real estate licensees.

The amendment to §537.20 proposes to adopt by reference Standard Contract Form TREC No. 9-9, Unimproved Property Contract. The proposed revision is the same as that proposed for Form TREC No. 20-10. Also, typographical errors in paragraph 7 are corrected.

The amendments to §537.28 propose to adopt by reference Standard Contract Form TREC No. 20-10, One to Four Family Residential Contract (Resale). Paragraph 15 would be revised to delete subparagraph 15B. This change to all six of the forms was adopted on an emergency basis at the February meeting of the Commission with an effective date of March 1, 2011.

The amendment to §537.30 proposes to adopt by reference Standard Contract Form TREC No. 23-11, New Home Contract (Incomplete Construction). The proposed revision is the same as that proposed for Form TREC No. 20-10.

The amendment to §537.31 proposes to adopt by reference Standard Contract Form TREC No. 24-11, New Home Contract (Completed Construction). The proposed revision is the same as that proposed for Form TREC No. 20-10. Also, typographical errors in paragraph 7 are corrected.

The amendment to §537.32 proposes to adopt by reference Standard Contract Form TREC No. 25-8, Farm and Ranch Contract. The proposed revision is the same as that proposed for Form TREC No. 20-10.

The amendment to §537.37 proposes to adopt by reference Standard Contract Form TREC No. 30-9, Residential Condominium Contract (Resale). The proposed revision is the same as that proposed for Form TREC No. 20-10.

Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the commission authorized, on behalf of the Commission, to submit the amendments and forms adopted by reference to 22 TAC §537.20 concerning Standard Contract Form TREC No. 9-9 Unimproved Contract; §537.28 concerning Standard Contract Form TREC No. 20-10, One to Four Family Residential Contract (Resale); §537.30 concerning Standard Contract Form TREC No. 23-11, New Home Contract (Incomplete Construction); §537.31 concerning Standard Contract Form TREC No. 24-11, New Home Contract (Completed Construction); §537.32 concerning Standard Contract Form TREC No. 25-8, Farm and Ranch Contract; and §537.37 concerning Standard Contract Form TREC No. 30-9, Residential Condominium Contract, as presented at this meeting, with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register*.

Mr. Eckstrum stated that at this time he would like to discuss the Broker Information that is required on all the contracts on the last page of the document. The Broker Information requires the licensee to name the licensed supervisor of the associate and provide a telephone number where that individual can be contacted. In response to a question from Chairman Eckstrum, staff explained that for contracts involving brokers associated with a licensed brokerage firm or another individual broker, the name that should be placed in the blank is the designated broker for the firm for a business entity, or the individual broker's name if not a business entity. If the designated broker has named someone else in writing to supervise the daily activities of the associated broker, then that licensee's name and telephone number should be filled in.

Chairman Eckstrum moved to agenda item ten, discussion and possible action to adopt amendments to 22 TAC Chapter 533 regarding Practice and Procedure. Ms. DeHay presented the agenda item for discussion and possible action. The amendments to 22 TAC §533.1 Definitions and §533.3. Filing and Notice adopt the rules, without changes to the proposed text, as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1467). The amendment to §533.1 amends the definition of "last known mailing address" to "mailing address" to be consistent with other TREC rules. The 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. No comments were received on the rule as proposed. Upon motion of Mr. Arriaga, duly seconded by Ms. Justice, the commission authorized, on behalf of the Commission, to submit the amendments to TAC §533.1 Definitions and §533.3. Filing and Notice as presented at this meeting for adoption, with any nonsubstantive changes as staff may deem necessary or advisable.

The Chairman moved to agenda item eleven, discussion and possible action to adopt amendments to 22 TAC §535.217 regarding Contact Information. This agenda item proposed the adoption of amendments to 22 TAC §535.217 regarding Contact Information without

changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1468).

The 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. No comments were received on the amendments to the rule as proposed. Upon motion of Mr. Alley, duly seconded by Ms. Justice, the commission authorized, on behalf of the Commission, to submit the amendments to 22 TAC §535.217 regarding Contact Information as presented at this meeting for adoption, with any nonsubstantive changes as staff may deem necessary or advisable.

Ms. DeHay presented agenda item twelve, discussion and possible action to adopt or withdraw amendments to 22 TAC Chapter 537 as follows: Amend §537.45 concerning Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract and withdraw amendments to §537.46 concerning Standard Contract Form TREC No. 39-7, Amendment to Contract. This agenda item adopts amendments to §537.45, concerning Standard Contract Form TREC No. 38-2, Notice of Buyer's Termination of Contract, without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 707). The proposed amendments to §537.46, concerning Standard Contract Form TREC No. 39-6, Amendment to Contract, are not adopted and are withdrawn.

The amendments to §537.45 adopts 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. No comments were received on the proposed amendments.

Upon motion of Ms. Hensley, duly seconded by Mr. Arriaga, the commission authorized, on behalf of the Commission, to submit the amendments to §537.45 concerning Standard Contract Form TREC No. 38-3, Notice of Buyer's Termination of Contract, with any non-substantive changes as staff may deem necessary or advisable for adoption, and withdraw the proposed amendments to §537.46 concerning Standard Contract Form TREC No. 39-7, Amendment to Contract.

The Chairman moved to agenda item thirteen, discussion and possible action to renew for an additional 60-day period emergency rules concerning: §537.20 concerning Standard Contract Form TREC No. 9-9; §537.28 concerning Standard Contract Form TREC No. 20-10; §537.30 concerning Standard Contract Form TREC No. 23-11; §537.31 concerning Standard Contract Form TREC No. 24-11; e. §537.32 concerning Standard Contract Form TREC No. 25-8 and §537.37 concerning Standard Contract Form TREC No. 30-9. Ms. DeHay presented the agenda item for discussion and possible action. This agenda item would extend the initial period of adoption by emergency action for an addition 60-day period to allow use of the forms until the final adoption of the contract forms under regular rulemaking action under agenda item 9. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the commission authorized staff, on behalf of this Commission, to request an additional 60-day period for the adoption by

emergency action of §537.20 concerning Standard Contract Form TREC No. 9-9, §537.28 concerning Standard Contract Form TREC No. 20-10, §537.30 concerning Standard Contract Form TREC No. 23-11, §537.31 concerning Standard Contract Form TREC No. 24-11, §537.32 concerning Standard Contract Form TREC No. 25-8 and §537.37 concerning Standard Contract Form TREC No. 30-9.

Chairman Eckstrum moved to agenda item fourteen, discussion regarding legislative housekeeping measures and other legislative items. Mr. Oldmixon presented this agenda item for discussion. He reported on the status of the following bill pairs which were agency specific to licensing.

SB 747 by Carona; HB 1637 by Hamilton -- TREC (broker/sales) housekeeping bill; SB 747 passed Senate, first read and referred to House Licensing and Administrative Procedures; Committee 4/4/11; House substitute voted out of LAP 3/22/11

HB 1680 by Geren; SB 1000 by Eltife et al – Provides for self-directed, semi-independent (SDSI) status for TREC; No action taken in LAP 3/15/11; Voted out of Business and Commerce 4/5/11

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; Referred to LAP 2/24/11; Referred to Business and Commerce 2/2/11

HB 1146 by Kuempel; SB 734 by Carona – Provides for registration and regulation of appraisal management companies (AMCs) by the Texas Appraiser Licensing and Certification Board; Substitute voted out of LAP 3/29/11; Left pending in B&C 3/30/11 but consensus among stakeholders

There was discussion concerning the amendments regarding real estate education in the section by section summary of CSHB 1637 provided in the meeting materials.

The Chairman moved to agenda item fifteen, discussion and possible action to appoint working groups to address possible legislative matters regarding: Education requirements for a broker and salesperson license; and experience requirements for a broker license. Mr. Oldmixon presented the agenda item for discussion and possible action. After discussion, upon motion of Mr. Arriaga, duly seconded by Ms. Justice, the Commission designated the Chairman of the Commission as the person responsible for making appointments to a working group to recommend rules regarding proposed amendments to the Real Estate License Act concerning education requirements for a broker and salesperson license. Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, the Commission designated the Chairman of the Commission as the person responsible for making appointments to a working group to recommend rules regarding proposed amendments to the Real Estate License Act concerning experience requirements for a broker license. The Chairman appointed Ms. Justice as the liaison to the working group regarding education requirements for a broker and salesperson license. Ms. Wukasch was appointed as the liaison to the working group regarding experience requirements for a broker license. He also appointed Ms. Hensley to serve as a back-up liaison if either appointed liaison was unable to serve.

Mr. Eckstrum moved to agenda item eighteen, discussion and possible action to adopt a code of conduct for members of advisory committees and working groups. Mr. Oldmixon presented the agenda item for discussion. He stated that the Chairman had requested that staff prepare a draft code of conduct for advisory committees and working groups. This agenda item would allow the posting of the draft code for public comment. . Upon motion of Mr. Alley, duly seconded by Ms. Wukasch, the Commission approved posting the code of conduct for members of advisory committees and working groups as submitted for public comment. Fred Willcox, Texas Real Estate Commission Inspector Committee Chairman, commented on the draft code of conduct for advisory committees and working groups. He gave the Commission a background of the committee, its charges and spoke against the draft code of ethics.

Chairman Eckstrum moved to agenda item nineteen, discussion and possible action regarding the appointment of members to the Broker Lawyer Committee. Ms. DeHay presented the agenda item for discussion and possible action. She stated that staff recommends that a committee consisting of Commissioners be appointed to recommend two broker members for appointment to the Broker Lawyer Committee to be approved by the full Commission at the next Commission meeting, and that staff be authorized to notify the public that the commission is taking applications for the positions. This would be the same process used to make previous appointments to the Committee in 2009. Upon motion of Ms. Wukasch, duly seconded by Mr. Alley, the Commission authorized an Appointment Committee to be created consisting of the Chairman, Ms. Arriaga, Ms. Hensley and Ms. Justice to recommend two broker members for appointment to the Broker Lawyer Committee to be approved by the full Commission at the August 15, 2011 Commission meeting, and that staff is hereby authorized to notify the public that the commission is taking application for two positions.

Mr. Eckstrum announced an executive session beginning at 1:15 p.m. to allow the Commission to meet with its attorney on any listed agenda item as authorized by the Texas Open Meetings Act, Tex. Gov't Code, §551.071. The open meeting resumed at 1:46 p.m.

Chairman Eckstrum moved to agenda item twenty, discussion and possible action concerning the Real Estate Inspector Committee recommendation to the Commission regarding the development of a National Home Inspector Examination. Ms. Bijansky presented the agenda item for discussion and possible action. Fred Willcox, Texas Real Estate Commission Inspector Committee Chairman, spoke in favor of the development of a National Home Inspector Examination. After discussion, Fred Buck, board member on the National Home Inspector Examination Board, spoke concerning the services provided by that entity. Upon motion of Mr. Alley, duly seconded by Mr. Arriaga, the Commission authorized that staff is hereby authorized, on behalf of this Commission, to explore procurement options and issue a request for proposals or other documentation as required by law to solicit vendors to develop, maintain, and administer a national home inspector examination for TREC.

Mr. Eckstrum, as the Presiding Member for contested cases, moved to agenda item twenty-two (a), consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of: (a) SOAH Docket No. 329-11-0448.REC, Texas Real Estate Commission v. Robin J. Muir. Ms. Galvin presented the agenda item. Mr. Muir did not

appear. The staff of the Texas Real Estate Commission seeks to revoke Robin J. Muir's 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) recommended that Mr. Muir's license be revoked. Upon motion of Mr. Arriaga, duly seconded by Ms. Wukasch, the Commission approved the proposal as submitted.

Mr. Eckstrum moved to agenda item twenty-two (b), consideration and possible action regarding proposal for decision from the State Office of Administrative Hearing in the matter of SOAH Docket NO. 329-11-1036.REC, Texas Real Estate Commission v. Derek Roy Evans. Ms. Galvin presented the agenda item for consideration. Mr. Evans did not appear. Mr. Evans applied to TREC for a moral character determination, and staff seeks denial of the application based on his criminal convictions. The ALJ found that Mr. Evans' application should be denied because of the seriousness of his crimes and because not enough time had elapsed since his release from prison and completion of parole for him to demonstrate fitness for a license. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission approved the proposal as submitted.

The Chairman moved to agenda item twenty-three (b), discussion and possible action to authorize settlement of recovery fund claims. Ms. Bijansky presented the agenda item for consideration. The following claims were submitted for approval:

RF11-001, Amina Ray v. Gregory Wesley Real Estate, LLC and Susan Gillespie Chastain, actual damages of \$1,500 against the LLC and \$2,500 against Chastain. Upon motion of Mr. Arriaga, duly seconded by Mr. Alley, the Commission authorized the payment of up to \$2,745.

RF11-013, Antonio Escobedo v. Manuel and Lydia Ramos and M Ramos, LLC, actual damages of \$24,335.68. Upon motion of Ms. Wukasch, duly seconded by Ms. Justice, the Commission authorized staff to make payment as requested.

RF11-023, Juan and Maria C. Gomez v. Manuel and Lydia Ramos and M Ramos, LLC, actual damages of \$53,000. Upon motion of Ms. Wukasch, duly seconded by Ms. Hensley, the Commission authorized staff to make payment of \$25,664.62.

RF11-014, Victor M. Prieto v. Joaquin D. Santonyo, actual damages of \$50,000 and attorney's fees of \$11,500. Upon motion of Ms. Justice, duly seconded by Ms. Wukasch, the Commission authorized staff to settle this case on the best possible terms.

RF11-016, Robert J. Garza v. Lonnie Paul Pruett, actual damages of \$1,050. Upon motion of Ms. Hensley, duly seconded by Ms. Wukasch, the Commission authorized staff to make payment as requested.

RF 11-018, Juan Munoz v. BSPP Enterprises, LLC, actual damages of \$5,120. Upon motion of Mr. Alley, duly seconded by Mr. Arriaga, the Commission authorized staff to make payment as requested.

RF11-019, Kathryn Cypert v. Frances Bethany Cammack, actual damages of \$50,000. Upon motion of Ms. Justice, duly seconded by Mr. Arriaga, the Commission authorized staff to make payment as requested.

RF11-020, Hastings Entertainment, Inc. v. Robin Muir, actual damages of \$100,000. Upon motion of Ms. Hensley, duly seconded by Ms. Wukasch, the Commission authorized staff to make payment as requested with Ms. Wukasch and Mr. Arriaga voting against the motion.

RF11-024, Charles and Debra Spaeth v. James Thomas Adams, actual damages of \$25,353 and attorney's fees of \$9,500. Upon motion of Mr. Arriaga, duly seconded by Ms. Hensley, the Commission authorized staff to make payment as requested.

RF11-027, Michelle and Terry Lewis, and Robert Lewis v. Susan Thomas, Ken Hogan, Century 21 Abilene Big Country, Inc. d/b/a Hogan-Warner Realtors, actual damages of \$9,000 and attorney's fees in the amount of \$3,831.09. Upon motion of Ms. Wukasch, duly seconded by Ms. Arriaga, the Commission authorized staff to make payment as requested.

IRF11-002, Andres and Yvette Arnold v. Charles Ray Turner, actual damages of \$12,500. Upon motion of Mr. Alley, duly seconded by Mr. Arriaga, the Commission authorized staff to make payment as requested.

The Chairman moved to agenda item twenty-three, discussion and possible action to schedule future meetings. After discussion, the next meetings are scheduled for August 15, 2011 and November 21, 2011 at 10:00 a.m. The Chairman adjourned the meeting at 2:15 p.m.



Patricia Holder, Secretary for the Meeting

APPROVED this the 1st day of August, 2011.

John Eckstrum Chairman

ATTEST: Douglas E. Oldmixon Administrator



Agenda Item 5:

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

Agenda Item 6:

Report by Texas Real Estate Inspector Committee

Agenda 7:

General comments from visitors on non-agenda items



Staff Reports for June 2011

Texas Real Estate Commission

Monthly Staff Reports

Contents

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

Reception and Communications Services

Customer Service Statistics

June 2011

		FY2011	FY2010
RCS Measures	Current Month	YTD Total	Prior YTD Total
Agency Incoming Calls (target - 400,000)	23,848	216,016	292,335

		FY2011	FY2010
Communications Incoming Calls	Monthly Total	YTD Total	Prior YTD Total
CO Lines	18,312	129,207	95,031
TREC 1-800	0	0	87,328
TALCB Local Line	489	5,347	4,967
TALCB 1-877	0	0	2,527
Total	18,801	134,554	189,853

		FY2011	FY2010
Reception Walk Ins	Monthly Total	YTD Total	Prior YTD Total
Licensing	917	7,721	3,939
Education	275	2,718	1,712
Inspector	11	164	90
Enforcement	17	159	125
TALCB Licensing	19	188	103
TALCB Enforcement	3	61	21
Total	1,242	11,011	5,990

		FY2011	FY2010
Communications E-Mail	Current Month	YTD Total	Prior YTD Total
E-mail Inquiries	6,657	63,965	10,286

C1 Report

Licensing Services Division

Fiscal Year Comparison

Fiscal Year 2011 - Year-to-Date

JUNE

	This YTD 9/10 – 06/11	Last YTD 9/09 – 06/10	Change			
			Count	Percent		
<i>Applications Received</i>						
Broker Original Applications Received	2,468	2,195	273	12.44%		
Sales Original Applications Received	10,474	9,357	1,117	11.94%		
<i>Total Original Applications</i>	12,942	11,552	1,390	12.03%		
Broker Reinstatement Applications Received	188	1,232	-1,044	-84.74%		
Sales Reinstatement Applications Received	1,177	5,897	-4,720	-80.04%		
Total Reinstatement Applications Received	1,365	7,129	-5,764	-80.85%		
<i>Licenses Issued from Applications</i>						
Broker Licenses from Original Applications	1,633	2,076	-443	-21.34%		
Sales Licenses from Original Applications	7,710	7,456	254	3.41%		
<i>Total Licenses from Original Applications</i>	9,343	9,532	-189	-1.98%		
Broker Licenses from Reinstatement Applications	158	1,321	-1,163	-88.04%		
Sales Licenses from Reinstatement Applications	956	6,026	-5,070	-84.14%		
<i>Total Licenses from Reinstatement Application</i>	1,114	7,347	-6,233	-84.84%		
<i>Renewal Activity</i>						
Broker Renewals and Percentage	20,759	85.38%	13,360	82.67%	7,399	55.38%
Salesperson Renewals and Percentage	52,471	72.65%	33,972	69.30%	18,499	54.45%
<i>Total Renewals from Broker and Sales</i>	73,230	76.28%	47,332	72.68%	25,898	54.72%

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.

Education and Licensing Services Division

Licensee and Registrant Status

June 2011

Real Estate Licensees

	Jun 10	Jul 10	Aug 10	*Sep-Dec10	Jan 11	Feb 11	Mar 11	Apr 11	May 11	Jun 11
Broker Licensees										
Individual (Active)	34,247	34,229	34,248		33,639	33,774	33,928	34,079	34,213	34,381
Corporation (Active)	4,001	3,985	3,975		3,963	3,980	4,029	4,056	4,091	4,127
LLC (Active)	3,058	3,088	3,107		3,175	3,204	3,288	3,336	3,409	3,451
Non-resident (Active)	484	488	490		554	557	564	567	575	582
Partnership (Active)	2	2	2		1	1	1	1	1	1
Total Active Status	41,792	41,792	41,822		41,332	41,516	41,810	42,039	42,289	42,542
<i>Inactive Status</i>	1,614	1,614	1,613		1,587	1,585	1,635	1,642	1,674	1,724
Total Brokers	43,406	43,406	43,435		42,919	43,101	43,445	43,681	43,963	44,266
Sales Licensees										
Active Status	73,891	73,898	74,058		71,170	71,485	71,458	72,059	72,460	71,947
Inactive Status	27,184	27,113	26,905		25,741	25,844	26,770	27,084	27,473	29,000
Total Sales	101,075	101,011	100,963		96,911	97,329	98,228	99,143	99,933	100,947
Total Active	115,683	115,690	115,880		112,502	113,001	113,268	114,098	114,749	114,489
Total Inactive	28,798	28,727	28,518		27,328	27,429	28,405	28,726	29,147	30,724
Total Brokers & Sales	144,481	144,417	144,398		139,830	140,430	141,673	142,824	143,896	145,213

Inspectors

	Jun 10	Jul 10	Aug 10	*Sep10-Dec10	Jan 11	Feb 11	Mar 11	Apr 11	May 11	Jun 11
Inspector Licensees										
Professional Inspectors(active)	2,310	2,290	2,271		2,096	2,101	2,126	2,140	2,063	2,106
Professional Inspectors(inactive)	968	957	951		771	779	825	835	778	791
Real Estate Inspectors(active)	101	95	97		92	91	91	92	91	89
Real Estate Inspectors(inactive)	33	34	33		21	22	24	22	17	18
Apprentice Inspectors(active)	71	72	72		60	60	62	64	60	67
Apprentice Inspectors(inactive)	17	13	15		15	15	15	15	14	16
Total Inspectors	3,500	3,461	3,439		3,055	3,068	3,143	3,168	3,023	3,087

Easement & Right-of-way Registrants

	Jun 10	Jul 10	Aug 10	*Sep10-Dec10	Jan 11	Feb 11	Mar 11	Apr 11	May 11	Jun 11
ERW Registrants										
Businesses	42	42	42		37	37	39	39	36	37
Individuals	1,667	1,683	1,705		1,749	1,765	1,929	1,987	1,803	1,913
Total Registrants	1,709	1,725	1,747		1,786	1,802	1,968	2,026	1,839	1,950

Total Licensees and Registrants

	Jun 10	Jul 10	Aug 10	*Sep10-Dec10	Jan 11	Feb 11	Mar 11	Apr 11	May 11	Jun 11
All Licensees & Registrants	149,690	149,603	149,584		144,671	145,300	146,784	148,018	148,758	150,250

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

Education & Licensing Services Division - TREC: L3 Report

Examination Activity

June 2011

Monthly Results

	<u>Salesperson</u>	<u>Broker</u>	<u>R.E. Inspector</u>	<u>Prof. Inspector</u>
Examinations Passed	547	100	2	26
Examinations Failed	472	97	0	22
Examinations Taken	1019	197	2	48
Applicants Examined	936	179	2	44
Passed on First Attempt	507	94	0	17
Examination Pass Rate	53.68%	50.76%	100.0%	54.17%
Applicant Pass Rate	58.44%	55.87%	100.0%	59.09%
First Attempt Pass Rate	54.17%	52.51%	0.0%	38.64%

Year-to-Date Results

	<u>Salesperson</u>	<u>Broker</u>	<u>R.E. Inspector</u>	<u>Prof. Inspector</u>
Examinations Passed	4120	649	12	179
Examinations Failed	3700	609	8	209
Examinations Taken	7820	1258	20	388
Applicants Examined	6389	1051	14	260
Passed on First Attempt	3734	593	6	107
Examination Pass Rate	52.69%	51.59%	60.0%	46.13%
Applicant Pass Rate	64.49%	61.75%	85.71%	68.85%
First Attempt Pass Rate	58.44%	56.42%	42.86%	41.15%

Licensing Services Division

Instructor Distribution

PROPRIETARY SCHOOL (CORE) AND MCE INSTRUCTORS

Approved Instructor Distribution

	Jan 11	Feb 11	Mar 11	Apr 11	May 11	June 11	July 11	Aug 11	Sep 11	Oct 11	Nov 11	Dec 11	Jan 12
MCE Electives Only	2,583	2,617	2,669	2,702	2,736	2,753							
Core and MCE Electives	1,327	1,332	1,334	1,341	1,353	1,357							
MCE Legal Update	365	365	365	366	366	375							
MCE Ethics	366	366	366	367	367	376							
Total Approved Instructors	4,641	4,680	4,734	4,776	4,822	4,861							

Standards and Enforcement Services Division

Case Status

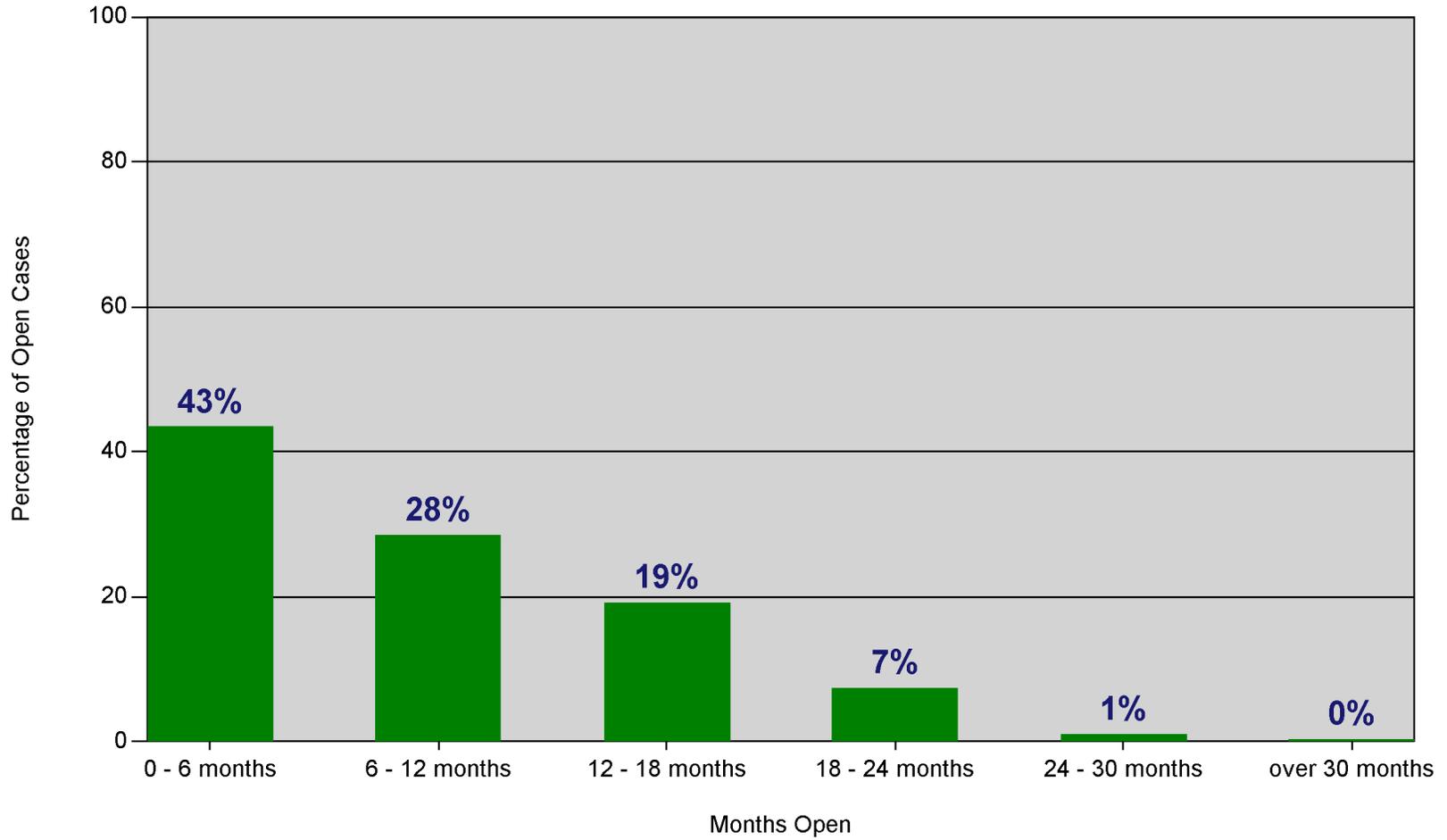
June 2011

	Sep - 10	Oct - 10	Nov - 10	Dec - 10	Jan - 11	Feb - 11	Mar - 11	Apr - 11	May - 11	Jun - 11	Jul - 11	Aug - 11
Received During Month	200	128	157	153	143	126	147	129	209	173		
Broker/Sales	91	68	83	87	75	62	77	76	93	68		
Inspector	9	5	4	4	2	4	2	5	5	7		
Timeshare	2	2	0	1	4	2	1	2	3	2		
Unlicensed Activity	6	2	1	2	4	6	5	4	5	3		
Residential Service Company	8	2	8	10	1	5	5	5	11	17		
No Jurisdiction	37	20	21	23	21	19	23	13	18	28		
Application Investigation	21	6	3	7	25	8	16	15	35	25		
MCD Inquiry	23	22	37	16	6	20	16	8	37	22		
Other	3	1	0	3	5	0	2	1	2	1		
Closed During Month	179	176	180	135	197	141	205	169	222	192		
Complaint Withdrawn	2	9	5	5	1	3	6	0	5	5		
Cease & Desist Issued	1	0	0	2	6	0	4	4	5	3		
Disciplinary Action	49	33	26	22	33	26	38	48	48	39		
Failure to Go Forward	14	16	12	6	14	16	11	10	11	9		
Insufficient Evidence	27	13	32	23	48	17	21	40	28	32		
Matter Settled	6	9	8	21	20	8	12	8	13	10		
No Jurisdiction	21	31	25	23	26	22	37	23	32	25		
No Violation	3	6	9	11	17	15	22	22	17	18		
Application Investigation	17	42	24	8	16	15	27	3	15	22		
MCD Inquiries	10	5	21	7	10	14	15	7	35	23		
Other	29	12	18	7	6	5	12	4	13	6		
Open at Beginning of Month								898	858	846		
Received During Month								129	209	173		
Closed During Month								169	222	192		
Open at End of Month								858	845	827		
Received During Fiscal Year								1183	1392	1565		
Closed During Fiscal Year								1382	1604	1795		

Standards & Enforcement Services Division - TREC: E2 Report

Open Cases Aging Report

as of 6/11/2011



Information Technology Services Division

Electronic Information Outlet Statistics

As of June 2011

World Wide Web	Latest Fiscal Quarter	Prior Yr Fiscal Quarter	Total Fiscal YTD	Total Prior Fiscal YTD
Total Pages Viewed	9,421,813	12,314,206	27,105,176	27,451,433

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

Online Transactions	Total Latest Fiscal Quarter	Online Latest Fiscal Quarter	Online Percent	Fiscal YTD Online Percent	Prior Fiscal YTD Online Percent
Applications (Performance Measure: 70%)	2683	1046	39.0%	29.8%	80.3%
Broker Application	408	134	32.8%	27.2%	82.3%
Salesperson Application	2188	896	41.0%	31.7%	91.1%
Corporate Application	87	16	18.4%	18.1%	17.5%
LLC Applications	198	23	11.6%	11.9%	
Renewals (Performance Measure 80%)	19174	16144	84.2%	76.7%	88.1%
Broker Renewals	4790	3741	78.1%	74.5%	88.2%
Salesperson Renewal	12781	11209	87.7%	78.8%	91.0%
Corporate Renewals	532	438	82.3%	76.0%	90.6%
Limited Liability Company Renewals	414	342	82.6%	77.4%	92.9%
Professional Inspector Renewals	416	258	62.0%	46.7%	24.7%
Real Estate Inspector Renewals	13	9	69.2%	39.0%	24.4%
Apprentice Inspector Renewals	7	3	42.9%	50.0%	10.0%
Easement ROW Business Renewals	17	10	58.8%	56.0%	5.6%
Easement ROW Individual Renewals	204	134	65.7%	68.0%	18.0%

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

**June 2011
THRU 10TH MONTH OF FISCAL YEAR 2011**

STRATEGIES	FY 2011 APPROPRIATION*	5% BUDGET REDUCTION	2.5% BUDGET REDUCTION	HB 4 OFFSET	REVISED BUDGET	10/12 ANNUAL APPROPRIATION	TEN MONTHS EXPENDITURES AND A/P	\$ VARIANCE OVER(-) OR UNDER**	% VARIANCE OVER(-) OR UNDER	ENCUMBRANCES
Licensing	\$ 3,427,902.61	\$ (363,238.00)	\$ (98,830.00)	\$ 198,246.00	\$ 3,164,080.61	\$ 2,636,733.84	\$ 2,050,264.37	\$ 586,469.47	22.24%	\$ 182,516.05
Enforcement	1,778,291.77	(73,036.00)	(31,323.00)	32,049.00	1,705,981.77	1,421,651.48	1,367,212.10	54,439.37	3.83%	49,111.26
Communication/Information	863,884.00	(88,018.00)	(17,085.00)	17,099.00	775,880.00	646,566.67	626,813.28	19,753.39	3.06%	12,586.06
Indirect Administration	1,630,951.70	(73,892.00)	(34,170.00)	51,782.00	1,574,671.70	1,312,226.42	1,086,475.30	225,751.12	17.20%	170,179.96
TOTAL	\$ <u>7,701,030.08</u>	\$ <u>(598,184.00)</u>	\$ <u>(181,408.00)</u>	\$ <u>299,176.00</u>	\$ <u>7,220,614.08</u>	\$ <u>6,017,178.40</u>	\$ <u>5,130,765.05</u>	\$ <u>886,413.35</u>	14.73%	\$ <u>414,393.33</u>

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

In the Licensing strategy, subscription fees in the amount of \$246,239 have been collected and remitted to the Texas Online vendor

In the Licensing strategy, FBI criminal history background check fees in the amount of \$904,788.50 have been collected and accrued to pay 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, office equipment leases, or other contractual obligations. Encumbrances are not included in the "Ten Months Expenditures and A/P" column.

Staff Services Division

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

June 2011

Purchase Date	Par Value	Purchase Price	Beginning Market Value	Additions Changes	Ending Market Value	Accrued Interest	Description	Maturity Date
05/24/2005	300,000.00	318,421.88	303,093.75	(1,359.45)	301,734.30	5,625.00	U.S. T-Notes, 5.00%	08/15/2011
02/28/2007	100,000.00	99,750.00	102,187.50	(359.40)	101,828.10	375.00	U.S. T-Notes, 4.50%	11/30/2011
08/29/2007	200,000.00	205,000.00	206,625.00	(750.00)	205,875.00	3,656.25	U.S. T-Notes, 4.875%	02/15/2012
02/20/2009	200,000.00	222,000.00	209,000.00	(750.00)	208,250.00	791.67	U.S. T-Notes, 4.750%	05/31/2012
12/06/2007	100,000.00	104,750.00	104,968.75	(374.95)	104,593.80	1,640.63	U.S. T-Notes, 4.375%	08/15/2012
05/27/2008	100,000.00	101,062.50	104,593.75	(257.85)	104,335.90	281.25	U.S. T-Notes, 3.375%	11/30/2012
02/20/2009	200,000.00	219,250.00	211,937.50	(718.70)	211,218.80	2,906.25	U.S. T-Notes, 3.875%	02/15/2013
04/28/2010	200,000.00	217,625.00	216,437.50	(593.70)	215,843.80	3,187.50	U.S. T-Notes, 4.25%	08/15/2013
08/31/2010	200,000.00	221,375.00	217,875.00	(656.20)	217,218.80	3,000.00	U.S. T-Notes, 4.00%	02/15/2014
08/31/2010	100,000.00	112,406.25	110,687.50	(171.90)	110,515.60	1,593.75	U.S. T-Notes, 4.25%	08/15/2014
Totals	\$ 1,700,000.00	\$ 1,821,640.63	\$ 1,787,406.25	\$ (5,992.15)	\$ 1,781,414.10	\$ 23,057.30		

	Current Month	Cumulative Totals	
Receipts:			
License's Remittances to Recovery Fund	\$ 22,700.00	\$ 6,415,630.08	
Interest Realized	485.14	6,055,123.51	
Repayments to Recovery Fund (Principal and Interest)	1,145.91	1,122,204.99	
Administrative Penalties	11,084.00	877,395.82	
Total Received	\$ 35,415.05	\$ 14,470,354.40	
Disbursements:			
Investments Purchased (Offset by Matured Security)	\$ 0.00	1,821,640.63	
Accrued Interest Purchased	0.00	0.00	
Payments from Recovery Fund	245,322.27	12,088,141.74	
Rider Disbursements	0.44	14,547.33	
Total Disbursed	\$ 245,322.71	\$ 13,924,329.70	
Totals	(209,907.66)	546,024.70 *	
	<small>(Current Month)</small>		
Reserved for Investment		0.00	
Reserved for Potential Payments Within 90 Days		(1,133,345.00)	
Balance		\$ (587,320.30)	

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 \$13,426.00 which was in the Trust & Suspense fund pending transfer plus \$485.14 accrued depository interest.

Staff Services Division

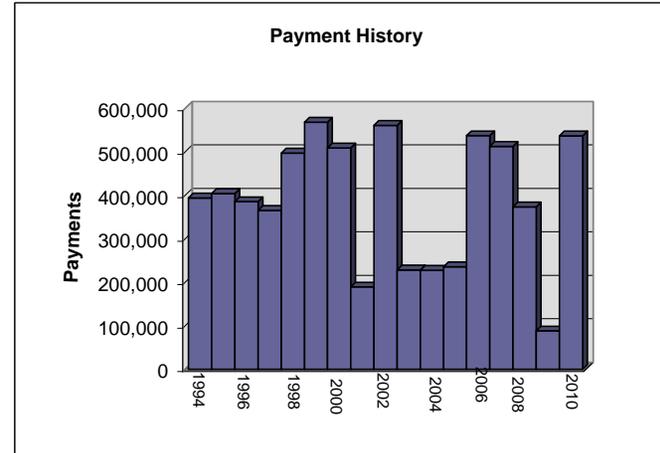
Real Estate Recovery Trust Account No. 971 Investments Payments and Repayments

June 2011

Month-Year	Payment Total	Repayment Total	Admin Penalties Total	Rider Disbursements	Payments FY2011-To-Date	Number of Payments
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	0.00	4,158.33	0.00	35,610.61	1
October 2010	0.00	3,609.23	4,878.33	0.00	0.00	0
November 2010	0.00	(1,243.65)	6,008.33	0.00	0.00	0
December 2010	86,374.69	2,193.87	2,283.34	0.00	86,374.69	2
January 2011	100,000.00	1,087.59	2,900.00	0.00	100,000.00	2
February 2011	132,678.68	1,207.12	3,616.00	0.00	132,678.68	3
March 2011	0.00	1,405.08	5,500.00	358.70	0.00	0
April 2011	37,066.15	4,635.64	3,942.41	0.00	37,066.15	2
May 2011	100,000.00	1,096.01	5,083.41	255.20	100,000.00	1
June 2011	245,322.27	1,145.91	11,084.00	0.44	245,322.27	3
	781,364.21	19,106.73	160,859.19	707.44	737,052.40	14

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
Total	647	\$11,351,089.34

Potential Payments*
Next 3 Months **1,133,345.00**



*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

June 2011

	Monthly Activity			Payment History		
	Beginning Balance	Current Month	Cumulative Totals	Fiscal Year	Number of Payments	Total Payments
Beginning Balance	\$ 617,635.22		\$ 617,635.22	1991	2	\$ 4,309.26
Receipts:				1992	0	0.00
Licensees' Remittances to Recovery Fund		\$ 2,690.00		1993	2	15,000.00
Interest Realized		360.25		1994	5	31,473.40
Repayments		668.09		1995	4	25,668.83
Administrative Penalties		0.00		1996	2	7,500.00
Total Received in Current Month		<u>3,718.34</u>	\$ 3,718.34	1997	1	7,500.00
Disbursements:				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
Total Disbursed in Current Month		<u>0.00</u>	\$ 0.00	2002	2	15,000.00
Total			\$ 621,353.56	2003	1	7,500.00
Reserved for Payment within 90 Days			(37,500.00)	2004	4	32,523.96
Unobligated Fund Balance			\$ <u>583,853.56</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
				Total		\$ 348,584.95

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

Karen Alexander

Karen Alexander, Investment Officer

Barbara C Kolb

Barbara Kolb, Alternate Investment Officer

*Reconciled balance includes accrued revenue of \$2,895.25 which consists of fees in the Trust & Suspense fund pending transfer & accrued interest.

**Agenda Item 8:**

Discussion and possible action to adopt amendments to 22 TAC Chapter 535, Subchapter Q, §535.191 regarding Schedule of Administrative Penalties

SUMMARY

Adopts amendments to §535.191 regarding Schedule of Administrative Penalties without changes to the proposed text as published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3257). Section 535.191 is amended to add additional provisions that apply to the schedule and to move an existing provision that should more appropriately fit under a different range.

No comments were received on the rule as proposed.

**STAFF
RECOMMENDATION**

Adopt amendments as published in the *Texas Register*.

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.191 regarding Schedule of Administrative Penalties, as published in the May 27, 2011 issue of the *Texas Register*, with any non-substantive changes as staff may deem necessary or advisable for adoption.

§535.191. Schedule of Administrative Penalties**§535.191. Schedule of Administrative Penalties.**

(a) The commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1101 of the Act in addition to or instead of assessing the administrative penalties set forth in this section.

(b) (No change.)

(c) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of the Act and Rules:

- (1) §1101.552;
- (2) §1101.652(a)(8);
- (3) §1101.652(b)(23);
- (4) §1101.652(b)(29);
- (5) 22 TAC §535.91[~~(e)~~] **(d); and**
- (6) [~~22 TAC §535.144; and~~]
- [(7)] 22 TAC §535.154.**

(d) An administrative penalty range of \$500 - \$3,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

- (1) §1101.652(a) (4) - (7);
- (2) §1101.652(b)(1);
- (3) §1101.652(b)(7) - (8);
- (4) §1101.652(b)(12);
- (5) §1101.652(b)(14);
- (6) §1101.652(b)(22);
- (7) §1101.652(b)(28);
- (8) §1101.652(b)(30) - (31); **[and]**
- (9) §1101.654(a);
- (10) 22 TAC §535.2; and**
- (11) 22 TAC §535.144.**

(e)-(f) (No change.)

**Agenda Item 9:**

Discussion and possible action to adopt amendments to 22 TAC, Subchapter R, §535.219 regarding Schedule of Administrative Penalties

SUMMARY

Adopts §535.219, Schedule of Administrative Penalties, without changes to the text as proposed in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3258). The new rule establishes a penalty matrix for the assessment of administrative penalties for different violations of the statute and rules governing real estate inspectors. The matrix was drafted in accordance with Section 1102.403 of the Texas Occupations Code (relating to administrative penalties imposed against inspectors) and Subchapter O, Chapter 1101 (relating to administrative penalties assessed by the Commission). As such, the highest category of administrative penalties provides for a maximum penalty of \$5,000 per violation, and each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty. The rule was developed by the Texas Real Estate Inspector Committee's enforcement subcommittee and endorsed by the Committee.

TREC received twelve comments during the notice and comment period regarding the rule as proposed (including several commenters who expressed more than one basis for concern). Seven commenters, including a statewide inspector trade association, stated that the penalties outlined in the matrix are too high and/or unfair to inspectors, including two commenters who believed that assessing certain penalties on a "per violation" or "per day" basis is excessive. Three commenters objected to the matrix as establishing administrative penalties that are disproportionate to the inspector's fee and/or repair costs resulting from violations. Six commenters further objected the matrix because they believe it does not give the agency the discretion to impose no administrative penalty when appropriate. The Commission respectfully disagrees with these commenters, as Section 1101.702 of the Texas Occupations Code provides for administrative penalties of up to \$5,000 for any violation of Chapter 1102 or the agency rules relating to inspectors. Section 1101.702 further provides for the assessment of administrative penalties on a "per violation"/"per day" basis.

**SUMMARY con't**

Additionally, the “may be assessed” language makes clear that administrative penalties are not mandatory but rather are discretionary. Three commenters suggested that the penalty matrix will increase inspection costs for consumers. The Commission respectfully disagrees with this concern, as the matrix limits administrative penalties to no more than – and in most cases less than – those currently allowed by law. Only inspectors who do not comply with the law need to be concerned about the impact of administrative penalties on their businesses, and any such inspectors have likely already taken the \$5,000 maximum penalty into account in setting their fees. Five commenters, including another statewide trade association, objected to the matrix on the basis that it does not take into account the totality of the circumstances and what the inspector has done correctly. In fact, the Commission has long taken into account the totality of the circumstances, including the extent and seriousness of the violation(s), as required by Section 1101.702(b). Last, one commenter opposed the matrix because of a belief that disciplinary action is sufficient to deter violations. The Commission respectfully disagrees, as both methods have deterrent effects and are authorized by Chapter 1102.

**STAFF
RECOMMENDATION**

Adopt amendments as submitted by staff

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.219 regarding Schedule of Administrative Penalties, as published in the May 27, 2011 issue of the *Texas Register*, with any non-substantive changes as staff may deem necessary or advisable for adoption.

§535.219. Schedule of Administrative Penalties

(a) The commission may suspend or revoke a license or take other disciplinary action authorized by Chapter 1102 of the Texas Occupations Code in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration the criteria listed in §1101.702(b) of the Texas Occupations Code.

(c) An administrative penalty range of \$100-\$1,500 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.118;** *(failure to report change of address)*
- (2) §1102.364;** *(failure to notify consumers of recovery fund)*
- (3) 22 TAC §535.216(d);** *(failure to provide information requested for a renewal)*
- (4) 22 TAC §535.220(a)-(d);** *(standards of conduct violations)*
- (5) 22 TAC §535.221; and** *(advertising violations)*
- (6) 22 TAC §535.223;** *(form violations)*

(d) An administrative penalty range of \$500-\$3,000 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.301;** *(negligent or incompetent inspection)*
- (2) 22 TAC §535.222;** *(failure to provide a written inspection report w/ required info)*
- (3) 22 TAC §535.224(b)(1)-(3);** *(failure to provide info or make good on bad check)*
- (4) 22 TAC §535.226(d)-(e); and** *(failure to properly supervise sponsored inspector)*
- (5) 22 TAC §535.227-.233.** *Standards of Practice violations)*

(e) An administrative penalty of \$1,000-\$5,000 per violation per day may be assessed for violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.101;** *(unlicensed activity -- apprentice)*
- (2) §1102.102;** *(unlicensed activity – real estate inspector)*
- (3) §1102.103;** *(unlicensed activity – professional inspector)*
- (4) §1102.302;** *(agreement for specific report; dishonesty)*
- (5) §1102.303;** *(acting as inspector and undisclosed principal/broker or salesperson)*
- (6) §1102.304;** *(repairs on inspected property)*
- (7) 22 TAC §535.208(f);** *(procuring a license by fraud)*
- (8) 22 TAC §535.211;** *(failure to maintain insurance while license is active)*
- (9) 22 TAC §535.215;** *(inspecting while license is on inactive status)*
- (10) 22 TAC §535.220(e)(1),(3)-(7); and** *(inspecting under contingent arrangements, impermissible referral fees, repairs within 12 months)*
- (11) 22 TAC §535.224(b)(4)-(5).** *(failure to maintain insurance while license is active or notify commission of cancellation or nonrenewal)*

(f) The commission may assess an administrative penalty of up to two times that outlined under subsections (c), (d), and (e) of this section, subject to the maximum penalties authorized under §1101.702(a) of the Texas Occupations Code, if a person has a history of previous violations.

Zimbra

pat.holder@trec.state.tx.u

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TREC Penalty Matrix Survey Results

From :
Subject : TREC Penalty Matrix Survey Results
To :
Reply To :

Fri, Jun 17, 2011 08:26 AM

 1 attachment

The attached file is the TPREIA Survey results concerning the TREC Penalty Matrix. We wanted to share this with you. Response was good and comments excellent.

Best Regards,

Paul W. Roebuck, Sr.

Paul W. Roebuck, Sr. MTI, CPI, ACI

Founding President

FoundingPresident@TPREIA.com



Scan TPREIA QR with your phone.



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Junes Penalty Survey Results 2011.pdf

13 KB

Constant Contact Survey Results

Survey Name: June Matrix Penalty Survey
 Response Status: Partial & Completed
 Filter: None
 Jun 17, 2011 8:11:10 AM

1. Are you aware of the TREC's Penalty Matrix?

	Number of Response(s)	Response Ratio
Yes	119	70.4%
No	15	8.8%
No Responses	35	20.7%
Total	169	100%

27 Comment(s)

2. Have you reviewed TREC's Penalty Matrix?532.219 Schedule of Administrative Penalties

	Number of Response(s)	Response Ratio
Yes	90	53.2%
No	37	21.8%
Other	7	4.1%
No Responses	35	20.7%
Total	169	100%

3. How concerned are you with the Penalty Matrix?

	Number of Response(s)	Response Ratio
Very concerned	86	50.8%
Somewhat concerned	31	18.3%
Neutral	7	4.1%
Somewhat unconcerned	4	2.3%
Very unconcerned	6	3.5%
No Responses	35	20.7%
Total	169	100%

25 Comment(s)

4. How interested are you in following the approval or changes in the penalty matrix? Select all that apply.

	Number of Response(s)	Response Ratio
When it affects my business.	96	72.1%
When it affects my wallet.	78	58.6%
When it changes in any way.	81	60.9%
When actual meetings occur on this topic.	56	42.1%
When TPREA provides update information on this issue.	58	43.6%
Other	6	4.5%
Total	133	100%

7 Comment(s)

5. Which of the following factors would you like to see changed? Select all that apply.

	Number of Response(s)	Response Ratio
Make penalties fines reasonable and fair.	96	71.6%
Make penalty fines better fit the violation.	96	71.6%
Create a peer review board with hearings prior to a fine being assessed.	99	73.8%
Flexibility in the amounts of the penalty fines.	70	52.2%
Have a statute of limitations and a lower cap on the penalty fines.	101	75.3%
Have a letter of reprimand prior to issuing a fine amount.	98	73.1%
Allow a continued education class on violation matter instead of a fine.	95	70.8%
Limit fines or penalties to the cost of the inspection fee.	95	70.8%
Eliminate daily fines.	108	80.5%
Eliminate double fines.	109	81.3%
Make lines applicable only to the area of a complaint. Not the entire report.	112	83.5%
Eliminate fine if a correction of the violation is made by the Inspector.	96	71.6%
Make a peer review board that is rotating and not made up of IAC Members.	86	64.1%
Inspectors should not receive fines based on a sellers complaint.	101	75.3%
Other	9	6.7%
Total	134	100%

18 Comment(s)

6. What do you think would be a justified cause for the TREC to impose a fine on an Inspector? Select all that applies.

	Number of Response(s)	Response Ratio
Not reporting on a required TREC Standard of Practice item.	83	62.4%
Not using the required TREC report form.	92	68.1%
Performing inspections when not having an active TREC Inspectors License.	123	92.4%
Not maintaining the required E&O insurance while license is active or notify	90	67.6%
Not providing the client a written report within 3-days of the inspection.	77	57.8%
Inspector not performing an inspection based on the TREC SoP.	92	69.1%
Failure to report a change of address.	43	32.3%
Failure to notify consumer of recovery fund.	33	24.8%
Failure to provide information requested for a renewal license.	52	39.0%
Violations of standards of conduct.	93	69.9%
Advertising violations.	54	40.6%
Negligent or incompetent inspection.	106	79.6%
Failure to provide a written inspection report w/required information.	84	63.1%
Failure to provide information or make good on a bad check.	61	45.8%
Failure to provide properly supervise sponsored inspector.	71	53.3%
Standard of practice violations.	86	64.6%
Agreement for specific report, dishonesty.	91	68.4%
Making repairs on property that you have inspected.	92	69.1%
Procuring an Inspectors license by fraud.	114	85.7%
Inspecting under contingent arrangement, impermissible referral fees, repairs	94	70.6%
Other	9	6.7%
Total	133	100%

16 Comment(s)

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pat.holder@trec.state.tx.u

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FW: Penalty matrix

From : Loretta DeHay <loretta.dehay@trec.state.tx.us>
Subject : FW: Penalty matrix
To : devon bijansky <devon.bijansky@trec.state.tx.us>

Thu, May 26, 2011 01:16 PM

Loretta DeHay
General Counsel and Deputy Administrator
Texas Real Estate Commission
512.465.3966

-----Original Message-----

From: _____
Sent: Thursday, May 26, 2011 12:51 PM
To: loretta.dehay@trec.state.tx.us
Subject: Penalty matrix

I am opposed to the implementation of this matrix as I feel the penalties are disproportioned to the violations. Since we now are forced to carry E&O insurance the consumer has an avenue of restitution. The establishment of a matrix solution should be to determine education needs of the inspectors and not disciplinary. Your agency is systematically assuming an adversarial role against anyone licensed in this State. Consumer protection is necessary but this is to extreme.

Luis Alvarez
License #4939

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pat.holder@trec.state.tx.us

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Penalty Matrix

From :

Thu, May 19, 2011 06:19 PM

Subject : Penalty Matrix**To :** loretta dehay <loretta.dehay@trec.state.tx.us>, devon bijansky
<devon.bijansky@trec.state.tx.us>**Cc :**

As a working Professional Inspector I am offended by the proposed penalty matrix the Texas Real Estate Commission is considering to be implemented for licensed Real Estate Inspectors in Texas.

In proportion to any income which might be realized by an inspector, the proposed penalties are onerous. It is absurd to think that not only is an inspector potentially in an adversarial position with any client which might decide to lodge a complaint, warranted or not, but that the agency overseeing the inspector will be an adversary also.

I would urge the Texas Real Estate Commission to review the recommendations as put forth by TAREI concerning the penalty matrix, and to support and nurture the inspection industry in the state.

--

Kenneth Pitts
TK Environmental Services, LLC
5603 N CR 1600
Shallowater, TX 79363

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pat.holder@trec.state.tx.u

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(22 TAC 535.191 and 22 TAC 535.219)

From :

Thu, May 19, 2011 10:38 AM

Subject : (22 TAC 535.191 and 22 TAC 535.219)**To :** devon bijansky <devon.bijansky@trec.state.tx.us>

This so-called penalty matrix is a direct attack on what is left of the real estate inspection profession. Outrageous financial penalties, combined with nitpicking details, with no concern for justice or reality, provide no benefit to consumers and serious harm to inspectors. Stop meddling with a system that works.

Stephen Ruback
832-489-1071
Professional Real Estate Inspector
License #6030
Helping people avoid UGLY surprises

RICH Club member 8758
Real Estate Inspection Instructor

Also available:

Home Energy Inspections

Find out how you can save \$\$\$ on your energy costs
and what you can do first for your best value.

Zimbra

pat.holder@trec.state.tx.u

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Penalty Matrix

From :

Thu, May 19, 2011 06:52 AM

Subject : Penalty Matrix**To :** devon bijansky <devon.bijansky@trec.state.tx.us>, loretta dehay
<loretta.dehay@trec.state.tx.us>**Cc :**

To TREC staff,

The following in bold, is a suggested revision to the penalty matrix, for which I firmly believe should happen, if TREC is going to have this PM established for a tool for penalizing Professional Real Estate Inspectors. I am not a member of TAREI, but I do hold a common belief along with TAREI that the current verbiage is unfair and skewed toward Inspectors. I have worked in residential and commercial construction for over 30 years. There have been many changes with codes, construction methods, and the overall perceived view of the construction industry not only from the contractor side, but by the general public. We as Professional Inspectors are held to a higher standard, not just because of our expertise in construction and methods, but because we hold and are expected to have higher moral and ethical standards. This I believe to be the common thread for all Professional Inspectors, and I am greatly appreciative of having the opportunity to comment on this proposed preliminary draft. I have held my Professional Real Estate Inspectors license since November of 2004, and work very diligently not just through CEU's, but by keeping up with the latest standards and construction methods. I feel privileged to actually be working as a Project Superintendent in the construction industry, so I am not one whose background is of another field, and I am proud to be able to make my small contribution to our industry. I ask you to use discernment and best judgment when considering what you are proposing, and listen fairly to all that have comments about this subject. I appreciate your efforts and thank you for this opportunity to comment.

Michael M. Digel
Professional Real Estate Inspector
Inside N' Out
TREC #7729

The lower limit for the range of fines in the current version of the proposed PM is something other than \$0.00. **By Rule, TREC staff should have it clearly stated in the PM that there can be, at the discretion of TREC staff or Commission, no disciplinary taken and any range of fines implemented from \$0 to the maximum allowable.**

The upper limit of the range of fines is onerous for first time violators. It is the consensus, by everyone, that there is not one solitary Inspector who will discover every defect in a home, much less every defect in every home inspected. **By Rule, the upper limit of the PM range of fines should be reduced by 90% of the current proposed limits. Repeat offenders can be fined by multiples of the maximum fine range.**

The range of fines, relative to the average inspection fee, is onerous. The Real Estate Sales Community (Brokers & Agents) enjoy a much higher per-transaction income, yet their range of fines, when compared to that of the proposed PM for Inspectors, is skewed. **By Rule, the range of fines, relative to a per-transaction income, should be adjusted to be consistent with that of Brokers and Agents. (I.e \$6,000.00 commission versus a \$300.00 inspection fee = a 20 to 1 ratio) A 90% reduction in the current proposed limit of fines for Inspectors is more than appropriate.**

The performance of the Inspector, his/her value to the consumer has not been considered with the current proposed PM. For example, as the result of a Home Inspection, the Inspector discovers and reports deficiencies, comments, and suggests further inspections that result in the discovery of \$200,000.00 in defects in the home. The Inspector's client moves forward with the purchase of the house. After purchasing the house, the Inspector's client decides that purchasing the house wasn't such a smart idea after all. This homebuyer then files a complaint that the Inspector 'missed' a leaking dishwasher, missing insulation, and a section of decayed/rotted wood (total cost \$2,000). The value of the defects discovered by the Inspector exceeded the 'missed' items by a ratio of 1000 to 1. **By Rule, the range of fines in the PM should be governed by the value of the Inspection Report findings relative to the value of the items 'missed' or unreported by the Inspector. For example, if the value of the discovered and reported deficiencies exceeds three (3) times the value of the verified unreported deficiencies complained of by the Inspector's client or any other complainant, there are to be no fines or other punitive measures taken by TREC against the Inspector. If the value of the Inspection findings exceeds that of unreported/'missed' items by 2 to 1, the maximum allowable fine would be 67% of the maximum PM fine schedule.**

The monies collected as a result of the fines imposed on Inspectors, Brokers, and Agents is funneled into the bank accounts controlled by

TREC and/or the Texas General Fund.

The consumer, the complainant, receives none of the monies for their efforts **By Rule, any fines collected as a result of the current TREC disciplinary system or that of the proposed PM, should be re-directed to the consumer/complainant. In the alternative, by Rule, TREC should be required to post on the TREC website and any related literature or electronic transmissions, that clearly states:**

Any Fines/monies collected pursuant to Disciplinary Action taken by TREC as a result of Consumer Complaints against Inspectors, is paid directly to TREC. The monies are then utilized at the discretion of TREC or the Texas General Fund. You, the complainant, will receive no monies as the result of your complaint.

Thank you,
Mike Digel
T.I. Proj. Superintendent
D.E. Harvey Builders
Weatherford
2000 St. James Place
Houston, Texas 77056

Zimbra

pat.holder@trec.state.tx.u

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Request for comments regarding the proposed penalty matrix for Inspectors

From :

Wed, May 18, 2011 09:33 PM

Subject : Request for comments regarding the proposed penalty matrix for Inspectors**To :** loretta dehay <loretta.dehay@trec.state.tx.us>, devon bijansky
<devon.bijansky@trec.state.tx.us>**Cc :**

Re: New proposed penalty matrix and Texas Register TRD-201101725 & TRD-201101726

I would like to provide the following opinions and comments regarding the subject above. I am completely opposed to the current forced, and rigid, penalty matrix as it applies to the licensed Inspectors in Texas. The following points are my reasons for this disagreement.

1. The current SOP is in a state of disarray, is excessively high level in nature without specifics for guidance, and lacks sufficient detail to make many decisions without the benefit of fact to deem an Inspector in violation of their duties. This leaves to many instances that penalties can be assessed based solely on a person(s) opinions rather than fact and specific written requirements. This can also lead to a disparity in the leveling of penalties depending on who at TREC handles which incident.
2. There is currently nothing within the laws that now prevents TREC from probating, suspending, or revoking an Inspectors license regardless of what the infraction is. TREC may now even issue letters of warning and reprimand that can be placed in an Inspector's records. All of these are considerably more damaging to an Inspector than a dollar amount assessed. There is no reason for a penalty matrix as the current system functions now without issues.
3. The penalty dollar amounts are extreme and do not fit any of the infractions that can easily be compiled with regards to just one inspection. The dollar amount of the penalties are well out of line with any current inspection fee pricing scheme that is currently accepted by consumers. The penalty amounts are also well out of line with the actual potential infractions. For example an Inspector that fails to report one missing window screen can be penalized from \$500 - \$3000 for a screen that costs as little as \$50. Under those same penalty conditions, and the same inspection, if the Inspector misses one 24" X 12" piece of vertical insulation another penalty of \$500 - \$3000 can be assessed for a piece of insulation costing less than \$20. As a minimum that Inspector will be forced to pay a fine of \$1000 - \$6000 for less than \$100 of missed items on an inspection they might only have charged \$250 for.
4. The penalties are mandated regardless of any other extenuating circumstances, and the penalties do not have a \$0 amount as a minimum as a safeguard against unfairly penalizing an Inspector. Using the previous inspection example (item 3 above) if the Inspector noted tens of thousands of dollars in issues on the inspection then there is **NO** leeway under the penalty matrix for a simple slap of the hand. Instead if TREC performs their job without discrimination, and evenly for all Inspectors, then that Inspector will effectively be forced out of business for not noting less than \$100 worth of trivial items.
5. The penalty matrix is no substitute for properly enforcing current rules and laws! As noted in item number 2 above TREC has at its discretion the power to effectively shut down an Inspector who is violating the rules and laws. A penalty matrix does nothing but severely, and unfairly, punishing a good, honest and ethical Inspector. The dishonest, unethical Inspectors will continue to operate whether they are caught and penalized or not! A severe penalty matrix is not an answer or solution to any current problems with Inspectors. Minor problems can be better handled with letters of reprimand and/or potentially requiring additional training. Continual gross violations should be handled with revocation of licenses as that is the sign of a dishonest and unethical Inspector!
6. The penalty matrix has no provisions for refusing review and action by TREC in the event the incident is the result of a complaint by, or related to, a consumer's complaint or inspection. Texas Inspectors are already forced to maintain Errors & Omissions insurance which covers many, if not all, of the violations in the penalty matrix. A consumer can file an E&O claim and TREC can impose a penalty based on this matrix. No E&O policy that I am aware of will pay for administrative fines levied by the licensing agency. The purpose of the forced E&O was touted as protection for the consumer. A penalty matrix only severely punishes the Inspector for no gain to the consumer except to fill State coffers. Every E&O claim already places the Inspector in danger of losing their license if they lose their E&O, expend the E&O limits, and are unable to obtain additional E&O coverage as a result.
7. The penalty matrix will do nothing to help protect consumers. It will in fact have a complete opposite effect. The potential is always there for inspection fees to increase as a result of the added liability potential. More realistically what will happen are Inspectors no longer providing exceptional service and only providing the bare minimums required by the rules and laws. Inspection reports will grow with the huge number of required disclaimers. Inspection agreements will change and be more carefully crafted to the consumers detriment. Since the penalty matrix only penalizes the Inspector for not calling out items then I would not be surprised to see more items called out regardless of their validity or not.
8. The penalty matrix has apparently been crafted and potentially advocated by the Inspector Advisory Committee (IAC). This is

the same group of Inspectors who are now at this very moment violating the rules and laws governing Inspectors as well as other State licensing laws. That in itself makes this penalty matrix a farce and subject to question if it is exercised.

I would certainly hope that TREC will consider removing the Inspectors from this penalty matrix at least until such time as it can be properly crafted to serve a useful purpose if needed. This penalty matrix, with regards to the Inspector community, **IS NOT** a feather in TREC's cap. It is the complete opposite and only opens up TREC to further scrutiny if the occasion arises. I am 100% pro consumer protection, and 100% for eliminating dishonest and unethical Inspectors. However this penalty matrix is not even a realistic or viable part of that goal!

Sincerely

Emmanuel J. Scanlan
PS Inspection & Property Services LLC

TREC License # 7593
International Code Council, Residential Combination Inspector #5247015-R5 (Electrical, Mechanical, Plumbing and Building)
Certified Infrared Thermographer (ASNT-TC1A Standards)
Texas Department Of Insurance, VIP Inspector # 08507061016
HUD/FHA/VA Fee Inspector #M801
Hayman Residential Engineering Services, Field Technician
CMC Energy - Certified Energy Auditor

Knowledge is power, but sharing knowledge brings peace!!

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pat.holder@trec.state.tx.us

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Emailing: Penalty Matrix argumentV3.doc

From :
Subject : Emailing: Penalty Matrix argumentV3.doc
To : devon bijansky <devon.bijansky@trec.state.tx.us>

Thu, Jun 23, 2011 11:47 PM

 1 attachment

Devon,

Would you please see that the IAC receives a copy of this comment/assessment for the proposed Penalty Matrix?

Thanks Devon,

Mark

The message is ready to be sent with the following file or link attachments:
Penalty Matrix argumentV3.doc

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

**Penalty Matrix argumentV3.doc**

35 KB

The TAREI Solution

What Texas Consumers and Texas Inspectors deserve is an Enforcement Division that provides protections for thorough Inspectors and focuses on poorly performing Inspectors.

Regardless of whether a schedule of fines (the PM) is constructed and implemented, a Mitigation Formula should immediately be considered to upgrade and professionalize TREC's dealings with Inspectors and to better protect the Consumer.

If the Inspector Advisory Committee and the Commission insist on moving forward with a Penalty Matrix...

What Texas Consumers and Texas Inspectors deserve is a Penalty Matrix that rewards thorough Inspectors and penalizes poorly performing Inspectors.

Step 1. Create a schedule of fines that has a floor of 'No Action', \$ 00.00 and a maximum dollar amount of \$ XX.00

Step 2. Create a Mitigation Formula that does a comparative cost analysis. This is where the Value of the Inspection and the Value to the Inspector's Client is compared to the Loss to the Client.

Step 3. When a consumer complaint is received by TREC Enforcement, TREC Enforcement determines if the complaint is valid and accurate. In addition, TREC determines whether the Consumer exercised proper 'Due-Diligence' subsequent to the Inspection.

Step 4. If the complaint is valid and the Consumer exercised reasonable 'Due-Diligence', TREC assesses the potential fine of \$XX.00 amount per violation complained of by the consumer.

Step 5. The Consumer is directed to obtain cost estimates to repair or replace the undisclosed deficiencies. In addition, the Consumer is directed to obtain cost estimates to repair or replace ALL '**Discovered and Reported**' Deficiencies. (In the alternative, TREC obtains these cost estimates)

Step 6. TREC compares the cost estimates of undisclosed and/or unreported deficiencies to the cost estimates of '**Discovered and Reported**' deficiencies.

Step 7. TREC compares the cost estimates to known industry cost estimates (to determine if the cost estimates are reasonable).

Step 8. TREC, utilizing the Mitigation Formula, determines the dollar amount, if any, of the fines/penalties assessed to the Inspector.

Step 9. TREC apprises the Consumer and Inspector of the \$ amount of the fine assessed by the PM, if any.

Step 10. If there is a \$ Penalty assessed/attached to the Inspector, after appropriate appeals are exhausted, Inspector pays the \$ Penalty to TREC, who then forwards to the Consumer, 'X' percentage of the total fine assessed.

**Example Penalty Matrix:
(Schedule of fines with integrated Mitigation Formula)**

Inspector fails to discover and/or report 5 deficiencies.

1. Attic lighting and control switch for mechanical equipment illumination.

Cost \$100.00

2. Rusted and leaking dishwasher.

Cost \$600.00

3. Water damaged wood flooring.

Cost \$1000.00

4. Rotted Fascia

Cost \$250.00

5. Broken bathtub stopper.

Cost \$50.00

Total Cost of undiscovered and/or unreported deficiencies: \$2000.00

Mitigation Items; Inspector discovers and reports the following items...

1. Hail damaged roof shingles.

Cost \$10,000

2. Sub-slab plumbing leak (discovered via recommended hydrostatic test)

Cost \$12,000

3. Faulty Central Heating unit.

Cost \$2000.00

4. Aluminum wiring with improper receptacle, light switch and fixture connections.

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pat.holder@trec.state.tx.u

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TREC Proposed Penalty Matrix

From : Fri, May 20, 2011 06:30 AM
Subject : TREC Proposed Penalty Matrix
To : devon bijansky <devon.bijansky@trec.state.tx.us>
Cc :

After reviewing the proposed Penalty Matrix for inspectors, I don't know whether to laugh or cry. I understand the need and desire for clarity, but the author(s) of the proposed penalty amounts is either extremely out of touch with the average inspector's ethical standards and fee schedule or just trying to see if we are paying attention. Most inspectors could easily be put out of business by even the lowest penalty amount, if assessed for each violation per day. And most inspectors try to comply with all of the administrative rules and our Standards of Practice while doing the best job possible for our clients, and any mistakes made will most likely be honest mistakes. These new proposed penalties seem to be based on some outrageous assumptions that inspectors try to get by with breaking rules and need to be taught a lesson or put out of business when a 'rule' is broken, or that we all have thousands of dollars to spare. If we forget to include our license number in email signatures (how much \$ per violation?) or check the wrong box on a report we shouldn't be viewed as a criminal.

We are expected to abide by ethical standards in this industry, and we do. We spend time in hot attics, crawl under houses, walk on roofs, check dangerous electrical equipment, lie on floors, and any number of other things for our clients; all while juggling the buyer's questions/expectations, the owner's property, the realtor, and trying to gather information from any number of sources/documents. This profession isn't for those trying to bypass rules or shortcut. No inspector can find every deficiency in every home. I think inspectors deserve more respect and consideration in these proposed rules. So why the high minimum penalty? Why not start at \$0 for an honest mistake. Why not have a limit to the 'per violation' or 'per day'. I don't think discouraging an honest mistake by putting someone out of business, or even making an example of someone, is good policy.

Steve Jolly
Texas Professional Inspections
TREC #7002

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pat.holder@trec.state.tx.u

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Matrix

From :

Thu, May 19, 2011 02:15 PM

Subject : Matrix**To :** devon bijansky <devon.bijansky@trec.state.tx.us>**Cc :**

Please evaluate the recommendations from TARIE for the Matrix for an already over regulated and burdened profession for the purpose of "making" money for TREC.

Thanks,

James Willyard

J.W.'s Inspection ServicTREC Profession 2413

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pat.holder@trec.state.tx.us

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Proposed 22 TAC 535.191 and 22 TAC 535.219

From :

Thu, May 19, 2011 09:36 AM

Subject : Proposed 22 TAC 535.191 and 22 TAC 535.219**To :** loretta dehay <loretta.dehay@trec.state.tx.us>, devon bijansky
<devon.bijansky@trec.state.tx.us>**Cc :**

Dear Devon Bijansky and Loretta DeHay,

I have reviewed the proposed penalty matrix and am inclined to agree with TAREI. TREC already has to authority to impose penalties as stated in text below.

I have been an instructor, teaching the Real Estate Inspector program since 2004. When I first started teaching, Inspectors had to have 188 hours of training, then it went to 448 total hours (These are hours without any experience). Then we went and required inspectors to have insurance, now were going to give outrageous fines.

We usually had around 20 students registered to take the classes, Now we are lucky to have 6 to 8 students registered in the classes. It seems that over the years, it is getting harder and harder to obtain a Professional Inspector License. I tell every body I run into (when the need arises) that they need to hire an inspector when the purchase a home or build one for that matter, because I highly believe every house should be inspected.

I have a Professional Inspector License which is currently on inactive status because I can not afford the insurance. Even before I went on inactive status, I only inspected new construction, because there are too many uncertainties with existing homes and I was afraid I might miss something and then I would be treated as if I did it on purpose. We are only human and we are going to make mistakes. If it is a repeat offender, then I say "Hammer Them".

Right now I am trying to decide weather I even want to keep my license. If the state keeps making changes, then I will let it go. I currently hold certifications with several state agencies, and I have never seen this many changes with any of them.

I hope you reconsider these changes. Thanks for your time.

The Penalty Matrix, has multiple flaws. **(TAREI Solutions are in bold)**

The lower limit for the range of fines in the current version of the proposed PM is something other than \$0.00. **By Rule, TREC staff should have it clearly stated in the PM that there can be, at the discretion of TREC staff or Commission, no disciplinary taken and any range of fines implemented from \$0 to the maximum allowable.**

The upper limit of the range of fines is onerous for first time violators. It is the consensus, by everyone, that there is not one solitary Inspector who will discover every defect in a home, much less every defect in every home inspected. **By Rule, the upper limit of the PM range of fines should be reduced by 90% of the current proposed limits. Repeat offenders can be fined by multiples of the maximum fine range.**

The range of fines, relative to the average inspection fee, is onerous. The Real Estate Sales Community (Brokers & Agents) enjoy a much higher per-transaction income, yet their range of fines, when compared to that of the proposed PM for Inspectors, is skewed. **By Rule, the range of fines, relative to a per-transaction income, should be adjusted to be consistent with that of Brokers and Agents. (Le \$6,000.00 commission versus a \$300.00 inspection fee = a 20 to 1 ratio) A 90% reduction in the current proposed limit of fines for Inspectors is more than appropriate.**

The performance of the Inspector, his/her value to the consumer has not been considered with the current proposed PM. For example, as the result of a Home Inspection, the Inspector discovers and reports deficiencies, comments, and suggests further inspections that result in the discovery of \$200,000.00 in defects in the home. The Inspector's client moves forward with the purchase of the house. After purchasing the house, the Inspector's client decides that purchasing the house wasn't such a smart idea after all. This homebuyer then files a complaint that the Inspector 'missed' a leaking dishwasher, missing insulation, and a section of decayed/rotted wood (total cost \$2,000). The value of the defects discovered by the Inspector exceeded the 'missed' items by a ratio of 1000 to 1. **By Rule, the range of fines in the PM should be governed by the value of the Inspection Report findings relative to the value of the items 'missed' or unreported by the Inspector. For example, if the value of the discovered and reported deficiencies exceeds three (3) times the value of the verified unreported deficiencies complained of by the Inspector's client or any other complainant, there are to be no fines or other punitive measures taken by TREC against the Inspector. If the value of the Inspection findings exceeds that of unreported/'missed' items by 2 to 1, the maximum allowable fine would be 67% of the maximum PM fine schedule.**

The monies collected as a result of the fines imposed on Inspectors, Brokers, and Agents is funneled into the bank accounts controlled by TREC and/or the Texas General Fund.

The consumer, the complainant, receives none of the monies for their efforts. **By Rule, any fines collected as a result of the current TREC disciplinary system or that of the proposed PM, should be re-directed to the consumer/complainant. In the alternative, by Rule, TREC should**

be required to post on the TREC website and any related literature or electronic transmissions, that clearly states:

Any Fines/monies collected pursuant to Disciplinary Action taken by TREC as a result of Consumer Complaints against Inspectors, is paid directly to TREC. The monies are then utilized at the discretion of TREC or the Texas General Fund. You, the complainant, will receive no monies as the result of your complaint.

William Gerber (Inactive # 7295)

"In GOD We Trust"

Zimbra

pat.holder@trec.state.tx.u

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Penalty Matrix

From : Robert L. Duncan Sr.

Wed, May 18, 2011 10:07 PM

Subject : Penalty Matrix**To :** loretta dehay <loretta.dehay@trec.state.tx.us>, devon bijansky
<devon.bijansky@trec.state.tx.us>**Cc :**

why the sudden rush to exterminate Real Estate Inspectors? This PM will surely cause Inspectors to discontinue service, (this Inspector included) , and drive up the cost of an inspection. You should be working with the Inspectors .not against us! With the economy in the mess it's in has reduced the inspections by 50% or more. The fines are not justified as proposed. I urge you to reconsider the proposal,and discontinue the bill.

Robert L. Duncan Sr, License #5970
Duncan Inspection Service
2045 FM 1784
Pleasanton, Texas 78064

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pat.holder@trec.state.tx.us

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Inspector Penalty Matrix

From : Kevin Weiss

Wed, May 18, 2011 05:57 PM

Subject : Inspector Penalty Matrix**To** : loretta dehay <loretta.dehay@trec.state.tx.us>, devon bijansky
<devon.bijansky@trec.state.tx.us>**Cc** :

I find the proposed penalty matrix to be a complete contradiction of the preliminary language of the promulgated introduction language of the standardized report. How can one reasonably tell clients that an inspection should not be considered a guarantee of no defects on one hand, while itemizing specific penalties for "missed items" on the other? Are there so many onerous complaints about inspector quality that such a structure is even needed?

If such a matrix must be put in place, I support the TAREI modifications fully. The proposed matrix is completely out of proportion to the typical inspection fees. It serves no one to artificially cause fees to go up to simply cover potential penalties.

Respectfully,

Kevin Weiss
TREC License # 7108
Professional Inspector / President
Absolute Inspections, LLC
972-463-0887

[w](#)

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

Discussion and possible action to adopt amendments to 22 TAC Chapter 537 as follows:

- a. §537.20 concerning Standard Contract Form TREC No. 9-9
- b. §537.28 concerning Standard Contract Form TREC No. 20-10
- c. §537.30 concerning Standard Contract Form TREC No. 23-11
- d. §537.31 concerning Standard Contract Form TREC No. 24-11
- e. §537.32 concerning Standard Contract Form TREC No. 25-8
- f. §537.37 concerning Standard Contract Form TREC No. 30-9

SUMMARY

Adopts amendments to 22 TAC §537.20 concerning Standard Contract Form TREC No. 9-9 Unimproved Contract; §537.28 concerning Standard Contract Form TREC No. 20-10, One to Four Family Residential Contract (Resale); §537.30 concerning Standard Contract Form TREC No. 23-11, New Home Contract (Incomplete Construction); §537.31 concerning Standard Contract Form TREC No. 24-11, New Home Contract (Completed Construction); §537.32 concerning Standard Contract Form TREC No. 25-8, Farm and Ranch Contract; and §537.37 concerning Standard Contract Form TREC No. 30-9, Residential Condominium Contract, without changes to the proposed text as published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3259). The difference between the contract forms as proposed and as finally adopted is that the Commission's address, phone number and website were changed on the forms.

The amendments propose to adopt on a permanent basis the elimination from the contracts of sub-paragraph 15B which requires a party to the contract to file suit for specific performance within 45 days of the closing date of the contract. This change was adopted on an emergency basis at the February meeting of the Texas Real Estate Commission effective March 1, 2011. The sub-paragraph may conflict with Section 16.070 of the Civil Practice and Remedies Code which precludes parties to a contract from agreeing to shorten the time period in which to file suit to less than 2 years. This



change was adopted on an emergency basis to prevent confusion and possible litigation regarding a potential conflict between a contract provision and an existing statutory provision. The amendments also correct typographical errors in paragraph 7 in both TREC No. 9-9, Unimproved Contract and TREC No. 24-11, New Home Contract (Completed Construction).

No comments were received on the rule as proposed.

**STAFF
RECOMMENDATION**

Adopt the amendments and forms adopted by reference as proposed in the May 27, 2011 issue of the *Texas Register* with a change to the Commission's mailing address, phone number and website.

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments and forms adopted by reference to 22 TAC §537.20 concerning Standard Contract Form TREC No. 9-9 Unimproved Contract; §537.28 concerning Standard Contract Form TREC No. 20-10, One to Four Family Residential Contract (Resale); §537.30 concerning Standard Contract Form TREC No. 23-11, New Home Contract (Incomplete Construction); §537.31 concerning Standard Contract Form TREC No. 24-11, New Home Contract (Completed Construction); §537.32 concerning Standard Contract Form TREC No. 25-8, Farm and Ranch Contract; and §537.37 concerning Standard Contract Form TREC No. 30-9, Residential Condominium Contract for adoption, as proposed in the May 27, 2011 issue of the *Texas Register*, with a change to the Commission's mailing address, phone number and website and with any non-substantive changes as staff may deem necessary or advisable.

Chapter 537, Professional Agreements and Standard Contracts

§537.20. *Standard Contract Form TREC No. 9-9 [~~9-7~~]*. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-9 [~~9-7~~] approved by the Texas Real Estate Commission in 2011 [~~2008~~] for use in the sale of unimproved property where intended use is for one to four family residences. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.28. *Standard Contract Form TREC No. 20-10 [~~20-8~~]*. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-10 [~~20-8~~] approved by the Texas Real Estate Commission in 2011 [~~2008~~] for use in the resale of residential real estate. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.30. *Standard Contract Form TREC No. 23-11 [~~23-9~~]*. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-11 [~~23-9~~] approved by the Texas Real Estate Commission in 2011 [~~2009~~] for use in the sale of a new home where construction is incomplete. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.31. *Standard Contract Form TREC No. 24-11 [~~24-9~~]*. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-11 [~~24-9~~] approved by the Texas Real Estate Commission in 2011 [~~2009~~] for use in the sale of a new home where construction is completed. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.32. *Standard Contract Form TREC No. 25-8 [~~25-6~~]*. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-8 [~~25-6~~] approved by the Texas Real Estate Commission in 2011 [~~2008~~] for use in the sale of a farm or ranch. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

§537.37. *Standard Contract Form TREC No. 30-9 [~~30-7~~]*. The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-9 [~~30-7~~] approved by the Texas Real Estate Commission in 2011 [~~2008~~] for use in the resale of a residential condominium unit. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.



UNIMPROVED PROPERTY CONTRACT

NOTICE: Not For Use For Condominium Transactions

1. PARTIES: The parties to this contract are _____ (Seller) and _____ (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: Lot _____, Block _____, _____ Addition, City of _____, County of _____, Texas, known as _____ (address/zip code), or as described on attached exhibit together with all rights, privileges and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships (the Property).

3. SALES PRICE:

- A. Cash portion of Sales Price payable by Buyer at closing \$ _____
B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) \$ _____
C. Sales Price (Sum of A and B) \$ _____

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

- [] A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of \$ _____ (excluding any loan funding fee or mortgage insurance premium).
(1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s) (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.
(2) Credit Approval: (Check one box only)
[] (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.
[] (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
[] B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
[] C. SELLER FINANCING: A 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 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 (i) defects, exceptions, or encumbrances to title; disclosed on the survey other than items 6A(1) through (7) above; or disclosed in the Commitment other than items 6A(1) through (8) above; (ii) any portion of the Property lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity:

Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

- E. TITLE NOTICES:
- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
 - (2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property is is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2 in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**
 - (3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
 - (4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(Address of Property)

- (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- (8) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property is is not located in a Texas Agricultural Development District. For additional information, contact the Texas Department of Agriculture.

7. PROPERTY CONDITION:

- A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.
NOTICE: Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.
- B. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)
- (1) Buyer accepts the Property in its present condition.
- (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____.(Do not insert general phrases, such as "subject to inspections," that do not identify specific repairs.)
- NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7B (1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.
- C. COMPLETION OF REPAIRS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs prior to the Closing Date. All required permits must be obtained, and repairs must be performed by persons who are licensed or otherwise permitted by law to provide such repairs. At Buyer's election, any transferable warranties received by Seller with respect to the repairs will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs.
- D. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.
- E. SELLER'S DISCLOSURES: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
- (1) any flooding of the Property;
 - (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
 - (3) any environmental hazards or conditions affecting the Property;
 - (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;

- (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
- (6) any threatened or endangered species or their habitat affecting the Property.

8. BROKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. CLOSING:

- A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
 - (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
 - (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
 - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
 - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
 - (5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s) and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

10. POSSESSION: Seller shall deliver to Buyer possession of the Property in its present or required condition upon closing and funding.

11. SPECIAL PROVISIONS: (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum or other form has been promulgated by TREC for mandatory use.)

12. SETTLEMENT AND OTHER EXPENSES:

- A. The following expenses must be paid at or prior to closing:
 - (1) Expenses payable by Seller (Seller's Expenses):
 - (a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.
 - (b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.
 - (2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with

endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

- B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

- A. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.
- B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property claimed by Seller results in Assessments for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

- 14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

- 15. DEFAULT:** 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.

- 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 disbursement of the earnest money.
- D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

To Buyer at:

To Seller at:

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- Third Party Financing Addendum for Credit Approval
- Seller Financing Addendum
- Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- Buyer's Temporary Residential Lease
- Seller's Temporary Residential Lease
- Addendum for Reservation of Oil, Gas and Other Minerals

- Addendum for "Back-Up" Contract
- Addendum for Coastal Area Property
- Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- Addendum for Sale of Other Property by Buyer
- Other (list): _____

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) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 9-9. This form replaces TREC NO. 9-7.

BROKER INFORMATION

Other Broker Firm _____ License No. _____

represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

Licensed Supervisor of Associate _____ Telephone _____

Associate _____ Telephone _____

Other Broker's Address _____ Facsimile _____

City _____ State _____ Zip _____

Associate Email Address _____

Listing Broker Firm _____ License No. _____

represents Seller and Buyer as an intermediary
 Seller only as Seller's agent

Licensed Supervisor of Listing Associate _____ Telephone _____

Listing Associate _____ Telephone _____

Listing Broker's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

Listing Associate's Email Address _____

Selling Associate _____ Telephone _____

Selling Associate's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

Selling Associate's Email Address _____

Listing Broker has agreed to pay Other Broker _____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.

 Seller or Listing Broker Date

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____

 Email Address

 Address Telephone (_____) _____

 City State Zip Facsimile: (_____) _____



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

(Address of Property)

allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
- (2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property is is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**
- (3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (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.
- (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.

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: 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.

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: _____

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):

- | | |
|---|--|
| <input type="checkbox"/> Third Party Financing Addendum for Credit Approval | <input type="checkbox"/> Addendum for "Back-Up" Contract |
| <input type="checkbox"/> Seller Financing Addendum | <input type="checkbox"/> Addendum for Coastal Area Property |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association | <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum |
| <input type="checkbox"/> Buyer's Temporary Residential Lease | <input type="checkbox"/> Seller's Temporary Residential Lease |
| <input type="checkbox"/> Loan Assumption Addendum | <input type="checkbox"/> Short Sale Addendum |
| <input type="checkbox"/> Addendum for Sale of Other Property by Buyer | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals | <input type="checkbox"/> Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law |
| <input type="checkbox"/> 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) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 20-10. This form replaces TREC NO. 20-9.

BROKER INFORMATION

Other Broker Firm _____ License No. _____
 represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

Listing Broker Firm _____ License No. _____
 represents Seller and Buyer as an intermediary
 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

 Address

Telephone (_____) _____

 City State Zip

Facsimile: (_____) _____



NEW HOME CONTRACT

(Incomplete Construction)

NOTICE: Not For Use For Condominium Transactions or Closings Prior to Completion of Construction

1. PARTIES: The parties to this contract are _____(Seller) and _____(Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: Lot _____, Block _____, Addition, City of _____, County of _____ Texas, known as _____(address/zip code), or as described on attached exhibit, together with: (i) improvements, fixtures and all other property described in the Construction Documents; and (ii) all rights, privileges and appurtenances thereto, including but not limited to: permits, easements, and cooperative and association memberships. All property sold by this contract is called the "Property".

3. SALES PRICE:

- A. Cash portion of Sales Price payable by Buyer at closing \$ _____
- B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) \$ _____
- C. Sales Price (Sum of A and B)..... \$ _____

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

- A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of \$ _____ (excluding any loan funding fee or mortgage insurance premium).
 - (1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s), (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.
 - (2) Credit Approval: (Check one box only)
 - (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.
 - (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
- B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
- C. SELLER FINANCING: A promissory note from Buyer to Seller of \$ _____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. EARNEST MONEY: Upon execution of this contract by all parties, Buyer shall deposit \$ _____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY AND SURVEY:

- A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
 - (1) Restrictive covenants common to the platted subdivision in which the Property is located.
 - (2) The standard printed exception for standby fees, taxes and assessments.
 - (3) Liens created as part of the financing described in Paragraph 4.
 - (4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
 - (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
 - (6) The standard printed exception as to marital rights.
 - (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
 - (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines,

encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made after the Substantial Completion Date by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s).

(Check one box only)

(1) At least _____ days prior to the Closing Date, Seller, at Seller's expense, shall provide a new survey to Buyer.

(2) At least _____ days prior to the Closing Date, Buyer, at Buyer's expense, shall obtain a new survey. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: _____.

Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property is is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

- (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

7. PROPERTY CONDITION:

- A. ACCESS AND INSPECTIONS: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections.
- B. CONSTRUCTION DOCUMENTS: Seller shall complete all improvements to the Property with due diligence in accordance with the Construction Documents. "Construction Documents" means the plans and specifications, the finish out schedules, any change orders, and any allowances related to the plans and specifications, finish out schedules, and change orders. The Construction Documents have been signed by the parties and are incorporated into this contract by reference.
- C. COST ADJUSTMENTS: All change orders must be in writing. Increase in costs resulting from change orders or items selected by Buyer which exceed the allowances specified in the Construction Documents will be paid by Buyer as follows: _____

A decrease in costs resulting from change orders and unused allowances will reduce the Sales Price, with proportionate adjustments to the amounts in Paragraphs 3A and 3B as required by lender.

- D. BUYER'S SELECTIONS: If the Construction Documents permit selections by Buyer, Buyer's selections will conform to Seller's normal standards as set out in the Construction Documents or will not, in Seller's judgment, adversely affect the marketability of the Property. Buyer will make required selections within _____ days after notice from Seller.
- E. COMPLETION: Seller must commence construction no later than _____ days after the effective date of this contract. The improvements will be substantially completed in accordance with the Construction Documents and ready for occupancy not later than _____, 20____. The improvements will be deemed to be substantially completed in accordance with the Construction Documents upon the final inspection and approval by all applicable governmental authorities and any lender (Substantial Completion Date). Construction delays caused by acts of God, fire or other casualty, strikes, boycotts or nonavailability of materials for which no substitute of comparable quality and price is available will be added to the time allowed for substantial completion of the construction. However, in no event may the time for substantial completion extend beyond the Closing Date. Seller may substitute materials, equipment and appliances of comparable quality for those specified in the Construction Documents.
- F. WARRANTIES: Except as expressly set forth in this contract, a separate writing, or provided by law, Seller makes no other express warranties. Seller shall assign to Buyer at closing all assignable manufacturer warranties.
- G. INSULATION: As required by Federal Trade Commission Regulations, the information relating to the insulation installed or to be installed in the Improvements at the Property is: (check only one box below)
 - (1) as shown in the attached specifications.
 - (2) as follows:
 - a) Exterior walls of improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
 - b) Walls in other areas of the home: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
 - c) Ceilings in improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.

- d) Floors of improved living areas not applied to a slab foundation: insulated with insulation to a thickness of ___ inches which yields an R-Value of _____.
- e) Other insulated areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.

All stated R-Values are based on information provided by the manufacturer of the insulation.

H. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

I. SELLER'S DISCLOSURE: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:

- (1) any flooding of the Property which has had a material adverse effect on the use of the Property;
- (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
- (3) any environmental hazards or conditions materially affecting the Property;
- (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
- (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
- (6) any threatened or endangered species or their habitat affecting the Property.

8. **BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. CLOSING:

A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
- (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
- (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
- (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing payment of any loans assumed by Buyer and assumed loans will not be in default.

10. **POSSESSION:** Seller shall deliver to Buyer possession of the Property: upon closing and funding according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

11. **SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

12. SETTLEMENT AND OTHER EXPENSES:

- A. The following expenses must be paid at or prior to closing:
- (1) Expenses payable by Seller (Seller's Expenses):
 - (a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.
 - (b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.
 - (2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.
- B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

- A. PRORATIONS: Taxes for the current year, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer will be obligated to pay taxes for the current year.
- B. ROLLBACK TAXES: If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property results in additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 45 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

15. DEFAULT: 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.

16. MEDIATION: It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Subject to applicable law, any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

17. ATTORNEY'S FEES: A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

18. ESCROW:

- A. **ESCROW:** The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.
- B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.
- C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.
- D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
- E. **NOTICES:** Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

To Buyer
at: _____

To Seller
at: _____

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- Third Party Financing Addendum for Credit Approval
- Addendum for "Back-Up" Contract
- Seller Financing Addendum
- Addendum for Coastal Area Property
- Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- Buyer's Temporary Residential Lease
- Seller's Temporary Residential Lease
- Loan Assumption Addendum
- Short Sale Addendum
- Addendum for Sale of Other Property by Buyer
- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- Addendum for Reservation of Oil, Gas and Other Minerals
- 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.)**

This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

Buyer

Buyer

Seller

Seller

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) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 23-11. This form replaces TREC NO. 23-10.

BROKER INFORMATION

Other Broker Firm _____ License No. _____
 represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

Listing Broker Firm _____ License No. _____
 represents Seller and Buyer as an intermediary
 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 _____

Address _____ Telephone (_____) _____

City _____ State _____ Zip _____ Facsimile: (_____) _____



NEW HOME CONTRACT

(Completed Construction)

NOTICE: Not For Use For Condominium Transactions or Closings Prior to Completion of Construction

1. PARTIES: The parties to this contract are _____ (Seller) and _____ (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: Lot _____, Block _____, Addition, City of _____, County of _____, Texas, known as _____ (address/zip code), or as described on attached exhibit, together with: (i) improvements, fixtures and all other property located thereon; and (ii) all rights, privileges and appurtenances thereto, including but not limited to: permits, easements, and cooperative and association memberships. All property sold by this contract is called the "Property".

3. SALES PRICE:

- A. Cash portion of Sales Price payable by Buyer at closing\$ _____
B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium)\$ _____
C. Sales Price (Sum of A and B)\$ _____

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

- [] A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of \$ _____ (excluding any loan funding fee or mortgage insurance premium).
(1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s), (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.
(2) Credit Approval: (Check one box only)
[] (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.
[] (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
[] B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
[] C. SELLER FINANCING: A promissory note from Buyer to Seller of \$ _____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. EARNEST MONEY: Upon execution of this contract by all parties, Buyer shall deposit \$ _____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY AND SURVEY:

- A. TITLE POLICY: Seller shall furnish to Buyer at [] Seller's [] Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
(1) Restrictive covenants common to the platted subdivision in which the Property is located.
(2) The standard printed exception for standby fees, taxes and assessments.
(3) Liens created as part of the financing described in Paragraph 4.
(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
(6) The standard printed exception as to marital rights.
(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary

lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.
- C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)
- (1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at Seller's Buyer's expense no later than 3 days prior to Closing Date.
- (2) Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
- (3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.
- D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: _____

Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
- (2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property is is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**
- (3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory

notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

- (4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.
- (7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

7. PROPERTY CONDITION:

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller shall pay for turning on existing utilities for inspections.

B. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)

- (1) Buyer accepts the Property in its present condition.
- (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____
 _____ (Do not insert general phrases, such as "subject to inspections," that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7B(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

C. WARRANTIES: Except as expressly set forth in this contract, a separate writing, or provided by law, Seller makes no other express warranties. Seller shall assign to Buyer at closing all assignable manufacturer warranties.

D. INSULATION: As required by Federal Trade Commission Regulations, the information relating to the insulation installed or to be installed in the Improvements at the Property is: (check only one box below)

- (1) as shown in the attached specifications.
- (2) as follows:
 - a) Exterior walls of improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
 - b) Walls in other areas of the home: insulated with _____

(Address of Property)

- insulation to a thickness of _____ inches which yields an R-Value of _____.
- c) Ceilings in improved living areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.
- d) Floors of improved living areas not applied to a slab foundation: insulated with insulation to a thickness of _____ inches which yields an R-Value of _____.
- e) Other insulated areas: insulated with _____ insulation to a thickness of _____ inches which yields an R-Value of _____.

All stated R-Values are based on information provided by the manufacturer of the insulation.

- E. **LENDER REQUIRED REPAIRS AND TREATMENTS:** Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
- F. **COMPLETION OF REPAIRS, TREATMENTS, AND IMPROVEMENTS:** Unless otherwise agreed in writing, Seller shall complete all agreed repairs, treatments, and improvements (Work) prior to the Closing Date. All required permits must be obtained, and Work must be performed by persons who are licensed or otherwise authorized by law to provide such Work. At Buyer's election, any transferable warranties received by Seller with respect to the Work will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed Work prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete Work.
- G. **ENVIRONMENTAL MATTERS:** Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.
- H. **SELLER'S DISCLOSURE:** Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
- (1) any flooding of the Property which has had a material adverse effect on the use of the Property;
 - (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
 - (3) any environmental hazards or conditions materially affecting the Property;
 - (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
 - (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
 - (6) any threatened or endangered species or their habitat affecting the Property.
- I. **RESIDENTIAL SERVICE CONTRACTS:** Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$_____. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**
- 8. BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.
- 9. CLOSING:**
- A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
- B. At closing:
- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
 - (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
 - (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
 - (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
- 10. POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: upon closing and funding according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any

possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

- 11. SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

A. PRORATIONS: Taxes for the current year, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer will be obligated to pay taxes for the current year.

B. ROLLBACK TAXES: If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property results in additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

- 14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the

(Address of Property)

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:** 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.
- 16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Subject to applicable law, any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.
- 17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.
- 18. ESCROW:**
- A. **ESCROW:** The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.
 - B. **EXPENSES:** At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.
 - C. **DEMAND:** Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.
 - D. **DAMAGES:** Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.
 - E. **NOTICES:** Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.
- 19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.
- 20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

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21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

To Buyer at:

To Seller at:

Telephone: () _____

Telephone: () _____

Facsimile: () _____

Facsimile: () _____

E-mail: _____

E-mail: _____

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- | | |
|---|---|
| <input type="checkbox"/> Third Party Financing Addendum for Credit Approval | <input type="checkbox"/> Addendum for "Back-Up" Contract |
| <input type="checkbox"/> Seller Financing Addendum | <input type="checkbox"/> Addendum for Coastal Area Property |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association | <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum |
| <input type="checkbox"/> Buyer's Temporary Residential Lease | <input type="checkbox"/> Seller's Temporary Residential Lease |
| <input type="checkbox"/> Loan Assumption Addendum | <input type="checkbox"/> Short Sale Addendum |
| <input type="checkbox"/> Addendum for Sale of Other Property by Buyer | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals | <input type="checkbox"/> 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: _____

(Address of Property)

**EXECUTED the _____ day of _____, 20____ (EFFECTIVE DATE).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code.

Buyer

Buyer

Seller

Seller

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) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 24-11. This form replaces TREC NO. 24-10.

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BROKER INFORMATION

Other Broker Firm _____ License No. _____

represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

Listing Broker Firm _____ License No. _____

represents Seller and Buyer as an intermediary
 Seller only as Seller's agent

Licensed Supervisor of Associate _____ Telephone _____

Associate _____ Telephone _____

Other Broker's Address _____ Facsimile _____

City _____ State _____ Zip _____

Associate Email Address _____

Licensed Supervisor of Associate _____ Telephone _____

Listing Associate _____ Telephone _____

Listing Broker's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

Listing Associate's Email Address _____

Selling Associate _____ Telephone _____

Selling Associate's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

Selling Associate's Email Address _____

Listing Broker has agreed to pay Other Broker _____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.

 Seller or Listing Broker

 Date

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____

 Email Address

 Address

Telephone (_____) _____

 City State Zip

Facsimile: (_____) _____



FARM AND RANCH CONTRACT

1. PARTIES: The parties to this contract are _____ (Seller) and _____ (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: The land, improvements, accessories and crops are collectively referred to as the "Property".

A. LAND: The land situated in the County of _____, Texas, described as follows: _____

or as described on attached exhibit, also known as _____ (address/zip code), together with all rights, privileges, and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships.

B. IMPROVEMENTS:

(1) FARM and RANCH IMPROVEMENTS: The following permanently installed and built-in items, if any: windmills, tanks, barns, pens, fences, gates, sheds, outbuildings, and corrals.

(2) RESIDENTIAL IMPROVEMENTS: The house, garage, and all other fixtures and improvements attached to the above-described real property, including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.

C. ACCESSORIES:

(1) FARM AND RANCH ACCESSORIES: The following described related accessories: (check boxes of conveyed accessories) [] portable buildings [] hunting blinds [] game feeders [] livestock feeders and troughs [] irrigation equipment [] fuel tanks [] submersible pumps [] pressure tanks [] corrals [] gates [] chutes [] other: _____

(2) RESIDENTIAL ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) satellite dish systems, (ii) garages, (iii) entry gates, and (iv) other improvements and accessories.

D. CROPS: Unless otherwise agreed in writing, Seller has the right to harvest all growing crops until delivery of possession of the Property.

E. EXCLUSIONS: The following improvements, accessories, and crops will be retained by Seller and must be removed prior to delivery of possession: _____

F. RESERVATIONS: Any reservation for oil, gas, or other minerals is described on the attached TREC addendum. Seller reserves the following water, timber, or other interests: _____

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing \$ _____

B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) \$ _____

C. Sales Price (Sum of A and B) \$ _____

D. The Sales Price [] will [] will not be adjusted based on the survey required by Paragraph 6C. If the Sales Price is adjusted, the Sales Price will be calculated on the basis of \$ _____ per acre. If the Sales Price is adjusted by more than 10%, either party may terminate this contract by providing written notice to the other party within _____ days after the terminating party receives the survey. If neither party terminates this contract or if the variance is 10% or less, the adjustment will be made to the amount in [] 3A [] 3B [] proportionately to 3A and 3B.

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

- A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of \$ _____ (excluding any loan funding fee or mortgage insurance premium).
 - (1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s) (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.
 - (1) Credit Approval: (Check one box only)
 - (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.
 - (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
- B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
- C. SELLER FINANCING: A promissory note from Buyer to Seller of \$ _____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. **EARNEST MONEY:** Upon execution of this contract by all parties, Buyer shall deposit \$ _____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. **TITLE POLICY AND SURVEY:**

- A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by: _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
 - (1) The standard printed exception for standby fees, taxes and assessments.
 - (2) Liens created as part of the financing described in Paragraph 4.
 - (3) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
 - (4) The standard printed exception as to marital rights.
 - (5) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
 - (6) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".
- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.
- C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only):
 - (1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** The existing survey will will not be recertified to a date subsequent to the effective date of this contract at the expense of Buyer Seller. If the existing survey is not approved by the Title Company or Buyer's lender (s), a new survey will be obtained at the expense of Buyer Seller no later than 3 days prior to Closing Date.
 - (2) Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
 - (3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.
 - (4) No survey is required.
- D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title disclosed on the survey other than items 6A(1) through (5) above; or disclosed in the Commitment other than items 6A(1) through (6) above; (ii) any portion of the Property

lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity:

Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. EXCEPTION DOCUMENTS: Prior to the execution of the contract, Seller has provided Buyer with copies of the Exception Documents listed below or on the attached exhibit. Matters reflected in the Exception Documents listed below or on the attached exhibit will be permitted exceptions in the Title Policy and will not be a basis for objection to title:

<u>Document</u>	<u>Date</u>	<u>Recording Reference</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

F. SURFACE LEASES: Prior to the execution of the contract, Seller has provided Buyer with copies of written leases and given notice of oral leases (Leases) listed below or on the attached exhibit. The following Leases will be permitted exceptions in the Title Policy and will not be a basis for objection to title: _____

G. TITLE NOTICES:

- (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
- (2) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (3) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (4) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (5) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to

(Address of Property)

determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

- (6) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.
- (7) TEXAS AGRICULTURAL DEVELOPMENT DISTRICT: The Property is is not located in a Texas Agricultural Development District. For additional information contact the Texas Department of Agriculture.

7. PROPERTY CONDITION:

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.

NOTICE: Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.

B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):
(Check one box only)

- (1) Buyer has received the Notice
- (2) Buyer has not received the Notice. Within _____ days after the effective date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.
- (3) The Texas Property Code does not require this Seller to furnish the Notice.

C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.

D. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)

- (1) Buyer accepts the Property in its present condition.
- (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____
(Do not insert general phrases, such as "subject to inspections," that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

E. COMPLETION OF REPAIRS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs prior to the Closing Date. All required permits must be obtained, and repairs must be performed by persons who are licensed or otherwise permitted by law to provide such repairs. At Buyer's election, any transferable warranties received by Seller with respect to the repairs will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs.

F. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. SELLER'S DISCLOSURES: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:

- (1) any flooding of the Property which has had a material adverse effect on the use of the Property;

- (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
- (3) any environmental hazards or conditions materially affecting the Property;
- (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
- (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
- (6) any threatened or endangered species or their habitat affecting the Property.

I. **RESIDENTIAL SERVICE CONTRACTS:** Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding \$ _____. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

J. **GOVERNMENT PROGRAMS:** The Property is subject to the government programs listed below or on the attached exhibit: _____. Seller shall provide Buyer with copies of all governmental program agreements. Any allocation or proration of payment under governmental programs is made by separate agreement between the parties which will survive closing.

8. **BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. **CLOSING:**

A. The closing of the sale will be on or before _____, 20____, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6, an assignment of Leases, and furnish tax statements or certificates showing no delinquent taxes on the Property.
- (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
- (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
- (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
- (5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s) and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

10. **POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: upon closing and funding according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

11. **SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum or other form has been promulgated by TREC for mandatory use.)

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses) Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

A. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year. Rentals which are unknown at time of closing will be prorated between Buyer and Seller when they become known.

B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Seller's change in use of the Property prior to closing or denial of a special use valuation on the Property claimed by Seller results in Assessments for periods prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer, (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

15. DEFAULT: 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.

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: _____

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):

- | | |
|---|--|
| <input type="checkbox"/> Third Party Financing Addendum for Credit Approval | <input type="checkbox"/> Addendum for "Back-Up" Contract |
| <input type="checkbox"/> Seller Financing Addendum | <input type="checkbox"/> Addendum for Coastal Area Property |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association | <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum |
| <input type="checkbox"/> Buyer's Temporary Residential Lease | <input type="checkbox"/> Seller's Temporary Residential Lease |
| <input type="checkbox"/> Loan Assumption Addendum | <input type="checkbox"/> Short Sale Addendum |
| <input type="checkbox"/> Addendum for Sale of Other Property by Buyer | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals | <input type="checkbox"/> Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law |
| <input type="checkbox"/> 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) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 25-8. This form replaces TREC NO. 25-7.

RATIFICATION OF FEE

Listing Broker has agreed to pay Other Broker _____ of the total Sales Price when Listing Broker's fee is received. Escrow Agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.

Other Broker: _____ Listing Broker: _____
 By: _____ By: _____

BROKER INFORMATION AND AGREEMENT FOR PAYMENT OF BROKERS' FEES

Other Broker _____	License No. _____	Listing or Principal Broker _____	License No. _____
Licensed Supervisor of Associate _____	Telephone _____	Licensed Supervisor of Associate _____	Telephone _____
Associate _____		Associate _____	
Address _____		Address _____	
City _____	State _____	Zip _____	
Telephone _____	Facsimile _____	Telephone _____	Facsimile _____
E-mail _____		E-mail _____	

represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

represents Seller only
 Buyer only
 Seller and Buyer as an intermediary

Upon closing of the sale by Seller to Buyer of the Property described in the contract to which this fee agreement is attached: (a) Seller Buyer will pay Listing/Principal Broker a cash fee of \$ _____ or _____% of the total Sales Price; and (b) Seller Buyer will pay Other Broker a cash fee of \$ _____ or _____% of the total Sales Price. Seller/Buyer authorizes and directs Escrow Agent to pay the brokers from the proceeds at closing.

Brokers' fees are negotiable. Brokers' fees or the sharing of fees between brokers are not fixed, controlled, recommended, suggested or maintained by the Texas Real Estate Commission.

Seller _____ Buyer _____
 Seller _____ Buyer _____

Do not sign if there is a separate written agreement for payment of Brokers' fees.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.

 Seller or Listing Broker Date

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____

 Address Email Address
 Telephone (_____) _____
 Facsimile: (_____) _____



RESIDENTIAL CONDOMINIUM CONTRACT (RESALE)

1. PARTIES: The parties to this contract are _____ (Seller) and _____ (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY AND CONDOMINIUM DOCUMENTS:

A. The Condominium Unit, improvements and accessories described below are collectively referred to as the "Property".

(1) CONDOMINIUM UNIT: Unit _____, in Building _____, of _____, a condominium project, located at _____ (address/zip code), City of _____, County of _____, Texas, described in the Condominium Declaration and Plat and any amendments thereto of record in said County; together with such Unit's undivided interest in the Common Elements designated by the Declaration, including those areas reserved as Limited Common Elements appurtenant to the Unit and such other rights to use the Common Elements which have been specifically assigned to the Unit in any other manner. Parking areas assigned to the Unit are: _____.

(2) IMPROVEMENTS: All fixtures and improvements attached to the above described real property including without limitation, the following permanently installed and built-in items, if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, mounts and brackets for televisions and speakers, heating and air conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described Condominium Unit.

(3) ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) satellite dish system, (ii) garage doors, (iii) entry gates, and (iv) other improvements and accessories.

(4) EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: _____.

B. The Declaration, Bylaws and any Rules of the Association are called "Documents". (Check one box only):

[] (1) Buyer has received a copy of the Documents. Buyer is advised to read the Documents before signing the contract.

[] (2) Buyer has not received a copy of the Documents. Seller shall deliver the Documents to Buyer within _____ days after the effective date of the contract. Buyer may cancel the contract before the sixth day after Buyer receives the Documents by hand-delivering or mailing written notice of cancellation to Seller by certified United States mail, return receipt requested. If Buyer cancels the contract pursuant to this paragraph, the contract will terminate and the earnest money will be refunded to Buyer.

[] (3) Buyer has received Seller's affidavit that Seller requested information

C. The Resale Certificate from the condominium owners association (the Association) is called the "Certificate". The Certificate must be in a form promulgated by TREC or required by the parties. The Certificate must have been prepared no more than 3 months before the date it is delivered to Buyer and must contain at a minimum the information required by Section 82.157, Texas Property Code.

(Check one box only):

[] (1) Buyer has received the Certificate.

[] (2) Buyer has not received the Certificate. Seller shall deliver the Certificate to Buyer within _____ days after the effective date of the contract. Buyer may cancel the contract before the sixth day after the date Buyer receives the Certificate by hand-delivering or mailing written notice of cancellation to Seller by certified United States mail, return receipt requested. If Buyer cancels the contract pursuant to this paragraph, the contract will terminate and the earnest money will be refunded to Buyer.

[] (3) Buyer has received Seller's affidavit that Seller requested information from the Association concerning its financial condition as required by the Texas Property Code, and that the Association did not provide a Certificate or information required in the Certificate. Buyer and Seller agree to waive the requirement to furnish the Certificate.

3. SALES PRICE:

A. Cash portion of Sales Price payable by Buyer at closing \$ _____

B. Sum of all financing described below (excluding any loan funding)

fee or mortgage insurance premium).....\$ _____
C. Sales Price (Sum of A and B)\$ _____

4. FINANCING: The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)

- A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of \$ _____ (excluding any loan funding fee or mortgage insurance premium).
 - (1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s), (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.
 - (2) Credit Approval: (Check one box only)
 - (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.
 - (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
- B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
- C. SELLER FINANCING: A promissory note from Buyer to Seller of \$ _____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. EARNEST MONEY: Upon execution of this contract by all parties, Buyer shall deposit \$ _____ as earnest money with _____, as escrow agent, at _____ (address). Buyer shall deposit additional earnest money of \$ _____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY:

- A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner policy of title insurance (Title Policy) issued by _____ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
 - (1) Restrictive covenants common to the platted subdivision in which the Property is located.
 - (2) The standard printed exception for standby fees, taxes and assessments.
 - (3) Liens created as part of the financing described in Paragraph 4.
 - (4) Terms and provisions of the Documents including the assessments and platted easements.
 - (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
 - (6) The standard printed exception as to marital rights.
 - (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
 - (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements.
- B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.
- C. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: _____ . Buyer must object the earlier of (i) the Closing Date or (ii) _____ days after Buyer receives the Commitment and Exception Documents. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.
- D. TITLE NOTICES:
 - (1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(Address of Property)

- (2) **STATUTORY TAX DISTRICTS:** If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.
- (3) **TIDE WATERS:** If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.
- (4) **ANNEXATION:** If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.
- (5) **PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER:** Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

7. PROPERTY CONDITION:

- A. **ACCESS, INSPECTIONS AND UTILITIES:** Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.
- B. **SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice):**
(Check one box only)
- (1) Buyer has received the Notice.
- (2) Buyer has not received the Notice. Within _____ days after the effective date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.
- (3) The Texas Property Code does not require this Seller to furnish the Notice.
- C. **SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS** is required by Federal law for a residential dwelling constructed prior to 1978.
- D. **ACCEPTANCE OF PROPERTY CONDITION:** (Check one box only)
- (1) Buyer accepts the Property in its present condition.
- (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____

(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

- E. **LENDER REQUIRED REPAIRS AND TREATMENTS:** Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or 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 to matters disclosed in the Commitment have been cured, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
- (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
- (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
- (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
- (5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s) and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

10. POSSESSION: Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: upon closing and funding according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

11. SPECIAL PROVISIONS: (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.)

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; lender, FHA, or VA completion requirements; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

(3) Except as provided by 12(A)(4) below, Buyer shall pay any and all Association fees or other charges resulting from the transfer of the Property not to exceed \$ _____ and Seller shall pay any excess.

(4) Buyer shall pay any deposits for reserves required at closing by the Association.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS: Taxes for the current year, interest, maintenance fees, regular condominium assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year. Cash reserves from regular condominium assessments for deferred maintenance or capital improvements established by the Association will not be credited to Seller. Any special condominium assessment due and unpaid at closing will be the obligation of Seller.

14. CASUALTY LOSS: If any part of the Unit which Seller is solely obligated to maintain and repair under the terms of the Declaration is damaged or destroyed by fire or other casualty, Seller shall restore the same to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer, (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. If any part of the Common Elements or Limited Common Elements appurtenant to the Unit is damaged or destroyed by fire or other casualty loss, Buyer will have 7 days from receipt of notice of such casualty loss within which to notify Seller in writing that the contract will be terminated unless Buyer receives written confirmation from the Association that the damaged condition will be restored to its previous condition within a reasonable time at no cost to Buyer. Unless Buyer gives such notice within such time, Buyer will be deemed to have accepted the Property without confirmation of such restoration. Seller will have 7 days from the date of receipt of Buyer's notice within which to cause to be delivered to Buyer such confirmation. If written confirmation is not delivered to Buyer as required above, Buyer may terminate this contract and the earnest money will be refunded to Buyer. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

15. DEFAULT: 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.

- 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 disbursement 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
- Loan Assumption Addendum
- Buyer's Temporary Residential Lease
- Seller's Temporary Residential Lease
- Addendum for Sale of Other Property by Buyer
- Addendum for "Back-Up" Contract
- Seller Financing Addendum
- Addendum for Coastal Area Property
- Short Sale Addendum
- Other (list): _____
- Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
- Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- Addendum for Release of Liability on Assumption of FHA, VA, or Conventional Loan Restoration of Seller's Entitlement for VA Guaranteed Loan

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) 936-3000 (<http://www.trec.texas.gov>) TREC NO. 30-9. This form replaces TREC NO. 30-8.

BROKER INFORMATION

Other Broker Firm _____ License No. _____

represents Buyer only as Buyer's agent
 Seller as Listing Broker's subagent

Licensed Supervisor of Associate _____ Telephone _____

Associate _____ Telephone _____

Other Broker's Address _____ Facsimile _____

City _____ State _____ Zip _____

Associate Email Address _____

Listing Broker Firm _____ License No. _____

represents Seller and Buyer as an intermediary
 Seller only as Seller's agent

Licensed Supervisor of Associate _____ Telephone _____

Listing Associate _____ Telephone _____

Listing Broker's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

Listing Associate's Email Address _____

Selling Associate _____ Telephone _____

Selling Associate's Office Address _____ Facsimile _____

City _____ State _____ Zip _____

Selling Associate's Email Address _____

Listing Broker has agreed to pay Other Broker _____ of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.

 Seller or Listing Broker Date

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____

 Email Address

 Address Telephone (_____) _____

 City State Zip Facsimile: (_____) _____

**Agenda Item 11:**

Discussion and possible action to take emergency action to adopt amendments to 22 TAC Chapter 535 as follows:

- a. Subchapter B, §535.17 concerning Appraisals
- b. Subchapter C, §535.31 concerning Attorneys at Law
- c. Subchapter E, Requirements for Licensure as follows:
 - i. §535.50 concerning Definitions
 - ii. §535.51 concerning General Requirements
 - iii. §535.53 concerning Corporations and Limited Liability Companies
- d. Subchapter I, §535.93 concerning Late Renewals
- e. Subchapter J, §535.101 concerning Fees
- f. Subchapter M, §535.132 concerning Eligibility for Licensure
- g. Subchapter N, §535.141 concerning Initiation of Investigation

SUMMARY 11 (a)

Adopts on an emergency basis amendments to 22 TAC §535.17 regarding Appraisals. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Session, Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101.002 to delete appraisals from the laundry list of activities that are considered real estate brokerage. In addition SB 747 added a new item to the list regarding broker price opinions.

The amendments to §535.17 clarify that a real estate licensee must be licensed under Texas Occupations Code, Chapter 1103 to conduct real estate appraisals. Further the rule is amended to provide that if a broker or salesperson provides a broker price opinion under Chapter 1101, the opinion must provide a written disclosure as provided in the rule.

STAFF

Adoption of amendments as proposed.

RECOMMENDATION**MOTION**

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.17 regarding Broker Price Opinion or Comparative Market Analysis as presented at this meeting for emergency adoption, with any non-substantive changes as staff may deem necessary or advisable.

Subchapter B. General Provisions Relating to the Requirements of Licensure
§535.17. Appraisals

§535.17. Broker Price Opinion or Comparative Market Analysis. [~~Appraisals~~].

~~(a) A real estate licensee may not perform an appraisal of real property unless the licensee is licensed or certified under Texas Occupations Code, Chapter 1103. [Except as provided by this section, appraisals of real property performed in this state by Texas real estate licensees must be conducted in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect at the time the appraisal is performed.]~~

~~(b) If a real estate licensee[~~, for a separate fee,~~] provides a broker price [~~an~~] opinion [~~of value~~] or comparative market analysis under §1101.002(1)(A)(xi) of the Act, [~~which does not conform with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation,~~] the licensee shall also provide the person for whom the opinion or analysis is prepared with a written statement containing the following language: "THIS IS A BROKER PRICE [~~AN~~] OPINION [~~OF VALUE~~] OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."~~

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

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

(d) A salesperson may prepare, sign, and present a broker price opinion or comparative market analysis [~~real-estate appraisals~~] for the salesperson's sponsoring broker, but the salesperson must submit the broker price opinion or comparative market analysis [~~appraisals~~] in the broker's name and the broker is responsible for it [~~the appraisals~~].

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

**SUMMARY 11(b)**

Adopts on an emergency basis amendments to 22 TAC §535.31 regarding Attorneys at Law. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In part, SB 747 amends Texas Occupations Code, §1101.005 regarding an exemption for attorneys. The amendment now exempts attorney licensed in the State of Texas; it previously applied to attorneys licensed in any state.

The amendments to §535.31 clarify that the exemption only applies to attorneys licensed in the State of Texas.

**STAFF
RECOMMENDATION
MOTION**

Adoption of amendments as presented.

MOVED, that staff is authorized, on behalf of this Commission, to submit the emergency amendments to §535.31 concerning Attorneys at Law, with any non-substantive changes as staff may deem necessary or advisable for emergency adoption to the *Texas Register*.

Subchapter C. Exemptions to Requirements of Licensure
§535.31. Attorneys at Law

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



SUMMARY 11(c) Adopts amendments to 22 TAC Subchapter E, §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies on an emergency basis. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, §1101.401 to expand from six months to one year the period of time in which an applicant may satisfy an examination requirement from the date the application is filed. In addition, the application and renewal requirements for business entities were changed in §§1101.355 and 1101.453 to require that business entities applying for and renewing a broker license must provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 Million if the designated broker owns less than 10 percent of the entity. Finally SB 747 amends Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code. Emergency action is necessary to amend §535.50, §535.51, and §535.53 to be consistent with SB 747.

The amendments to §535.50 amend the list of definitions to define a designated broker of a business entity and to clarify that the designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership. The amendments to §535.51 clarify that an applicant must meet education and experience requirements before the applicant may take a qualifying examination. The amendments to §535.53 change the title of the rule to apply to all business entities, not just corporations and limited liability companies, to add partnerships to the types of business entities that must be licensed, and to address the requirement that business entities must maintain errors and omissions insurance if the designated broker owns less than 10 percent of the entity.



STAFF Adopt the emergency amendments as presented
RECOMMENDATION

MOTION MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the *Texas Register*.

Subchapter E. Requirements for Licensure
§535.50, §535.51 and §535.53

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

(1)-(3) (No Change.)

(4) Designated broker – An individual holding an active Texas real estate broker license designated by a business entity licensed by the commission to act on its behalf. The designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership.

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

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

(7) [(6)] Hour--Fifty minutes of actual session time.

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

(9) [(8)] MCE--Mandatory Continuing Education.

(10) [(9)] Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the commission.

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

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

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

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

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

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

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

§535.51. General Requirements for a License.

(a) –(c) (No Change.)

(d) An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1) the applicant fails to satisfy a current education, experience or [requirement or an] examination requirement within one year [six months] from the date the application is filed;

(2)-(4) (No Change.)

(e) An applicant must complete relevant education and experience requirements before the applicant is eligible to take a qualifying examination for a license.

§535.53 Business Entities [Corporations and Limited Liability Companies.]

(a) For the purposes of qualifying for, maintaining, or renewing a license, a business entity [corporation or limited liability company] must designate a broker [one individual holding an active Texas real estate broker license] to act for it. [The designated broker must be an officer of the corporation or a manager of a limited liability company.] The business entity [corporation or limited liability company] may not act as a broker during any period in which it does [has] not have a designated broker [person] to act for it who meets the requirements of the Act. Upon any change in the business entity's [corporation or limited liability company's] designated broker individual, the entity [corporation or limited liability company] must provide proof to the commission of the designated broker's [individual's] current status as an officer, [or] manager or general partner for that entity and proof that the business entity maintains appropriate errors and omissions insurance if the designated broker owns less than 10 percent of the entity. A broker may not act as a designated broker [person] at any time while the broker's license is inactive, expired, suspended or revoked.

(b) Section 1101.355 of the Act applies only to business entities [corporations or limited liability companies] which are created under the laws of this state, provided, however, that a business entity [corporation or limited liability company] formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of this section if it is qualified to do business in Texas; its officers, [or] managers, or general partner, its principal place of business and all of its assets are located in Texas; and all of its officers, [and] directors, or managers, [and] members and partners are Texas residents.

(c) No Change.

MAILING ADDRESS:
TEXAS REAL ESTATE COMMISSION
P.O. Box 12188
Austin, Texas 78711-2188
www.trec.texas.gov



STREET ADDRESS:
TEXAS REAL ESTATE COMMISSION
1700 N. Congress Ave., Suite 400 Austin, Texas
78701 Telephone: (512) 936-3000

CERTIFICATE OF INSURANCE FOR A BROKER BUSINESS ENTITY

The business entity shall furnish the Texas Real Estate Commission a new Certificate of Insurance not later than 15 days after the expiration of this Certificate of Insurance. This Certificate of Insurance expires on the date that the below named policy expires. This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This Certificate of Insurance neither affirmatively or negatively amends, extends, or alters the coverage afforded by the policy specified herein. The aggregate limit is as specified in the policy.

1. Broker's Name (Business Entity)	5. TREC Broker License #
_____	_____
2. Mailing Address	6. Insurance Company
_____	_____
Business Address (Fixed Office)	
_____	7. Policy Number
Mailing Address (if different)	_____
_____	(Binders not accepted)
City State Zip Code	8. Name of Policy Holder (if group policy)

3. Business Phone	9. Term Dates
_____	_____
4. Email Address	Effective Expired
_____	_____
TEXAS ADMITTED CARRIER NO. _____	OR TEXAS SURPLUS LINE CO. NO. _____
10. Name of Insurance Agency	12. Name of Agent
_____	_____
11. Insurance Agency Address	13. Agent Phone
_____	_____
Number and Street	14. Policy Type:
_____	OCCURRENCE <input type="checkbox"/>
City State Zip Code	CLAIMS MADE <input type="checkbox"/>

By my signature below, as an authorized insurance agent licensed to do business in the State of Texas, I hereby certify that the above policy meets the following minimum standards:

- (1) provides for Errors & Omissions (E&O) insurance as required by §1101.355, Texas Occupations Code, and
- (2) is in a coverage amount of not less than \$1 million per occurrence.

Signature of insurance agent licensed to do business in Texas _____

Printed Name _____

Date _____

CERTIFICATE HOLDER
TEXAS REAL ESTATE COMMISSION
P.O. Box 12188
Austin, Texas 78711-2188
PHONE 512-936-3000 FAX 512-936-3864

CANCELLATION
Should any of the above described policies be cancelled or reduced the insurance agent shall notify the Texas Real Estate Commission (Certificate Holder) not more than 30 days after non-renewal or cancellation by the insured.



SUMMARY 11(d) Adopts on an emergency basis amendments to 22 TAC §535.93 regarding Late Renewal Applications. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101.451 to change the maximum period of time in which a licensee can file a late renewal from one year to six months.

The amendments to §535.93 change to six months any references to the one year period for filing a late renewal.

STAFF Adopt the emergency amendments as presented
RECOMMENDATION

MOTION MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.93 regarding Late Renewal Applications with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the *Texas Register*.

Subchapter I. Licenses

§535.93. Late Renewal Applications

§535.93. Late Renewal Applications.

(a) A licensee who files a late application to renew a previous license less than **six months** [~~one year~~] after the expiration of the license must do so on a form approved by the commission for that purpose and is subject to the requirements of this section and Tex. Occ. Code §1101.451(e). The commission shall renew the license in an active status except as provided by this section. A license issued under this section is effective the day following the expiration of the previous license.

(b) - (c) No Change.

(d) If a licensee who has not completed all MCE before the expiration of the previous license files a late application to renew the license in an active status more than 60 days but less than **six months** [~~one year~~] from the expiration of the license, the licensee must:

- (1) provide the commission with evidence that the licensee has completed the MCE;
- (2) pay the \$200 MCE deferral fee;
- (3) complete and submit a Salesperson Sponsorship Form if a salesperson; and
- (4) pay a late reporting fee of \$250.

(e) – (g) No Change.



SUMMARY 11(e) Adopts on an emergency basis amendments to 22 TAC §535.101 regarding Fees. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101. to change the maximum period of time in which a licensee can file a late renewal from one year to six months.

The amendments to §535.101 change to six months the reference to the one year period for filing a late renewal in subsection (b)(11).

STAFF Adopt the emergency amendments as presented
RECOMMENDATION

MOTION MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.101 regarding Fees with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the *Texas Register*.

Subchapter J. Fees
§535.101. Fees.

§535.101. Fees.

(a) (No Change.)

(b) The commission shall charge and collect the following fees:

(1) - (14) (No Change.)

(15) a fee of \$68 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than six months [~~one year~~];

(16) - (18) (No Change.)

(c) (No Change.)

**SUMMARY 11 (f)**

Adopts on an emergency basis amendments to 22 TAC §535.132 Eligibility for Licensure. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code. Emergency action is necessary to amend §535.132, to be consistent with SB 747.

The amendment to §535.132 makes emergency conforming changes to be consistent with the statutory text amended by SB 747.

**STAFF
RECOMMENDATION**

Adopt the emergency amendments as presented

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to 22 TAC §535.132 Eligibility for Licensure with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the *Texas Register*.

Subchapter M. Nonresidents
§535.132. Eligibility for Licensure

535.132. Eligibility for Licensure.

(a) No Change.

(b) A **business entity** [~~limited liability company~~] created **or chartered** under the laws of another state ~~[or a corporation chartered in a state other than Texas]~~ may apply for a Texas real estate broker license if the entity meets one of the following requirements.

(1) The entity is licensed as a broker by the state in which it was created or chartered.

(2) The entity is licensed as a broker in a state in which it is permitted to engage in real estate brokerage business as a foreign **business entity** [~~limited liability company or corporation~~].

(3) The entity was created or chartered in a state that does not license **business entities** [~~limited liability companies or corporations~~], as the case may be, and the entity is lawfully engaged in the practice of real estate brokerage in another state and meets all other requirements for applications for a license in Texas.

(c) An individual licensed as a broker who subsequently moves to another state is not required to maintain an office in Texas unless the individual sponsors a salesperson in this state.

(d) To be eligible to receive a license and maintain an active license, a **business entity** [~~limited liability company or corporation~~] created or chartered in another state must designate a person to act for it who meets the requirements of §1101.453 of the Act, although the designated **broker** [~~person~~] is not required to be a resident of Texas. Foreign **business entities** [~~corporations and limited liability companies~~] also must be permitted to engage in business in this state to receive a Texas real estate broker license.



SUMMARY 11(g) Adopts on an emergency basis amendments to 22 TAC Subchapter N, §535.141 regarding Initiation of Investigation. The amendments are adopted on an emergency basis to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code. Emergency action is necessary to amend §535.5141 to be consistent with SB 747.

The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101, and to make conforming changes to the rule to be consistent with other rules that have been adopted on an emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747.

STAFF Adopt the emergency amendments as presented
RECOMMENDATION

MOTION MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.141 regarding Initiation of Investigation with any non-substantive changes as staff may deem necessary or advisable for adoption on an emergency basis to the *Texas Register*.

Subchapter N. Suspension and Revocation of License.
§535.141. Initiation of Investigation.

§535.141. Initiation of Investigation.

(a) –(c) No Change.

(d) The **designated** broker [~~designated by a licensed business entity to act as its officer, manager or partner~~] is responsible for all real estate brokerage activities performed by, on behalf of, or through **a** [~~the~~] business entity. A complaint which names a business entity licensed as a broker as the subject of the complaint but which does not specifically name the **designated** broker [~~designated as the officer, manager or partner of the business entity,~~] is a complaint against the **designated** broker [~~acting as the designated officer, manager or partner~~] at the time of any alleged violation for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities. A complaint which names a salesperson sponsored by a licensed business entity but which does not specifically name the designated broker of the business entity is a complaint against the designated broker at the time of any alleged violation by the salesperson for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities provided the complaint concerns the conduct of the salesperson as an agent of the business entity.

(e) – (h)(No Change.)

(i) A person whose license is subject to an order suspending the license must prior to the suspension taking effect:

(1))(No Change.)

(2) if the person is a broker, notify in writing any salespersons he or she sponsors, or any **business entity**[~~corporation, limited liability company or partnership~~] for which the person is designated **broker** [~~as an officer, manager or partner~~] that:

(A)(No Change.)

(B) once the suspension is effective any salesperson he or she sponsors or who is sponsored by the **business entity** [~~corporation, limited liability company or partnership~~] will not be authorized to engage in real estate brokerage unless the salespersons associate with another broker and file a change of sponsorship with the commission or the business entity designates a new broker and files a change of designated **broker** [~~officer, manager or partner~~] with the commission;

(3)-(7) (No Change.)

(j) – (k) (No Change.)

**Agenda Item 12:**

Discussion and possible action to propose amendments to 22 TAC Chapter 535 as follows:

- a. Subchapter B §535.17 concerning Appraisals
- b. Subchapter C, §535.31 concerning Attorneys at Law
- c. Subchapter E, Requirements for Licensure as follows:
 - i. §535.50 concerning Definitions
 - ii. §535.51 concerning General Requirements
 - iii. §535.53 concerning Corporations and Limited Liability Companies
 - iv. §535.55 concerning Education Requirements for a Salesperson License
 - v. §535.56 concerning Education and Experience Requirements for a Broker License
- d. Subchapter F, §535.63 concerning Accreditation of Core Education Schools
- e. Subchapter G, Mandatory Continuing Education as follows:
 - i. §535.71 concerning Approval of Providers, Courses and Instructors
 - ii. §535.72 concerning Presentation of Courses, Advertising and Records
 - iii. Subchapter I, Licenses as follows:
 - iv. §535.91 concerning Renewal Notices
 - v. §535.93 concerning Late Renewal Applications
 - vi. §535.96 concerning Mailing Address and Other Contact Information
- f. Subchapter J, §535.101 concerning Fees
- g. Subchapter L, Termination of Salesperson's Association with Sponsoring Broker as follows:
 - i. §535.121 concerning Inactive License
 - ii. §535.122 concerning Reactivation of License
- h. Subchapter M, §535.132 concerning Eligibility for Licensure
- i. Subchapter N, §535.141 concerning Initiation of Investigation
- j. Subchapter R, §535.210 concerning Inspector Fees

**SUMMARY 12(a)**

Proposes amendments to 22 TAC §535.17 regarding Appraisals. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amends Texas Occupations Code, §1101.002 to delete appraisals from the laundry list of activities that are considered real estate brokerage which requires licensure as a real estate broker or salesperson. In addition SB 747 adds a new item regarding broker price opinions. Because the effective date of the relevant provisions of SB 747 is September 1, 2011, the commission is simultaneously taking emergency action to amend §535.17 to be consistent with SB 747.

The amendments to §535.17 clarify that a real estate licensee must be licensed under Texas Occupations Code, Chapter 1103 to conduct real estate appraisals. Further the rule is amended to provide that if a broker or salesperson provides a broker price opinion under Chapter 1101, the opinion must provide a written disclosure as provided in the rule.

**STAFF
RECOMMENDATION**

Propose the amendments as presented

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.17 regarding Appraisals with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

§535.17. Broker Price Opinion or Comparative Market Analysis. [Appraisals].

(a) A real estate licensee may not perform an appraisal of real property unless the licensee is licensed or certified under Texas Occupations Code, Chapter 1103. [Except as provided by this section, appraisals of real property performed in this state by Texas real estate licensees must be conducted in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect at the time the appraisal is performed.]

(b) If a real estate licensee, [for a separate fee,] provides a broker price [an] opinion [of value] or comparative market analysis under §1101.002(1)(A)(xi) of the Act, [which does not conform with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation,] the licensee shall also provide the person for whom the opinion or analysis is prepared with a written statement containing the following language: "THIS IS A BROKER PRICE [AN] OPINION [OF VALUE] OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."

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

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

(d) A salesperson may prepare, sign, and present a broker price opinion or comparative market analysis [real estate appraisals] for the salesperson's sponsoring broker, but the salesperson must submit the broker price opinion or comparative market analysis [appraisals] in the broker's name and the broker is responsible for it the appraisals].

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

**SUMMARY 12(b)**

Proposes amendments to 22 TAC §535.31 regarding Attorneys at Law. The amendments are proposed to implement the requirements of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amended Texas Occupations Code, §1101.005 regarding an exemption for attorneys. The amendment now exempts attorney licensed in the State of Texas; it previously applied to attorneys licensed in any state. Because the effective date of the relevant provisions of SB 747 is September 1, 2011, the commission is simultaneously taking emergency action to amend §535.31 to be consistent with SB 747.

The amendments to §535.31 clarify that the exemption only applies to attorneys licensed in the State of Texas. .

STAFF

Propose the amendments as presented

RECOMMENDATION**MOTION**

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.31 regarding Attorneys at Law with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

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

**SUMMARY 12(c)**

Proposes amendments to 22 TAC Subchapter E, §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies, §535.55 regarding Education Requirements for a Salesperson License and §535.56 regarding Education and Experience Requirements for a Broker License. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.401 to expand from six months to one year the period of time in which an applicant may satisfy an examination requirement from the date the application is filed. In addition, the application and renewal requirements for business entities were changed in §§1101.355 and 1101.453 to require that business entities applying for and renewing a broker license must provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 Million if the designated broker owns less than 10 percent of the entity. Finally SB 747 amends Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code. Emergency action is simultaneously being taken to amend §535.50, §535.51, and §535.53 to be consistent with SB 747 because the effective date of those provisions is September 1, 2011.

The amendments to §535.50 amend the list of definitions to define a designated broker of a business entity, to clarify that the designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership, and to incorporate the relevant provisions regarding the new broker responsibility continuing education course required under amendments to §1101.458. The amendments to §535.51 clarify that an applicant must meet education and experience requirements before the applicant may take a qualifying examination. The amendments to §535.53 change the title of the rule to apply to all business entities, not just corporations and limited liability companies, to add partnerships to the types of business entities that must be licensed, and to address the requirement that business entities must maintain errors and omissions insurance if the designated broker owns less than 10 percent of the entity.

Regarding the amendments to §§535.55 and .56, the commission has the authority under §1101.362 of the Act to waive some or all of the education and experience requirements for someone who has been licensed within the six years preceding the date the application is filed. Under current §535.55, the commission has waived the education required for a salesperson license for an applicant who was licensed in the preceding six years and otherwise meets the requirements of the section. The proposed amendment to §535.55 would



change the period from six years to two years so that an applicant who was licensed as a salesperson or broker in the preceding two years and otherwise meets the requirements of the section regarding MCE could apply for a salesperson license. Similarly, under current §535.56(a), the commission has waived the education and experience required for a broker license for a broker who was licensed in the preceding four years and otherwise meets the requirements of the subsection. The proposed rule would change the period from four years to two years and delete the reference to a salesperson so that a broker who had an active license in two of the preceding four years and otherwise meets the requirements of the section regarding MCE could apply for a broker license without meeting the new experience requirements.

In addition, amendments to §535.56 would add the rules required by amendments to §1101.356(b-1) of the Act to establish active experience requirements to apply for a broker license under §1101.356 and §1101.357 of the Act. An applicant would be required to establish that the applicant has obtained 3600 points of active experience with documentary evidence and a statement from the applicant's sponsoring broker at the time the experience was earned. Certain types of transactions would be worth a certain number of points and the applicant would be required to use the forms adopted by reference in the rule to summarize the transactions. An applicant would be able to continue to gain experience after an application has been submitted until such time that the applicant meets the total number required but before the applicant may take the qualifying examination. Experience earned after the application is submitted would be reported on a different form adopted by reference in the rule. If an applicant is unable to obtain sufficient documentation and/or the signature of the sponsoring broker, the applicant would be required to use an affidavit adopted by reference in the rule to describe the applicant's efforts to obtain the documentation and/or signatures. In addition, the applicant would be required to provide two additional affidavits each signed by a different individual familiar with the applicant's circumstances and attesting to the applicant's efforts to obtain the appropriate documentation. Finally, the rule would give the commission the discretion to request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by Section 1101.356 of the Act and §535.56.

**STAFF
RECOMMENDATION**

Propose the amendments as presented

TEXAS



REAL ESTATE COMMISSION

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.50 regarding Definitions, §535.51 regarding General Requirements and §535.53 regarding Corporations and Limited Liability Companies, §535.55 regarding Education Requirements for a Salesperson License and §535.56 regarding Education and Experience Requirements for a Broker License with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

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

(1)-(2) (No Change)

(3) Broker Responsibility Course – The course required by §1101.458 of the Act.

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

(5) Designated broker – An individual holding an active Texas real estate broker license designated by a business entity licensed by the commission to act on its behalf. The designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership.

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

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

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

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

(10) ~~(8)~~ MCE--Mandatory Continuing Education.

(11) Non-elective Courses – The legal and ethics courses required by §1101.455 of the Act and the broker responsibility course required by §1101.458 of the Act.

(12) ~~(9)~~ Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the commission.

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

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

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

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

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

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

(19) ~~[(16)]~~ Student--An individual taking a core or MCE course for TREC credit.

§535.51. General Requirements.

(a)-(c) (No Change.)

(d) An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1) the applicant fails to satisfy a current education, experience or [requirement or an] examination requirement within one year [six months] from the date the application is filed;

(2) –(4) (No Change.)

(e) An applicant must complete relevant education and experience requirements before the applicant is eligible to take a qualifying examination for a license.

§535.53 Business Entities [Corporations and Limited Liability Companies].

(a) For the purposes of qualifying for, maintaining, or renewing a license, a **business entity [corporation or limited liability company]** must designate **a broker [one individual holding an active Texas real estate broker license]** to act for it. ~~[The designated broker must be an officer of the corporation or a manager of a limited liability company.]~~ The **business entity [corporation or limited liability company]** may not act as a broker during any period in which it **does [has]** not **have a** designated **broker [person]** to act for it who meets the requirements of the Act. Upon any change in the **business entity's [corporation or limited liability company's]** designated **broker [individual,]** the **entity [corporation or limited liability company]** must provide proof to the commission of the designated **broker's [individual's]** current status as an officer, ~~or~~ manager **or general partner** for that entity **and proof that the business entity maintains appropriate errors and omissions insurance if the designated broker owns less than 10 percent of the entity.** A broker may not act as a designated **broker [person]** at any time while the broker's license is inactive, expired, suspended or revoked.

(b) Section 1101.355 of the Act applies only to **business entities [corporations or limited liability companies]** which are created under the laws of this state, provided, however, that a **business entity [corporation or limited liability company]** formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of this section if it is qualified to do business in Texas; its officers, ~~or~~ managers, **or general partner**, its principal place of business and all of its assets are located in Texas; and all of its officers, **[and]** directors, **or** managers, **[and]** members **and partners** are Texas residents.

(c) (No Changes.)

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

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

(2) (No Changes.)

§535.56 Education and Experience Requirements for a Broker License.

(a) An applicant for a broker license must have **four** [~~two~~] years of experience actively practicing as a broker or salesperson in Texas during the **60** [~~36~~] months prior to filing the application, as follows:

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

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

(b) An applicant for a broker license must possess four years of active experience as a licensed real estate broker or salesperson during the 60 months preceding the date the application is filed.

(c) An applicant for a broker license must demonstrate not less than 3600 points of qualifying practical experience obtained during the period required by subsection (b), using TREC No. BL-A, Supplement A-Qualifying Experience Report for a Broker License. An applicant must use TREC No. BL-B, Supplement B-Qualifying Experience Report for a Broker License After an Application Has Been Filed, to report qualifying experience after an application for a broker license is filed. An applicant must demonstrate experience for four out of five years.

(1) An applicant will receive credit for such experience according to the point system set forth in subsection (d).

(2) Upon request by the commission, either prior to or after licensure, an applicant shall provide documentation to substantiate any or all of the experience claimed by the applicant.

(3) Failure to promptly provide the requested documentation or proof shall be grounds to deny the application. Any false claim of experience shall be grounds to deny the application, or shall be grounds to suspend or revoke the applicant's current license.

(d) Experience points shall be credited to an applicant in accordance with the following schedule for active licensed salesperson or broker activity only:

(1) Residential transactions including single family, condo, co-op unit, multi-family (1 to 4-unit):

(A) Closed purchase or sale -- 300 points per transaction

(B) An executed lease, renewal or extension for a landlord or tenant -- 50 points per transaction

(C) Residential rental property management rent collection -- 25 points per property per year

(2) Commercial transactions, including apartments (5 units or more), office, retail, industrial, mixed use, hotel/motel, parking facility/garage, and specialty:

(A) Closed purchase or sale -- 450 points

(B) An executed lease, renewal or extension for a landlord or tenant -- 100 points per transaction

(C) Commercial rental property management rent collection --100 points per property per year

(3) Farm and Ranch transactions

(A) Closed purchase or sale on a farm and ranch contract – 300 points

(B) Closed purchase or sale on an unimproved contract -- 25 points

(4) Brokerage branch office or team management -- 20 points per month with a maximum of 1200 points credit toward the 3,600 points total requirement

(5) Listing or buyer representation agreements --10 points each.

(e) An applicant shall have the burden of establishing to the satisfaction of the commission that the applicant actually performed the work associated with the real estate transaction claimed for experience credit.

(f) If an applicant is unable to obtain documentation and/or the signature of a sponsoring broker to support their claim for experience, the applicant must use TREC No. AFF-A, Affidavit in Lieu of Documentation and/or Signature, to explain that the applicant made a good faith effort to obtain the documentation and/or signature, describing the effort to obtain the documentation and reasons why it is not available. In addition, the applicant must submit two TREC No. AFF-B, Affidavit in Support of Applicant's Claim of Experience, each signed by a different individual who knows the applicant or is familiar with the transaction(s) at issue attesting to the applicant's efforts to obtain the documentation and/or signature, and attesting to the fact that the applicant performed the work for which the applicant is requesting points.

(g) The commission may request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by Section 1101.356 of the Act and this section.

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

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

(2) **The** [~~If the applicant was previously licensed as a Texas real estate broker, the~~] applicant has completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license. If the applicant was previously licensed as a Texas real estate salesperson, the applicant satisfies all current education requirements for an original broker license.

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

(i) Forms and affidavits required to be used to report experience under this section are adopted by reference, published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.



Application for a Real Estate Broker License

Supplement A-Qualifying Experience Report for a Broker License

Applicant Name (ENTER NAME EXACTLY AS SHOWN ON APPLICATION PAGE 1)

LastFirstMiddleLicense Number

Instructions for Completing Supplement A

You must accumulate at least 3600 points to qualify for a broker's license based on experience as a real estate licensee. An applicant must also be actively licensed as a real estate salesperson or broker for a minimum period of **48 months** during the **60 months preceding the date the application is filed**. For calculation purposes the experience period runs from the **date the application is filed** and should be listed in reverse chronological order beginning with the year the application is filed.

1. **Only experience gained during the period beginning 60 months before the date the broker application is filed may be used for this report.**
2. **Multiply the number of transactions performed by the point value indicated to arrive at the points earned for that category for each year.**
3. **Add the points earned for each category to arrive at your total points for that category.**
4. **Add the points earned for each year to arrive at your total points per year. You must have at least one category or transaction type for each year for at least 4 years.**
5. **Enter the total figure on the Total Qualifying Points line. You should have at least 3600 final qualifying points.**
6. **You must file "Supplement B" to receive credit for experience earned after the application is filed.**
7. **If you are unable to obtain sufficient documentation and/or signatures to support your claim for experience, you must file TREC No. AFF-A, Affidavit in Lieu of Documentation and/or Signature and two TREC No. AFF-B, Affidavit in Support of Applicant's Claim of Experience each signed by a different individual familiar with your circumstances.**
8. **Examples of documentation that supports experience may include executed contracts, listing agreements, HUD1s, etc.**

You must complete the entire experience report to report your qualifying experience including broker signature(s) and verification.

Points earned for experience must be calculated below.

CATEGORY OR TRANSACTION TYPE	POINT VALUE x # OF TRANSACTIONS	=	TOTAL POINTS EARNED PER CATEGORY PER YEAR					=	TOTAL POINTS EARNED
			YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5		
<i>Residential: Single Family, Condo, Co-op unit, Multi family (1 to 4 unit)</i>									
1. CLOSED PURCHASE OR SALE - with improvements.....	300 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
2. EXECUTED LEASE LANDLORD OR TENANT - new, renewal or extension.....	50 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
3. PROPERTY MANAGEMENT - Rent collections per property/per year.....	25 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
4. EXCLUSIVE LISTINGS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
5. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	_____	=	_____
TOTAL NUMBER OF POINTS EARNED PER YEAR			_____	_____	_____	_____	_____	=	_____

CATEGORY OR TRANSACTION TYPE	POINT VALUE x # OF TRANSACTIONS	TOTAL POINTS EARNED PER CATEGORY PER YEAR					TOTAL POINTS EARNED
		YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	
Commercial: <i>Apartments (5 units or more), Office, Retail, Industrial, Mixed Use, Hotel, Parking Facility, Specialty, Other</i>							
6. CLOSED PURCHASE OR SALE.....	450X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	= _____
7. EXECUTED LEASE LANDLORD OR TENANT - new, renewal or extension/ per year.....	50 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	= _____
8. PROPERTY MANAGEMENT - Rent collections per property/per year.....	100 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	= _____
9. LISTINGS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	= _____
10. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	= _____
TOTAL NUMBER OF POINTS EARNED PER YEAR			_____	_____	_____	_____	
Farm and Ranch: <i>Farm and Ranch with residence, improved, or unimproved</i>							
11. CLOSED PURCHASE OR SALE-Unimproved Lot Contract.....	25 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	= _____
12. CLOSED PURCHASE OR SALE-Farm and Ranch Contract.....	300 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	= _____
13. EXCLUSIVE LISTINGS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	= _____
14. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR	=	_____	_____	_____	_____	= _____
TOTAL NUMBER OF POINTS EARNED PER YEAR			_____	_____	_____	_____	
Brokerage Branch Office or Team Management <i>(at least 1 agent supervised; written designation required)</i>							
15. 20 points per month (maximum of 1200 points).....		=	_____	_____	_____	_____	= _____
TOTAL NUMBER OF POINTS EARNED FOR ALL YEARS LISTED			_____	_____	_____	_____	
SUM OF TOTAL POINTS EARNED FOR EACH CATEGORY = TOTAL QUALIFYING POINTS ON SUPPLEMENT A			_____				<input type="text"/>

NOTE: You must have at least one transaction type per year for 4 of the 5 years (one listing, rent collection, closing, management, etc.)

EMPLOYMENT HISTORY

Salesperson Experience - I was actively engaged as a licensed real estate salesperson as indicated below:

Broker's Name, Address and Telephone Number	License Number	FROM MM/ YYYY	TO MM/ YYYY

Notice to Applicant: The information given on this application is subject to verification. In order to prevent any unnecessary return of your application, we request your cooperation by providing us with information that will help us contact you by telephone or email if needed.

Business Number _____ Home Number _____ Alternate Number _____ Email address _____

CERTIFICATIONS

All claimed transactions are subject to verification. In order to claim experience points, the applicant must be able to provide documentation, such as an executed contract, listing agreement, or HUD 1, which clearly demonstrates the active participation of the applicant in each transaction. If the applicant is unable to provide documentation and/or obtain the sponsoring broker's signature the applicant must attest to that using a separate verification, Affidavit in Lieu of Documentation and/or Signature, TREC Form No. _____. In addition, the applicant must submit two of the TREC forms entitled "Affidavit in Support of Applicants Claim of Experience" each signed by a different individual familiar with the applicant's circumstances.

Failure to provide satisfactory supporting documentation when requested may result in denial of the application and/or disciplinary action initiated against the applicant and broker.

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

Additional Affirmations if Necessary:

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

Additional Affirmations if Necessary:

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

The information and certifications on this page must be supplied for each broker who sponsored the applicant during the periods being reported on the experience report.



Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188
 (512) 936-3000 www.trec.texas.gov

Application for a Real Estate Broker License

Supplement B-Qualifying Experience Report for a Broker License After an Application has Been Filed.

Applicant Name (ENTER NAME EXACTLY AS SHOWN ON APPLICATION PAGE 1)

Instructions for Completing Supplement B

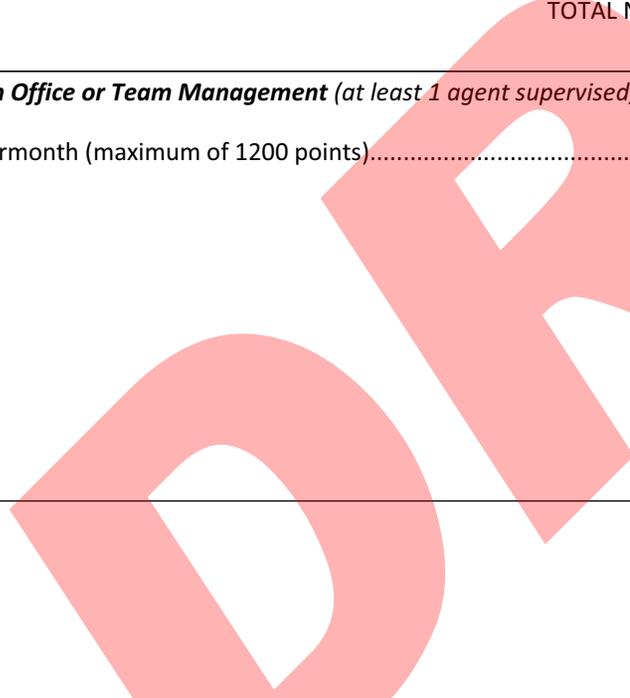
You must accumulate at least **3600** points to qualify for a broker's license based on experience as a real estate licensee. An applicant must also be actively licensed as a real estate salesperson or broker for a minimum period of **48 months** during the **60 months preceding the date the application is filed**. For calculation purposes the experience period for this form begins on the **date the application is filed**.

- Only experience gained during the period after the date the broker application is filed may be used for this report.**
- Multiply the number of transactions performed by the point value indicated to arrive at the points earned for that category per year.**
- Add the points earned for each category to arrive at your total points for Supplement B.**
- Add the points reported under Supplement A to arrive at you total points.**
- Enter the total figure on the Total Qualifying Points line. You should have at least 3600 final qualifying points.**
- You must file "Supplement A" to receive credit for experience earned before the application is filed.**
- If you are unable to obtain sufficient documentation and/or signatures to support your claim for experience, you must file TREC No. AFF-A, Affidavit in Lieu of Documentation and/or Signature and two TREC No. AFF-B, Affidavit in Support of Applicant's Claim of Experience each signed by a different individual familiar with your circumstances.**
- Examples of documentation that supports experience may include executed contracts, listing agreements, HUD1s, etc.**

You must complete the entire experience report to report your qualifying experience including broker signature(s) and verification.
Points earned for experience must be calculated below.

CATEGORY OR TRANSACTION TYPE	POINT VALUE x # OF TRANSACTIONS	=	TOTAL POINTS EARNED PER CATEGORY	=	TOTAL POINTS EARNED
<i>Residential: Single Family, Condo, Co-op unit, Multi family (1 to 4 unit)</i>					
1. CLOSED PURCHASE OR SALE - with improvements.....	300 X TRANSACTIONS PER YEAR	=	_____	=	_____
2. EXECUTED LEASE LANDLORD OR TENANT - new, renewal or extension.....	50 X TRANSACTIONS PER YEAR	=	_____	=	_____
3. PROPERTY MANAGEMENT - Rent collections per property/per year.....	25 X TRANSACTIONS PER YEAR	=	_____	=	_____
4. EXCLUSIVE LISTINGS.....	10 X TRANSACTIONS PER YEAR	=	_____	=	_____
5. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR	=	_____	=	_____
	TOTAL NUMBER OF POINTS EARNED		_____		_____

CATEGORY OR TRANSACTION TYPE	POINT VALUE x # OF TRANSACTIONS	TOTAL POINTS EARNED PER CATEGORY	TOTAL POINTS EARNED
Commercial: <i>Apartments (5 units or more), Office, Retail, Industrial, Mixed Use, Hotel, Parking Facility, Specialty, Other</i>		YEAR 1	
6. CLOSED PURCHASE OR SALE.....	450X TRANSACTIONS PER YEAR =	_____	= _____
7. EXECUTED LEASE LANDLORD OR TENANT - new, renewal or extension/ per year.....	50 X TRANSACTIONS PER YEAR =	_____	= _____
8. PROPERTY MANAGEMENT - Rent collections per property/per year.....	100 X TRANSACTIONS PER YEAR =	_____	= _____
9. LISTINGS.....	10 X TRANSACTIONS PER YEAR =	_____	= _____
10. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR =	_____	= _____
TOTAL NUMBER OF POINTS EARNED PER YEAR		_____	_____
<hr/>			
Farm and Ranch: <i>Farm and Ranch with residence, improved, or unimproved</i>			
11. CLOSED PURCHASE OR SALE-Unimproved Lot Contract.....	25 X TRANSACTIONS PER YEAR =	_____	= _____
12. CLOSED PURCHASE OR SALE-Farm and Ranch Contract.....	250 X TRANSACTIONS PER YEAR =	_____	= _____
13. EXCLUSIVE LISTINGS.....	10 X TRANSACTIONS PER YEAR =	_____	= _____
14. BUYER REPRESENTATION AGREEMENTS.....	10 X TRANSACTIONS PER YEAR =	_____	= _____
TOTAL NUMBER OF POINTS EARNED PER YEAR		_____	_____
<hr/>			
Brokerage Branch Office or Team Management <i>(at least 1 agent supervised; written designation required)</i>			
15. 20 points permonth (maximum of 1200 points).....	=	_____	= _____
TOTAL NUMBER OF POINTS EARNED FOR THIS TIME PERIOD		_____	_____
TOTAL NUMBER OF POINTS CARRIED OVER FROM SUPPLEMENT A		_____	_____
TOTAL QUALIFYING POINTS (MUST BE AT LEAST 3600 PTS)			<input type="text"/>



EMPLOYMENT HISTORY

Salesperson Experience - I was actively engaged as a licensed real estate salesperson as indicated below:

Broker's Name, Address and Telephone Number	License Number	FROM MM/ YYYY	TO MM/ YYYY

Notice to Applicant: The information given on this application is subject to verification. In order to prevent any unnecessary return of your application, we request your cooperation by providing us with information that will help us contact you by telephone or email if needed.

Business Number _____ Home Number _____ Alternate Number _____ Email address _____

CERTIFICATIONS

All claimed transactions are subject to verification. In order to claim experience points, the applicant must be able to provide documentation, such as an executed contract, listing agreement, or HUD 1, which clearly demonstrates the active participation of the applicant in each transaction. If the applicant is unable to provide documentation and/or obtain the sponsoring broker's signature the applicant must attest to that using a separate verification, Affidavit in Lieu of Documentation and/or Signature, TREC Form No. _____. In addition, the applicant must submit two of the TREC forms entitled "Affidavit in Support of Applicants Claim of Experience" each signed by a different individual familiar with the applicant's circumstances.

Failure to provide satisfactory supporting documentation when requested may result in denial of the application and/or disciplinary action initiated against the applicant and broker.

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

Additional Affirmations if Necessary:

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

Additional Affirmations if Necessary:

We, the undersigned, jointly certify that the named applicant has accumulated a total of _____ points as indicated in the preceding qualifying experience report. We further certify that the information given above is true to the best of our knowledge and belief. We understand that any material misstatement made may result in the revocation or suspension of the license, if issued, as well as any existing license of the applicant and/or the broker.

Applicant Signature/Date _____ Broker Signature/Date _____

The information and certifications on this page must be supplied for each broker who sponsored the applicant during the periods being reported on the experience report.



Texas Real Estate Commission

P.O. Box 12188

Austin, Texas 78711-2188

(512) 936-3000 www.trec.texas.gov

AFFIDAVIT IN LIEU OF DOCUMENTATION AND/OR SIGNATURE

NAME OF APPLICANT

Last First Middle License Number

Attach additional pages, if necessary, for any of the questions below.

Condition or circumstances surrounding the missing document(s). Complete this section only if the applicant is unable to provide documents such as executed contracts, listing agreements or HUD1s to support a claim of experience.

[Blank lines for condition or circumstances]

Explain your efforts to obtain the missing documents.

Describe the transaction and your role for which you are claiming experience.

Describe your attempts to obtain the broker's signature acknowledging your experience while sponsored by the broker.

[Blank lines for attempts to obtain broker's signature]

I certify that the facts provided in this affidavit are true, correct and complete. I further certify that I have made a good faith effort to obtain the documents and or broker's signature described above relating to the transaction(s) for which I am claiming experience. I understand that this claim for experience in lieu of documentation will be considered incomplete if not accompanied by two affidavits each signed by a person familiar with my attempts to obtain the documents and/or sponsoring broker's signature, and my contribution to the transaction(s) for which I am claiming experience points.

I understand that providing information that is not true, correct, and complete is grounds for disapproval of this application or revocation of my license. I authorize the Texas Real Estate Commission to conduct any investigations of me related to this application and claim for experience. I understand that information revealed in an investigation may be cause for denial of the application even though other requirements for a license have been met and that if an investigation is necessary, it may not be conducted until I have passed the examination.

I further understand that information submitted in conjunction with this application may become a public record. If granted a license, I will abide by the provisions of The Real Estate License Act and the Rules of the Texas Real Estate Commission.

Applicant's Signature Date

ACKNOWLEDGEMENT

State of Texas §

County of §

Before me, a notary public, on this day personally appeared, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Notary Public in the State of Texas

My commission expires:



Texas Real Estate Commission

P.O. Box 12188

Austin, Texas 78711-2188

(512) 936-3000 www.trec.texas.gov

AFFIDAVIT IN SUPPORT OF CLAIM FOR EXPERIENCE

NAME OF APPLICANT

Last First Middle License Number

NAME OF AFFIANT

Last First Middle

Address City State Zip Code Telephone Number

Attach additional pages, if necessary, for any of the questions below.

Explain your knowledge of applicant's efforts to obtain required documentation to support a claim of experience for a Texas Broker License.

Explain your knowledge of applicant's efforts to obtain the sponsoring broker's signature acknowledging the applicant's experience while sponsored by the broker.

Describe your knowledge of the applicant's role in the transaction(s) for which the applicant is requesting experience points.

What is your relationship to the applicant? Friend Coworker Relative Other

I certify that the facts provided in this affidavit are true, correct and complete to the best of my knowledge.

Affiant's Signature Date

VERIFICATION

State of Texas §

County of §

Before me, a notary public, on this day personally appeared, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

Notary Public in the State of Texas

My commission expires:



SUMMARY 12 (d) Proposes amendments to §535.63, Accreditation of Core Education Schools. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.301 to require the commission to adopt rules setting an examination passage rate benchmark for each category of license issued under Chapter 1101 and Chapter 1102, Texas Occupations Code.

The amendment to §535.63 establishes the method in which the benchmark passage rate would be calculated for each license category and makes other conforming changes to be consistent with the amendments made by SB 747.

STAFF
RECOMMENDATION

Propose the amendments as presented

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.63, Accreditation of Core Education Schools with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

§535.63 Accreditation of Core Education Schools

(a) (No Change.)

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

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

(2) (No Change.)

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

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

(5) The commission shall calculate and publish the average pass rate for each license type each quarter by dividing the total number of applicants who passed the qualifying examination the first time in the four-year period ending on the last day of the previous quarter by the total number of applicants who took the examination for the first time in the same period.

(c) No Change.



SUMMARY 12(e) Proposes amendments to §535.71, Approval of Providers, Courses and Instructors, and §535.72, Presentation of Courses, Advertising and Records, The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.458 to require a broker who sponsors a salesperson and a licensee who supervise another licensee to take a 6 hour broker responsibility course to renew a license.

The amendments to §535.71 and §535.72 provide the method by which the commission will create and approve the broker responsibility course, which will be the same way it deals with the 3 hour legal update and 3 hour ethics courses required under §1101.455, and provides conforming changes for consistency.

**STAFF
RECOMMENDATION**

Propose the amendments as presented

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.71, Approval of Providers, Courses and Instructors, and §535.72, Presentation of Courses, Advertising and Records with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

§535.71. Approval of Providers, Courses, and Instructors.

(a)-(j) (No change.)

(k) Non-elective ~~[Required legal update and ethics]~~ courses. The commission shall approve bi-annually a legal update course and a legal ethics course required by §1101.455(e) of the Act, and a broker responsibility course required by §1101.458(a) of the Act which shall be conducted through providers by instructors certified by the commission under this subchapter. The subject matter and course materials for the courses shall be created for and approved by the commission. The courses expire on December 31 of each odd-numbered year and shall be replaced with new courses approved by the commission. A provider may not offer a new course until an instructor of the course obtains recertification by attending a new instructor training program. Providers must acquire the commission-developed course materials and utilize such materials to conduct the non-elective [required legal] courses. The non-elective [required legal] courses must be conducted as prescribed by the rules in this subchapter and the course materials developed for the commission.

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

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

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

(1) -(3) (No change.)

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

(p) -(q) No Change.

(r) Legal update, ~~and~~ legal ethics course and broker responsibility course application. A provider must submit a MCE Course Application Supplement and receive written acknowledgment from the commission prior to offering a non-elective [required legal update or required legal ethics] course.

(s) No Change.

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

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

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

(1)-(2) (No change.)

(3) the course does not include a request for non-elective [required legal] course credit.

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

(1) (No change.)

(2) the course does not include a request for non-elective [required legal] course credit;
and

(3) (No change.)

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

(1) (No change.)

(2) the content of the course must satisfy the requirements of §1101.455 or §1101.458 of the Act and this section and must be substantially similar to the non-elective ~~[legal]~~ courses disseminated and updated by the Commission;

(3)-(4) (No change.)

(y) Each non-elective ~~[required legal]~~ course offered by correspondence must contain the following:

(1) -(8) (No change.)

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

(1) -(4) (No change.)

(aa) No Change.

(bb) Supervised Video Instruction for non-elective ~~required legal~~ course credit. A provider may register a course under subsection (r) of this section to be taught by supervised video instruction if the provider:

(1) -(3) (No change.)

(cc) An applicant must submit an MCE Course Application Supplement to seek approval to offer an MCE distance learning non-elective ~~[required legal]~~ course and receive written acknowledgment from the commission prior to offering the course.

(dd) – (ff) No Change.

§535.72. Presentation of Courses, Advertising, and Records.

(a) No Change.

(b) Partial credit.

(1) (No change.)

(3) Partial credit may not be granted for any course that contains as part of its curriculum all or part of the nonelective ~~[six legal]~~ hours of mandatory continuing education required by §1101.455 and §1101.458 of the Act.

(c) - (f) No Change.

(g) Course materials. Providers must furnish students with copies, for students' permanent use, of any material which is the basis for a significant portion of the course. Providers offering any of the non-elective ~~[required-legal]~~ courses must provide the students with the materials identified as student course materials for the non-elective ~~[required-legal]~~ courses. The course materials provided to the students may be in printed form or electronic media such as a CD-ROM or diskette that the student may access through commonly available software such as common word-processing programs and slide presentation programs. Ample space must be provided on handouts for note taking or completion of any written exercises. If a provider charges fees for supplies, materials, or books needed in course work, the fees must be itemized in a written statement provided to each student by the provider before the student registers for the course.

(h) – (k) No Change.

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

(m) Updates. If the commission determines that it is in the public interest to update the non-elective ~~[required-legal]~~ courses about changes in the law, the commission may require the provider to furnish each student with a copy of the information. The commission also may require the provider to ensure that the provider's instructors include the material in the presentation of the course. The commission shall furnish the provider with a copy of the information and notify the provider that the commission requires compliance with this subsection in a non-elective ~~[required-legal]~~ course or any elective course combined with a non-elective ~~[legal]~~ course offered after the provider's receipt of the notice.

(n) – (p) No Change.

**SUMMARY 12(f)**

Proposes amendments to 22 TAC §535.91 regarding Renewal Notices, §535.93 regarding Late Renewals, and §535.96 regarding Mailing Address and Other Information. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amends Texas Occupations Code, §1101.451 to change the maximum period of time in which a licensee can file a late renewal from one year to six months, amends §1101.458 to require that certain licensees take a six hour broker responsibility course to renew a license, and amends the requirements in §1101.552 for license holders to provide and maintain certain contact information with the commission, including an email address if available. Because the effective date of certain provisions of SB 747 is September 1, 2011, the commission is simultaneously taking emergency action to amend §535.93 to be consistent with SB 747.

The amendments to §535.91 clarify that a broker who sponsors salespersons, a designated broker of a business entity, and a license holder who is a delegated supervisor of one or more licensees under §535.2 for six months or more during the course of the current license must take the six hour broker responsibility course to renew a license. The amendments to §535.93 change to six months any references to the one year period for filing a late renewal. The amendments to §535.96 clarify that licensees must provide and maintain contact information with the commission, including an email address if available.

**STAFF
RECOMMENDATION**

Propose the amendments as presented

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.91 regarding Renewal Notices, §535.93 regarding Late Renewals, and §535.96 regarding Mailing Address and Other Information with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

§535.91, §535.93, and §535.96

535.91. Renewal Notices.

(a) No Change.

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

(c) A broker who sponsors a salesperson, a designated broker of a business entity, or a license holder who is a delegated supervisor of one or more license holders pursuant to §535.2 of this chapter for six months or more during the course of the current license must attend the six hour broker responsibility course required by §1101.458 of the Act.

~~(d) [(e)]~~ The commission shall mail a license renewal notice three months before the expiration of the current license. Failure to receive a license renewal notice does not relieve a licensee of the obligation to renew a license.

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

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

§535.93. Late Renewal Applications.

(a) A licensee who files a late application to renew a previous license less than six months [one year] after the expiration of the license must do so on a form approved by the commission for that purpose and is subject to the requirements of this section and Tex. Occ. Code §1101.451(e). The commission shall renew the license in an active status except as provided by this section. A license issued under this section is effective the day following the expiration of the previous license.

(b) - (c) No Change.

(d) If a licensee who has not completed all MCE before the expiration of the previous license files a late application to renew the license in an active status more than 60 days but less than six months [~~one year~~] from the expiration of the license, the licensee must:

(1) - (4) (No Change.)

(e) – (g) (No Change.)

§535.96 Mailing address and Other Contact Information.

(a) Each licensee shall furnish a mailing address, phone number, and email address, **if available**, to the commission and shall report all subsequent changes within 10 days after a change of any of the listed contact information. If a licensee fails to update the mailing address, the last known mailing address provided to the commission will be deemed to be the licensee's mailing address.

(b) (No Change.)

**SUMMARY 12(g)**

Proposes amendments to §535.101 regarding Fees. The amendments would increase the salesperson and broker application fees from \$105 to \$119, the annual renewal fees for brokers and salespersons from \$34 to \$41; the late renewal fee from \$51 to \$61.50 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from \$68 to \$82 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than six months. The amendments also change the maximum late renewal period from six months to one year and remove a reference to an application in the fee for moral character determination.

The justification for the fee increases is to generate sufficient revenue to fund the operations of the agency and to comply with requirements of Senate Bill 1000, 82nd Texas Legislature, Regular Session (2011).

Senate Bill 1000 makes the Texas Real Estate Commission self-directed and semi-independent. The bill removes the agency from the legislative budgeting process, and requires the commission to adopt and approve an annual budget. The bill requires that the commission collect sufficient fees to fund operations to carry out its function and to fund the budget. In relevant part, the bill also requires the agency to remit \$750,000 to the general revenue fund not later than August 31 of each fiscal year, to remit a non-refundable retainer to the State Auditor of \$10,000 per fiscal year, a nonrefundable retainer to the Attorney General of \$75,000 per fiscal year, and a non-refundable retainer to the State Office of Administrative Hearings of \$75,000 per fiscal year. TREC will be required to reimburse each agency for all costs incurred in excess of the retainers for providing services to the commission. In addition, the bill requires the agency to pay rent in a reasonable amount to be determined by the Texas Facilities Commission with aggregate rent payments to be not less than \$550,000 per fiscal year for state fiscal years ending August 31, 2012 and August 31, 2013; and not less than \$425,000 per fiscal year for each year ending August 31, 2014, August 31, 2015, and August 31, 2016.

**STAFF
RECOMMENDATION**

Propose the amendments as presented

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.101 regarding Fees with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

§535.101 Fees.

(a) Fees for the issuance of a license due to a change of address, additional place of business or change of sponsoring broker are due when requests for such licenses are received. A change of address or name submitted with an application to renew a license, however, does not require payment of a fee in addition to the fee for renewing the license. If the commission receives a request for issuance of a license certificate which requires payment of a fee, and appropriate fee was not filed with the request, the commission shall return the request and notify the person filing the request that the person must pay the fee before the certificate will be issued. The commission may require written proof of a licensee's right to use a different name prior to issuing a license certificate reflecting a change of name. As used in this section, the term "license" includes a certificate of registration.

(b) The commission shall charge and collect the following fees:

(1) a fee of **\$119** [~~405~~] for the filing of an original application for a real estate broker license, which includes a fee for transcript evaluation;

(2) a fee of **\$41** [~~34~~] for annual renewal of a real estate broker license;

(3) a fee of **\$119** [~~405~~] for the filing of an original application for a real estate salesperson license, which includes a fee for transcript evaluation;

(4) a fee of **\$41** [~~34~~] for annual renewal of a real estate salesperson license;

(5) a fee of \$61 for taking a license examination;

(6) a fee of \$20 for filing a request for a license for each additional office or place of business;

(7) a fee of \$20 for filing a request for a license for a change of place of business change of name, return to active status or change of sponsoring broker;

(8) a fee of \$20 for filing a request to replace a license lost or destroyed;

(9) a fee of \$400 for filing an application for accreditation of an education program under Texas Occupations Code (the Act), §1101.301;

(10) a fee of \$200 a year for operation of a real estate education program under the Act, §1101.301;

(11) a fee of \$20 for preparing a license history;

(12) a fee of \$25 for the filing of ~~an application for~~ a moral character determination;

(13) a fee of \$25 for the filing of an instructor application;

(14) a fee of **\$61.50** [~~54~~] for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less;

(15) a fee of **\$82** [~~68~~] for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than **six months** ~~one year~~;

(16) the fee charged by the Federal Bureau of Investigation for a national criminal history check in connection with a license renewal;

(17) a late reporting fee of \$250 to reactivate a license under §535.92(f) of this chapter; and

(18) a fee of \$20 for filing any application, renewal, change request, or other record on paper that a person may otherwise file with the commission electronically by accessing the commission's web site, entering the required information online, and paying the appropriate fee.

(c) Fees established by this section that are paid when an application is filed are not refundable once an application has been accepted for filing.



SUMMARY 12(h) Proposes amendments to 22 TAC §535.121, Inactive License, and §535.122, Reactivation of License. The amendments are proposed to make conforming changes to other rules that are being proposed to implement the requirements of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amends Texas Occupations Code, Chapter §1101 regarding the treatment of business entities who engage in real estate brokerage activity.

The amendments to §535.121 makes conforming changes to be consistent with other rules that are being simultaneously proposed to implement the requirements of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The amendments to §535.122 clarify that a salesperson on inactive status may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission as long as the salesperson otherwise meets MCE requirements.

STAFF
RECOMMENDATION

Propose the amendments as presented

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.121, Inactive License, and §535.122, Reactivation of License with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

§535.121 Inactive License.

(a) The license of a salesperson immediately becomes inactive upon each of the following circumstances:

(1) - (3) (No Change.)

(4) if the sponsoring broker is a corporation, limited liability company or partnership, the expiration, suspension, revocation or inactivation of the license of the ~~[person]~~ designated ~~[as]~~ broker ~~[- manager, or partner on the license certificate]~~ of the entity, which also places the license of the entity on inactive status; or

(5) (No Change.)

(b) –(c) No Change.

535.122. Reactivation of License.

(a) No Change.

(b) When a salesperson whose license status is inactive enters the sponsorship of a broker and the salesperson is subject to MCE requirements, the salesperson is not returned to active status until MCE requirements are satisfied and the commission has received documentation of course completion in a form satisfactory to the commission. **If the salesperson has satisfied all MCE requirements, the salesperson may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission.** A salesperson whose original application or renewal application was subject to educational requirements imposed by the Act, §1101.358 and §1101.454, is not subject to MCE requirements as a condition of returning to active status during the term of the license issued from the original application or renewal application.



SUMMARY 12(i) Proposes amendments to 22 TAC §535.132 regarding Eligibility for Licensure. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends the Texas Occupations Code Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code.

The amendments to §535.132 make conforming changes to be consistent with proposed changes to §§535.55 and .56 regarding waiver of education or experience requirements for a salesperson or broker license, and change the references from individual business entity types to "business entity" to make conforming changes to be consistent with the statutory text amended by SB 747.

STAFF
RECOMMENDATION Propose the amendments as presented

MOTION MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.132 regarding Eligibility for Licensure with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

§535.132. Eligibility for Licensure.

(a) A person residing in another state may apply for a license under ~~[the provisions of Subchapter H of the Act and]~~ this section if the person:

(1) is licensed as a broker by the other state; or

(2) was licensed as a Texas real estate salesperson or broker no more than two ~~six~~ years prior to the filing of the application.

(3) The commission may waive ~~[examination,]~~ education and experience requirements if the applicant satisfies the conditions established by §535.56(h) ~~[\$535.61 of this title (relating to Waiver of Examinations) and by either §535.62]~~ of this title (relating to Brokers: Education and Experience) or §535.55 ~~[\$535.63]~~ of this title (relating to Salespersons: Education).

(b) A business entity ~~[limited liability company]~~ created or chartered under the laws of another state~~[or a corporation chartered in a state other than Texas]~~ may apply for a Texas real estate broker license if the entity meets one of the following requirements.

(1) The entity is licensed as a broker by the state in which it was created or chartered.

(2) The entity is licensed as a broker in a state in which it is permitted to engage in real estate brokerage business as a foreign business entity ~~[limited liability company or corporation]~~.

(3) The entity was created or chartered in a state that does not license business entities ~~[limited liability companies or corporations]~~, as the case may be, and the entity is lawfully engaged in the practice of real estate brokerage in another state and meets all other requirements for applications for a license in Texas.

(c) (No change.)

(d) To be eligible to receive a license and maintain an active license, a business entity ~~[limited liability company or corporation]~~ created or chartered in another state must designate a person to act for it who meets the requirements of §1101.453 of the Act, although the designated broker ~~[person]~~ is not required to be a resident of Texas. Foreign business entities ~~[corporations and limited liability companies]~~ also must be permitted to engage in business in this state to receive a Texas real estate broker license.



SUMMARY 12(j) Proposes amendments to 22 TAC Subchapter N, §535.141 regarding Initiation of Investigation. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in Section 1.002 of the Business Organizations Code. Because the effective date of the relevant provision in SB 747 is September 1, 2011, the commission is simultaneously taking emergency action to amend §535.5141 to be consistent with SB 747 on that date.

The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101, and to make conforming changes to the rule to be consistent with other rules that have been adopted on an emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747.

STAFF
RECOMMENDATION

Propose the amendments as presented

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.141 regarding Initiation of Investigation with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

§535.141. Initiation of Investigation.

(a) –(c) No Change.

(d) The designated broker ~~{designated by a licensed business entity to act as its officer, manager or partner}~~ is responsible for all real estate brokerage activities performed by, on behalf of, or through a ~~the~~ business entity. A complaint which names a business entity licensed as a broker as the subject of the complaint but which does not specifically name the designated broker ~~[designated as the officer, manager or partner of the business entity,]~~ is a complaint against the designated broker ~~[acting as the designated officer, manager or partner]~~ at the time of any alleged violation for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities. A complaint which names a salesperson sponsored by a licensed business entity but which does not specifically name the designated broker of the business entity is a complaint against the designated broker at the time of any alleged violation by the salesperson for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities provided the complaint concerns the conduct of the salesperson as an agent of the business entity.

(e) – (h) No Change.

(i) A person whose license is subject to an order suspending the license must prior to the suspension taking effect:

(1) (No Change.)

(2) if the person is a broker, notify in writing any salespersons he or she sponsors, or any business entity ~~[corporation, limited liability company or partnership]~~ for which the person is designated broker ~~[as an officer, manager or partner]~~ that:

(A) (No Change.)

(B) once the suspension is effective any salesperson he or she sponsors or who is sponsored by the business entity ~~[corporation, limited liability company or partnership]~~ will not be authorized to engage in real estate brokerage unless the salespersons associate with another broker and file a change of sponsorship with the commission or the business entity designates a new broker and files a change of designated broker ~~[officer, manager or partner]~~ with the commission;

(3)-(7) (No Change.)

(j) – (k) (No Change.)

**SUMMARY 12(k)**

Proposes amendments to §535.210 regarding Inspector Fees. The amendments would increase the professional inspector application fee from \$90 to \$104, the real estate inspector application fee from \$75 to \$89, and the apprentice inspector application fee from \$35 to \$42, the annual renewal fees for professional and real estate inspectors from \$27 to \$34, and the annual renewal fee for an apprentice inspector from \$22 to \$29.

The justification for the fee increases is to generate sufficient revenue to fund the operations of the agency and to comply with requirements of Senate Bill 1000, 82nd Texas Legislature, Regular Session (2011).

Senate Bill 1000 makes the Texas Real Estate Commission self-directed and semi-independent. The bill removes the agency from the legislative budgeting process, and requires the commission to adopt and approve an annual budget. The bill requires that the commission collect sufficient fees to fund operations to carry out its function and to fund the budget. In relevant part, the bill also requires the agency to remit \$750,000 to the general revenue fund not later than August 31 of each fiscal year, to remit a non-refundable retainer to the State Auditor of \$10,000 per fiscal year, a nonrefundable retainer to the Attorney General of \$75,000 per fiscal year, and a non-refundable retainer to the State Office of Administrative Hearings of \$75,000 per fiscal year. TREC will be required to reimburse each agency for all costs incurred in excess of the retainers for providing services to the commission. In addition, the bill requires the agency to pay rent in a reasonable amount to be determined by the Texas Facilities Commission with aggregate rent payments to be not less than \$550,000 per fiscal year for state fiscal years ending August 31, 2012 and August 31, 2013; and not less than \$425,000 per fiscal year for each year ending August 31, 2014, August 31, 2015, and August 31, 2016.

**STAFF
RECOMMENDATION**

Propose the amendments as presented

MOTION

MOVED, that staff is authorized, on behalf of this Commission, to submit the amendments to §535.210 regarding Inspector Fees with any non-substantive changes as staff may deem necessary or advisable for proposal to the *Texas Register* and for public comment.

§535.210 Fees.

(a) The commission shall charge and collect the following fees:

(1) a fee of ~~\$42~~ [35] for filing an original application for a license as an apprentice inspector;

(2) a fee of ~~\$89~~ [75] for filing an original application for a license as a real estate inspector, which includes a fee for transcript evaluation;

(3) a fee of ~~\$104~~ [90] for filing an original application for a license as a professional inspector, which includes a fee for transcript evaluation;

(4) a fee of ~~\$29~~ [22] for the annual renewal of the license of an apprentice inspector;

(5) a fee of ~~\$34~~ [27] for the annual renewal of the license of a real estate inspector;

(6) a fee of ~~\$34~~ [27] for the annual renewal of the license of a professional inspector;

(7) a fee of \$61 for taking a license examination;

(8) a fee of \$20 for requesting a change of address or replacement of a lost or destroyed license certificate;

(9) a fee of \$20 for requesting issuance of a license because of a change of name, return to active status, or change in sponsoring professional inspector;

(10) a fee of \$100 for deposit in the real estate inspection recovery fund upon an applicant's successful completion of an examination; and

(11) a fee of \$20 for filing any application, renewal, change request, or other record on paper that a person may otherwise file with the commission electronically by accessing the commission's web site, entering the required information online, and paying the appropriate fee.

(b) Fees established by this section which are paid when an application is filed are not refundable once an application has been accepted for filing.



Agenda Item 13:

Discussion regarding legislative housekeeping measures and other legislative items.

SUMMARY

See attached information. .

STAFF
RECOMMENDATION

MOTION

Discussion item only

AN ACT

relating to self-directed and semi-independent status of the Texas Real Estate Commission; making an appropriation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 7, Occupations Code, is amended by adding Chapter 1105 to read as follows:

CHAPTER 1105. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF
TEXAS REAL ESTATE COMMISSION

Sec. 1105.001. DEFINITIONS. In this section:

(1) "Agency" means the commission and the board.

(2) "Board" means the Texas Appraiser Licensing and Certification Board.

(3) "Commission" means the Texas Real Estate Commission.

Sec. 1105.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS.

(a) Notwithstanding any other provision of law, the agency is self-directed and semi-independent as specified by this chapter. Any Act of the 82nd Legislature that relates to the agency and that is inconsistent with the agency being self-directed and semi-independent may be implemented by the administrator of the agency only on authorization by the agency.

(b) This chapter does not affect the board's status as an

independent subdivision of the commission as provided by Section 1103.051.

Sec. 1105.003. BUDGET, REVENUES, AND EXPENSES.

(a) Notwithstanding any other provision of law, including the General Appropriations Act, the commission and the board shall each adopt a separate budget annually using generally accepted accounting principles.

(b) The commission shall be responsible for all direct and indirect costs of the commission's existence and operation. The board shall be responsible for all direct and indirect costs of the board's existence and operation. The agency may not directly or indirectly cause the general revenue fund to incur any cost.

(c) Notwithstanding any other provision of law, the commission and the board may each set the amounts of the respective fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the separate functions of the commission and the board and funding the respective budgets of the commission and the board adopted and approved under Subsection (a).

(d) Except as provided by Subsection (e), all fees and funds collected by the commission or the board and any funds appropriated to the commission or the board shall be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The comptroller shall contract with the commission and

the board for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers.

(e) A fee collected under:

(1) Section 1101.153(b)(2) shall be deposited in Fund 0193 in the state treasury; and

(2) Section 1101.153(b)(3) shall be deposited in Fund 0001 in the state treasury.

(f) Not later than August 31 of each fiscal year, the agency shall remit \$750,000 to the general revenue fund.

(g) The fiscal year for the agency begins on September 1 and ends on August 31.

Sec. 1105.004. AUDITS. (a) This chapter does not affect the duty of the state auditor to audit the agency. The state auditor shall enter into a contract and schedule with the agency to conduct audits.

(b) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the state auditor in an amount not less than \$10,000. The agency shall reimburse the state auditor for all costs incurred, in excess of the aggregate nonrefundable retainer amounts paid each fiscal year, in performing the audits and shall provide to the governor a copy of any audit performed.

Sec. 1105.005. RECORDS; REPORTING REQUIREMENTS. (a) The

agency shall keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of the agency.

(b) Before the beginning of each regular session of the legislature, the agency shall submit to the legislature and the governor a report describing all of the agency's activities in the previous biennium. The report must include:

(1) an audit as required by Section 1105.004;

(2) a financial report of the previous fiscal year, including reports on the financial condition and results of operations;

(3) a description of all changes in fees imposed on regulated persons;

(4) a report on changes in the regulatory jurisdiction of the agency; and

(5) a list of all new rules adopted or repealed.

(c) In addition to the reporting requirements of Subsection (b), not later than November 1 of each year, the agency shall submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board a report that contains:

(1) the salary for all agency personnel and the total amount of per diem expenses and travel expenses paid for all agency employees;

(2) the total amount of per diem expenses and travel expenses paid for each member of the agency;

(3) the agency's operating plan and the annual budgets of the commission and the board; and

(4) a detailed report of all revenue received and all expenses incurred by the agency in the previous 12 months.

Sec. 1105.006. ABILITY TO CONTRACT. (a) To carry out and promote the objectives of this chapter, the commission or board may enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of the commission's or board's respective affairs and for the attainment of the commission's or board's respective purposes, except as limited by Subsection (b).

(b) Any indebtedness, liability, or obligation of the commission or board incurred under this section may not:

(1) create a debt or other liability of this state or another entity other than the commission or board, as appropriate;
or

(2) create any personal liability on the part of the members or employees of the agency.

Sec. 1105.007. PROPERTY. The commission or board may:

(1) acquire by purchase, lease, gift, or any other manner provided by law and maintain, use, and operate any real, personal, or mixed property, or any interest in property, necessary

or convenient to the exercise of the respective powers, rights, privileges, or functions of the commission or board;

(2) sell or otherwise dispose of any real, personal, or mixed property, or any interest in property, that the commission or board, as appropriate, determines is not necessary or convenient to the exercise of the commission's or board's respective powers, rights, privileges, or functions;

(3) construct, extend, improve, maintain, and reconstruct, or cause to construct, extend, improve, maintain, and reconstruct, and use and operate all facilities necessary or convenient to the exercise of the respective powers, rights, privileges, or functions of the commission or board; and

(4) borrow money, as may be authorized from time to time by an affirmative vote of a two-thirds majority of the commission or board, as appropriate, for a period not to exceed five years if necessary or convenient to the exercise of the commission's or board's respective powers, rights, privileges, or functions.

Sec. 1105.008. SUITS. (a) The office of the attorney general shall represent the agency in any litigation.

(b) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the office of the attorney general in an amount of not less than \$75,000. The nonrefundable retainer shall be applied to any services provided to the agency. If additional litigation services are required, the attorney

general may assess and collect from the agency reasonable attorney's fees, in excess of the aggregate nonrefundable retainer amount paid each fiscal year, associated with any litigation under this section.

Sec. 1105.009. ADMINISTRATIVE HEARINGS. (a) Not later than August 31 of each fiscal year, the agency shall remit a nonrefundable retainer to the State Office of Administrative Hearings in an amount of not less than \$75,000 for hearings conducted by the State Office of Administrative Hearings under a law administered by the commission or the board.

(b) The nonrefundable retainer shall be applied to the costs associated with conducting the hearings. If additional costs are incurred, the State Office of Administrative Hearings may assess and collect from the agency reasonable fees, in excess of the nonrefundable retainer amount paid each fiscal year, associated with conducting the hearings.

Sec. 1105.010. POST-PARTICIPATION LIABILITY. (a) If the agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, the agency shall be liable for any expenses or debts incurred by the agency during the time the agency was a self-directed semi-independent agency. The agency's liability under this section includes liability for any lease entered into by the agency. This state is not liable for any expense or debt covered by this subsection, and money from the

general revenue fund may not be used to repay the expense or debt.

(b) If the agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, ownership of any property or other asset acquired by the agency during the time the agency was a self-directed semi-independent agency, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to this state.

Sec. 1105.011. DUE PROCESS; OPEN GOVERNMENT. The commission and the board are governmental bodies for purposes of Chapters 551 and 552, Government Code. The commission is a state agency for purposes of Chapters 2001 and 2005, Government Code.

Sec. 1105.012. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Employees of the agency are members of the Employees Retirement System of Texas under Chapter 812, Government Code, and the commission's and the board's transition to independent status as provided by this chapter has no effect on their membership or any benefits under that system.

SECTION 2. Subsection (c), Section 1101.059, Occupations Code, is amended to read as follows:

(c) A person appointed to the commission is entitled to reimbursement~~[, as provided by the General Appropriations Act,]~~ for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before

or after the person qualifies for office.

SECTION 3. Subsection (d), Section 1101.101, Occupations Code, is amended to read as follows:

(d) The commission shall determine the salaries of the administrator, officers, and employees of the commission. [~~The amounts of the salaries may not exceed the amounts specified by the General Appropriations Act.~~]

SECTION 4. Subsection (b), Section 1103.103, Occupations Code, is repealed.

SECTION 5. (a) To provide a reasonable period for the Texas Real Estate Commission to establish itself as a self-directed and semi-independent agency under Chapter 1105, Occupations Code, as added by this Act, the following amounts are appropriated out of the general revenue fund:

(1) for the state fiscal year ending August 31, 2012, an amount equal to 50 percent of the amount of general revenue appropriated to the agency for the state fiscal year ending August 31, 2011; and

(2) for the state fiscal year ending August 31, 2013, an amount equal to 50 percent of the amount of general revenue appropriated to the agency for the state fiscal year ending August 31, 2011.

(b) Subject to Chapter 1105, Occupations Code, as added by this Act, the appropriations made by Subsection (a) of this section

may be spent by the Texas Real Estate Commission as the commission directs. The Texas Real Estate Commission shall repay to the general revenue fund the appropriation made to the commission for the state fiscal year ending August 31, 2012, not later than that date and as funds become available. The Texas Real Estate Commission shall repay to the general revenue fund the appropriation made to the commission for the state fiscal year ending August 31, 2013, not later than that date and as funds become available.

SECTION 6. The transfer of the Texas Real Estate Commission to self-directed and semi-independent status under Chapter 1105, Occupations Code, as added by this Act, and the expiration of self-directed and semi-independent status may not act to cancel, suspend, or prevent:

- (1) any debt owed to or by the commission or the Texas Appraiser Licensing and Certification Board;
- (2) any fine, tax, penalty, or obligation of any party;
- (3) any contract or other obligation of any party; or
- (4) any action taken by the commission or the board in the administration or enforcement of the commission's or the board's duties.

SECTION 7. The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board shall continue to have and exercise the powers and duties allocated to the commission or

the board in the commission's or the board's enabling legislation, except as specifically amended by this Act.

SECTION 8. Title to or ownership of all supplies, materials, records, equipment, books, papers, and furniture used by the Texas Real Estate Commission or the Texas Appraiser Licensing and Certification Board is transferred to the commission or the board, respectively. This Act does not affect any property owned by the commission or the board on or before the effective date of this Act.

SECTION 9. The Texas Real Estate Commission and the Texas Appraiser Licensing and Certification Board shall relocate to state-owned office space not later than September 1, 2011, and shall pay rent to this state in a reasonable amount to be determined by the Texas Facilities Commission for the use and occupancy of the office space. Aggregate rental payments may not be less than \$550,000 per fiscal year for the state fiscal years ending August 31, 2012, and August 31, 2013. Aggregate rental payments may not be less than \$425,000 per fiscal year for each state fiscal year ending August 31, 2014, August 31, 2015, and August 31, 2016.

SECTION 10. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1000 passed the Senate on April 20, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 31, Nays 0; passed subject to the provisions of Article III, Section 49a, of the Constitution of Texas.

Secretary of the Senate

I hereby certify that S.B. No. 1000 passed the House, with amendment, on May 23, 2011, by the following vote: Yeas 147, Nays 0, two present not voting; passed subject to the provisions of Article III, Section 49a, of the Constitution of Texas.

Chief Clerk of the House

Approved:

Date

Governor

I, Susan Combs, Comptroller of Public Accounts, do hereby certify that the amounts appropriated in the herein S.B. No. 1000, Regular

Session, 82nd Legislature, are within the amount estimated to be available in the affected fund.

Certified _____,
2011.

Comptroller of Public Accounts



Agenda Item 14:

Discussion and possible action to adopt a code of conduct for members of advisory committees and working groups.

SUMMARY

See attached documentation

**STAFF
RECOMMENDATION**

Approve code of conduct.

MOTION

Moved, that the Commission approves the code of conduct for members of advisory committees and working groups as submitted under this agenda item.

Agency Code of Conduct for Appointees to Advisory Committees for TREC & TALCB

Introduction - The people of Texas have a right to expect the business of the State to be conducted with efficiency, fairness, impartiality and integrity. Volunteer service to the public as an appointed member of an advisory committee or work group (advisory committees) is a revocable privilege and carries with it a particular obligation to the public interest. Such service requires standards of professional behavior from all participants that promote and maintain public confidence and trust in the work of the agency.

This code of conduct explains the principles covering appropriate conduct in a variety of contexts and outlines the minimum standards of behavior expected of members who serve on advisory committees.

Relevant Legal Standards - The main legislation applying to appointed members is found in Chapters 1101-1103 of the Texas Occupations Code. The Administrative Rules adopted under such legislation also apply. Guidance found in opinions of the Texas Ethics Commission may also be relevant to such service.

Applicability of this Code of Conduct – Appointed advisory committees should use the standards, principles and specific requirements in this code to guide and assist their members while serving.

Responsibility to the Commission - Committee members will implement the policies of the governing body as directed, and produce the work requested of the committee in a professional manner.

Respect for People - Members will perform their duties in a professional and responsible manner. Members are to treat their colleagues, agency staff and members of the public respectfully and consistently, in a non-discriminatory manner with due regard for their rights and dignity. Sarcasm and condescension are inappropriate. Members must not harass or discriminate against their colleagues, agency staff or members of the public on the basis of any protected category, or of political conviction.

Integrity and Public Interest - Members are to promote due confidence in the integrity of public administration and always act in the public interest and not in their private interest. Members should protect the reputation of the agency. They should not engage in any activities that would bring the committee or the agency into disrepute.

Responsive Service - The agency's standards require members to commence work in a timely manner, and provide requested information promptly and in a form that is clear, accurate, current and complete. They should also ensure that their decisions and actions are reasonable, fair and appropriate to the circumstances, based on consideration of all relevant facts, and supported by adequate documentation.

Economy and Efficiency - Members should keep current with advances and changes in their area of expertise and strive to improve performance and achieve high standards of service. They should use their authority, available resources and information only for the work-related purpose intended.

Fairness and Equity - Issues or cases being considered by members should be dealt with consistently, promptly and fairly. This involves dealing with matters in accordance with approved procedures, in a

non-discriminatory manner, and in conformity with justice. When using any discretionary powers, members should ensure that they take all relevant facts into consideration, have regard to the particular merits of each case, and not take irrelevant matters or circumstances into consideration.

Protecting Confidential Information – The agency has clearly documented procedures regarding the storage, disclosure and distribution of confidential or sensitive personal, commercial or political information. Any request for information should be referred to the agency director for handling.

Guide to Ethical Decision Making - To assist in fostering a climate of ethical awareness, conduct and decision-making, members may find it useful to refer to or consider, alone or as a body, these 5 points: Is the decision or conduct lawful? Is the decision or conduct consistent with agency policy and in line with the agency's objectives and code of conduct? What will the outcome be for all parties involved? Do these outcomes raise a conflict of interest or lead to private gain at public expense? Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

Conflicts of Interest - Conflicts of interest exist when it is likely that a member could be influenced, or could be perceived to be influenced, by a personal interest in carrying out their public duty. Conflicts of interest that lead to other than impartial decision-making may constitute corrupt conduct.

Some related interests that may give rise to a conflict of interest include: financial interests in a matter the agency deals with or having friends or relatives with such an interest that the member is aware of; personal beliefs or attitudes that influence the impartiality of advice given; personal relationships with the people the agency is dealing with that go beyond the level of a professional working relationship; other employment that compromises the integrity of the member and the agency; and partisan political activities or making adverse political comments related to the agency's work.

An individual member may often be the only person aware of the potential for conflict. It is therefore their responsibility to avoid any financial or other interest that could compromise impartial performance of their duties, and disclose any potential or actual conflicts of interest to the agency's director. If members are uncertain whether a conflict exists, they should discuss the related interest matter with the director and attempt to resolve any conflicts of interest that may exist.

To resolve any conflicts of interest that occur, or could occur, a range of options is available depending on the significance of the conflict. These options include: recording the details of the disclosure and taking no further action because the potential for conflict is minimal or can be eliminated by disclosure; the member relinquishing the personal interest; the member withdrawing from the consideration or particular task where the conflict arises; or the member resigning from the appointed position. Disputes over alleged conflicts of interests will be resolved through the agency director and governing body Chair.

Acceptance of Gifts or Benefits – Members should not accept a gift or benefit that is intended, or likely, to cause them to act in a non-impartial manner in the course of their duties. The governing body Chair may approve the acceptance of token gifts or benefits under certain circumstances provided that there is no possibility that the recipient might be, or might appear to be, compromised in the process.

Members should advise the director if they believe they have been offered a bribe or if they have been offered or received a favor or benefit. Members dealing with or having access to sensitive investigations or commercially sensitive information should be particularly alert to undue attempts to influence them.

Public Comment on the Work of the Committee or Agency - Public comment by members includes public speaking engagements, comments on radio and television or in letters to newspapers, and expressing views in books, journals or notices if it is expected that the comments will spread to the community at large. Members, as individual citizens of the community, have the right to make public comment and enter into public debate on political and social issues. However, there are some circumstances in which this can be inappropriate. For example, situations when the public comment, although made in a private capacity, may appear to be an official comment on behalf of the agency. In such circumstances, members should preface their remarks with a comment that they are made in a private capacity and do not represent the official view of the agency.

As a general rule, members can disclose official information that is normally given to the public seeking that information, but should only disclose other official information or documents when proper authority has been given; as required or authorized to do so by law; or when called to give evidence in court. In these cases, comments made by members should be confined to factual information and should not, as far as possible, express an opinion on official policy or practice unless required to do so by the circumstances of the particular situation (for example, when asked to do so in court).

Political and Community Participation – Members must make sure that any participation in political activities does not conflict with their duty as a volunteer to serve the agency and its policies.

Use of Official Facilities and Equipment - Members should be scrupulous in their use of public property and services. Public facilities and equipment may not be used for private purposes.

Reporting Corrupt Conduct or Waste – Members are urged to report suspected corrupt conduct, as well as serious and substantial waste of public resources. Disclosures should be made to the agency director, or if the director is suspected, then to the governing body Chair.

Violations of the Code of Conduct – Violations of one or more of the standards or requirements of this Code of Conduct may result in the immediate termination of a member's appointment to serve on an advisory committee to the agency. Termination may be made in writing by the governing body Chair. Appeal of a termination may be made in writing to the full governing body. In the event of a written appeal, the final decision of the appropriate governing body will be given in writing.

Acknowledged and Agreed to:

Print Name:

Date:



Agenda Item 15:

Discussion and possible action to approve changes to TREC application forms to incorporate amendments to Texas Occupations Code Chapter 1101 under Senate Bill 747, 82nd Texas Legislature, Regular Session (2011)

SUMMARY Will be presented at the meeting.

STAFF
RECOMMENDATION

MOTION MOVED, that the Commission does hereby approve all the changes to the Application for Broker License by a Corporation, Limited Liability Company (LLC) or Partnership Form and the Change of Designated Officer, Manager or Partner Form, and the changes to all application forms concerning the one-year expiration period for applications and the six month period for filing a late renewal with an effective date of September 1, 2011 to reflect amendments to Texas Occupations Code Chapter 1101 under SB 747, as submitted under this agenda item.



TEXAS REAL ESTATE COMMISSION
P.O. Box 12188
Austin, Texas 78711-2188
www.trec.texas.gov (512) 936-3000

APPLICATION FOR BROKER LICENSE BY A CORPORATION, LIMITED LIABILITY COMPANY (LLC) OR **PARTNERSHIP**

(PLEASE READ ALL INFORMATION CAREFULLY)

**IF THE CORPORATION, LLC OR PARTNERSHIP HELD A TEXAS BROKER LICENSE DURING THE PRECEDING TWELVE MONTHS, CONTACT THE COMMISSION FOR THE CORRECT APPLICATION FORM.
DO NOT USE THIS FORM**

The Real Estate License Act requires a **business entity (corporation, LLC or partnership)** to be licensed as a real estate broker if the **business entity** provides brokerage services. The attached form may be used by a **business entity** in applying for a Texas Real Estate Broker license.

A corporation is required to designate one of its officers to act for it. An LLC is required to designate a manager to act for it. A general partner of a partnership is required to be designated to act for it. For the application to be approved and a license issued, the designated officer, manager or partner must be individually licensed as an active Texas real estate broker (designated broker) and will have the authority to act as a real estate agent on behalf of the business entity.

A **business entity** chartered in a state other than Texas may obtain a Texas broker license, but to be eligible to apply it must be licensed as a real estate broker by the state of its incorporation or organization or by the state in which it is permitted to engage in real estate brokerage as a foreign **business entity**. The **business entity** must procure from the agency which administers such laws in the other state a certificate recognizing the standing of the **business entity** in that state and file the certificate as part of its Texas application. A **business entity** which is not licensed in the state of its incorporation or organization must also apply for a Texas license upon proof that such state does not license **business entities** as brokers and that the **business entity** is lawfully engaged in the practice of real estate brokerage in another state, as well as meet all other requirements to apply for a Texas license.

A current "Certificate of Good Standing" (issued within 21 days prior to the date of this application) must be provided with this application. This certificate is available from the TEXAS COMPTROLLER OF PUBLIC ACCOUNTS in Austin.

1. An application by a corporation, LLC **or partnership** cannot be approved unless its designated officer, manager **or partner** is individually licensed as an active Texas real estate broker. If the designated broker does not own at least 10% of the entity, the entity must maintain E&O insurance in the amount of \$1 million. Attach BE COI-0, Certificate of Insurance for a Broker Business Entity to the application if applicable.

2. a. FEES REQUIRED WITH A REAL ESTATE BROKER APPLICATION BY A CORPORATION **OR PARTNERSHIP**

Application Fee	\$98.00
Recovery Fund Fee	\$10.00 (If not previously paid)
Paper Filing Fee	\$20.00 (If not filed electronically at TREC's website)

b. FEES REQUIRED WITH A REAL ESTATE BROKER APPLICATION BY A LIMITED LIABILITY COMPANY

Application Fee	\$95.00
Recovery Fund Fee	\$10.00 (If not previously paid)
Paper Filing Fee	NONE (Not available electronically)

ALL FEES MUST BE SUBMITTED AT THE TIME OF FILING THE APPLICATION.

3. **ALL FEES LISTED ARE NONREFUNDABLE AND CANNOT BE TRANSFERRED TO ANY OTHER APPLICATION.** All fees should be submitted in the form of a check or money order made payable to the Texas Real Estate Commission. Fees not pertaining to this application should NOT accompany the application.

4. Filing an application authorizes an investigation of the applicant's background. Information revealed in an investigation may be cause for disapproval of an application even though other requirements for a license are met.

NOTE: An incomplete application will not be returned for completion. If the application is incomplete, a letter will be mailed requesting that the deficiency be remedied.

5. Fingerprints for this license will be required from the designated officer, manager **or partner** of the **business entity**. An applicant who has not been previously fingerprinted for TREC must pay a fee to DPS to get fingerprinted and satisfy the statutory requirement for honesty, trustworthiness and integrity. **Each licensee is required by law to have fingerprints on file with the Department of Public Safety (DPS) for TREC. Fingerprints on file for other agencies will not be accepted.** The license will issue once all licensing requirements are met and TREC receives confirmation from DPS that the applicant's fingerprints are on file. The applicant will be required to pay a fee for a background check with each renewal. The applicant must present a completed FAST Pass at the time of fingerprinting. For directions on how to download the FAST pass and make an appointment to get fingerprints taken go to <http://www.trec.texas.gov/fastpass>. The digital fingerprinting process may take up to 10 days, so plan accordingly. An applicant must pay a license application fee AND a fingerprint fee.
6. Once you receive your license, go to the TREC web site and register with the new system. You can access this webpage (<https://mylicense.trec.texas.gov>) via the "my license" button at the top of www.trec.texas.gov. You only have to do this once. To register, click the "Register here to set up a User ID and Password" link at the bottom of the homepage and follow the instructions using the security token that will be provided to you with your license.
7. Please ensure the following:
 - a. all information is printed in ink or typewritten;
 - b. all requested information is provided; c. all questions have been answered;
 - d. all required signatures and dates of signing are in place, (**do not** use signature stamps); and
 - e. all fees are enclosed.

IF ALL REQUIREMENTS FOR A LICENSE ARE NOT MET WITHIN ONE (1) YEAR OF THE FILING DATE, THE APPLICATION EXPIRES.

NOTE

State law prohibits issuing a license after a licensee has defaulted on a student loan guaranteed by the Texas Guaranteed Student Loan Corporation (TG) unless the licensee has entered into a repayment agreement with TG. **YOU SHOULD CONTACT TG BEFORE FILING THIS APPLICATION** if you have defaulted on a student loan. An application or renewal may be rejected if this agency has received information from TG that the applicant has defaulted on a student loan. The Texas Guaranteed Student Loan Corporation can be contacted at:

Texas Guaranteed Student Loan Corporation
P.O. Box 83100
Round Rock, TX 78683-3100
Telephone: 1-800-252-9743

PRIVACY NOTICE

In accordance with Chapter 559, Government Code, the following notice about certain information laws and practices is given.

- (1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.
- (2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.
- (3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.



REAL ESTATE BROKER LICENSE BY A BUSINESS ENTITY

FEE	REGISTER NUMBER	CORPORATION/ PARTNERSHIP AMOUNT	LLC AMOUNT	MONEY TYPE
Application Fee		\$98.00	\$95.00	
Recovery Fund Fee		\$10.00	\$10.00	
Paper Filing Fee		\$20.00	NONE	

App#	File#	Entity #	License #
------	-------	----------	-----------

DO NOT WRITE ABOVE THIS LINE

NOTE: ALL INFORMATION MUST BE TYPED OR PRINTED IN INK

1. License Type:	<input type="checkbox"/> Corporation	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Partnership								
2. Name of Business Entity :	<hr/> <p style="color: red;">A "Certificate of Good Standing" must accompany the application</p> <p style="color: red;">A current "Certificate of Good Standing" dated within 21 days prior to the date of the application must be provided with this application as evidence that there is no delinquent tax owed the State under Chapter 171 Tax Code. This certificate is available from the TEXAS COMPTROLLER OF PUBLIC ACCOUNTS. The business entity must designate an officer, manager or partner to act for it who is licensed as an active Texas real estate broker.</p>										
3. Business Address (Fixed Office): STREET ADDRESS MUST BE DESIGNATED BELOW. (A license will not be issued to a P.O. Box only)	<hr/> <p>Number, Street and Apt. No.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 30%;">City</td> <td style="width: 15%;">State</td> <td style="width: 15%;">Zip Code</td> <td style="width: 15%;">Area Code</td> <td style="width: 25%;">Phone Number</td> </tr> </table> <p>FAX Number:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 30%;">Area Code</td> <td style="width: 15%;">Phone Number</td> <td style="width: 55%;">E-mail Address</td> </tr> </table>			City	State	Zip Code	Area Code	Phone Number	Area Code	Phone Number	E-mail Address
City	State	Zip Code	Area Code	Phone Number							
Area Code	Phone Number	E-mail Address									
4. Mailing Address and Contact Information (Post Office Box may be used):	<hr/> <p>Number, Street and Apt. No.</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 30%;">City</td> <td style="width: 15%;">State</td> <td style="width: 15%;">Zip Code</td> <td style="width: 15%;">Area Code</td> <td style="width: 25%;">Phone Number</td> </tr> </table> <p>FAX Number:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 30%;">Area Code</td> <td style="width: 15%;">Phone Number</td> <td style="width: 55%;">E-mail Address</td> </tr> </table>			City	State	Zip Code	Area Code	Phone Number	Area Code	Phone Number	E-mail Address
City	State	Zip Code	Area Code	Phone Number							
Area Code	Phone Number	E-mail Address									
5. Has the business entity been licensed as a real estate broker in a state other than Texas within the last five (5) years?	<input type="checkbox"/> Yes <input type="checkbox"/> No										
<p style="color: red;">If the answer is YES, you must complete the applicable sections of the Background History Form located at http://www.trec.texas.gov/pdf/forms/miscellaneous/BackgroundHistory.pdf.</p>											



Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188

CHANGE OF DESIGNATED OFFICER, MANAGER OR PARTNER

FEE	REGISTER NUMBER	AMOUNT	\$ TYPE	App#	File#
Processing Fee		\$20.00		Entity #	License#

DO NOT WRITE ABOVE THIS LINE

**A \$20.00 fee MUST accompany this application.
The fee must be a SINGLE REMITTANCE.**

_____ Name of Corporation or LLC

_____ TREC License Number

_____ Name of Current Designated Officer or Manager and Office Held OR Current Designated Partner _____ TREC License Number

_____ Name of **NEW** Designated Officer or Manager and Office Held OR New Designated Partner _____ TREC License Number

_____ Email address of **NEW** Designated Officer or Manager OR New Designated Partner

Does the **NEW** designated officer or manager own 10% or more of the business entity? Yes No

If the answer is yes please provide proof of ownership, if no attach COI BE-0.

A business entity licensed as a broker must maintain documentation showing that it has complied with the requirements contained in its governing documents for changing officers or managers. **The business entity must promptly provide to TREC upon request all business formation, ownership and representative authorization records and changes thereto required to be kept by the business entity by law, including those required by the Secretary of State and the Texas Comptroller.**

Authorization

BOTH SIGNATURES REQUIRED

Corporation President or Limited Liability Company Manager

_____ Printed Name _____ Signature _____ Date _____

NEW Designated Officer or Manager & Office Held
(Must be president, vice-president, secretary or treasurer for corporation or manager for LLC)

_____ Printed Name and Office Held _____ Signature _____ Date _____

This document is available on the TREC website at www.trec.texas.gov

PRIVACY NOTICE

In accordance with Chapter 559, Government code, the following notice about certain information laws and practices is given.

- (1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.
- (2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.
- (3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual that is incorrect.

TEXAS



REAL ESTATE COMMISSION

Agenda Item 16:

Discussion and possible action on Broker Responsibility working group recommendations on experience requirements for a broker license

SUMMARY Will be presented at the meeting.

STAFF
RECOMMENDATION

MOTION



Agenda Item 17:

Discussion and possible action to approve amendments to the Seller's Disclosure of Property Condition Form, TREC No. OP-H

SUMMARY Will be presented at the meeting.

STAFF
RECOMMENDATION

MOTION MOVED, that the Commission does hereby approve the changes to the Seller's Disclosure of Property Condition Form with an effective date of September 1, 2011 as submitted under this agenda item.



SELLER'S DISCLOSURE OF PROPERTY CONDITION

CONCERNING THE PROPERTY AT _____
(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

Seller is is not occupying the Property. If unoccupied, how long since Seller has occupied the Property? _____

1. The Property has the items checked below [Write Yes (Y), No (N), or Unknown (U)]:

- | | | |
|--|--|---|
| <input type="checkbox"/> Range | <input type="checkbox"/> Oven | <input type="checkbox"/> Microwave |
| <input type="checkbox"/> Dishwasher | <input type="checkbox"/> Trash Compactor | <input type="checkbox"/> Disposal |
| <input type="checkbox"/> Washer/Dryer Hookups | <input type="checkbox"/> Window Screens | <input type="checkbox"/> Rain Gutters |
| <input type="checkbox"/> Security System | <input type="checkbox"/> Fire Detection Equipment | <input type="checkbox"/> Intercom System |
| | <input type="checkbox"/> Smoke Detector | |
| | <input type="checkbox"/> Smoke Detector-Hearing Impaired | |
| | <input type="checkbox"/> Carbon Monoxide Alarm | |
| | <input type="checkbox"/> Emergency Escape Ladder(s) | |
| <input type="checkbox"/> TV Antenna | <input type="checkbox"/> Cable TV Wiring | <input type="checkbox"/> Satellite Dish |
| <input type="checkbox"/> Ceiling Fan(s) | <input type="checkbox"/> Attic Fan(s) | <input type="checkbox"/> Exhaust Fan(s) |
| <input type="checkbox"/> Central A/C | <input type="checkbox"/> Central Heating | <input type="checkbox"/> Wall/Window Air Conditioning |
| <input type="checkbox"/> Plumbing System | <input type="checkbox"/> Septic System | <input type="checkbox"/> Public Sewer System |
| <input type="checkbox"/> Patio/Decking | <input type="checkbox"/> Outdoor Grill | <input type="checkbox"/> Fences |
| <input type="checkbox"/> Pool | <input type="checkbox"/> Sauna | <input type="checkbox"/> Spa <input type="checkbox"/> Hot Tub |
| <input type="checkbox"/> Pool Equipment | <input type="checkbox"/> Pool Heater | <input type="checkbox"/> Automatic Lawn Sprinkler System |
| <input type="checkbox"/> Fireplace(s) & Chimney
(Woodburning) | | <input type="checkbox"/> Fireplace(s) & Chimney (Mock) |
| <input type="checkbox"/> Natural Gas Lines | | <input type="checkbox"/> Gas Fixtures |
| <input type="checkbox"/> <u>Liquid Propane Gas:</u> | <input type="checkbox"/> <u>LP Community (Captive)</u> | <input type="checkbox"/> <u>LP on Property</u> |
| Garage: <input type="checkbox"/> Attached | <input type="checkbox"/> Not Attached | <input type="checkbox"/> Carport |
| Garage Door Opener(s): | <input type="checkbox"/> Electronic | <input type="checkbox"/> Control(s) |
| Water Heater: | <input type="checkbox"/> Gas | <input type="checkbox"/> Electric |
| Water Supply: <input type="checkbox"/> City | <input type="checkbox"/> Well <input type="checkbox"/> MUD | <input type="checkbox"/> Co-op |
| Roof Type: _____ | Age: _____ | (approx) |

Are you (Seller) aware of any of the above items that are not in working condition, that have known defects or that are in need of repair? Yes No Unknown If yes, then describe. (Attach additional sheets if necessary): _____

(Street Address and City)

2. Does the property have working smoke detectors installed in accordance with the smoke detector requirements of Chapter 766, Health and Safety Code? Yes No Unknown If the answer to this question is no or unknown, explain.

(Attach additional sheets if necessary): _____

* Chapter 766 of the Health and Safety Code requires one-family or two-family dwellings to have working smoke detectors installed in accordance with the requirements of the building code in effect in the area in which the dwelling is located, including performance, location, and power source requirements. If you do not know the building code requirements in effect in your area, you may check unknown above or contact your local building official for more information. A buyer may require a seller to install smoke detectors for the hearing impaired if: (1) the buyer or a member of the buyer's family who will reside in the dwelling is hearing impaired; (2) the buyer gives the seller written evidence of the hearing impairment from a licensed physician; and (3) within 10 days after the effective date, the buyer makes a written request for the seller to install smoke detectors for the hearing impaired and specifies the locations for the installation. The parties may agree who will bear the cost of installing the smoke detectors and which brand of smoke detectors to install.

3. Are you (Seller) aware of any known defects/malfunctions in any of the following? Write Yes (Y) if you are aware, write No (N) if you are not aware.

___ Interior Walls	___ Ceilings	___ Floors
___ Exterior Walls	___ Doors	___ Windows
___ Roof	___ Foundation/Slab(s)	___ Basement
___ Walls/Fences	___ Driveways	___ Sidewalks
___ Plumbing Sewers/Septics	___ Electrical Systems	___ Lighting Fixtures
___ Other Structural Components (Describe)	_____	

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

4. Are you (Seller) aware of any of the following conditions? Write Yes (Y) if you are aware, write No (N) if you are not aware.

___ Active Termites (includes wood destroying insects)	___ Previous Structural or Roof Repair
___ Termite or Wood Rot Damage Needing Repair	___ Hazardous or Toxic Waste
___ Previous Termite Damage	___ Asbestos Components
___ Previous Termite Treatment	___ Urea-formaldehyde Insulation
___ Previous Flooding	___ Radon Gas
___ Improper Drainage	___ Lead Based Paint
___ Water Penetration	___ Aluminum Wiring
___ Located in 100-Year Floodplain	___ Previous Fires
___ Present Flood Insurance Coverage	___ Unplatted Easements

(Street Address and City)

___ Landfill, Settling, Soil Movement, Fault Lines

___ Subsurface Structure or Pits

___ **Single Blockable Main Drain in Pool/Hot Tub/Spa***

___ Previous Use of Premises for Manufacture of Methamphetamine

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

***A single blockable main drain may cause a suction entrapment hazard for an individual.**

5. Are you (Seller) aware of any item, equipment, or system in or on the Property that is in need of repair? Yes (if you are aware) No (if you are not aware) If yes, explain. (Attach additional sheets if necessary): _____

6. Are you (Seller) aware of any of the following? Write Yes (Y) if you are aware, write No (N) if you are not aware.

___ Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.

___ Homeowners' Association or maintenance fees or assessments.

___ Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.

___ Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.

___ Any lawsuits directly or indirectly affecting the Property.

___ Any condition on the Property which materially affects the physical health or safety of an individual.

___ **Any rainwater harvesting system connected to the property's public water supply that is able to be used for indoor potable purposes.**

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

7. If the property is located in a coastal area that is seaward of the Gulf Intracoastal Waterway or within 1,000 feet of the mean high tide bordering the Gulf of Mexico, the property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63, Natural Resources Code, respectively) and a beachfront construction certificate or dune protection permit may be required for repairs or improvements. Contact the local government with ordinance authority over construction adjacent to public beaches for more information.

Signature of Seller Date

Signature of Seller Date

The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

Signature of Buyer Date

Signature of Buyer Date



Agenda Item 18:

Discussion and possible action to appoint two members to the Broker Lawyer Committee

SUMMARY Will be presented at the meeting.

STAFF
RECOMMENDATION

MOTION MOVED, that the Commission does hereby appoint _____ and _____ to a six-year term on the Broker Lawyer Committee.



Agenda Item 19:

Discussion and possible action to approve annual internal audit report

SUMMARY Will be presented at the meeting.

STAFF
RECOMMENDATION

MOTION MOVED, that the Commission does hereby approve the Annual Internal Audit Report as submitted under this agenda item.

Garza/Gonzalez & Associates

CERTIFIED PUBLIC ACCOUNTANTS

TEXAS REAL ESTATE COMMISSION

Austin, Texas

ANNUAL INTERNAL AUDIT REPORT

Fiscal Year 2011

207 Arden Grove
San Antonio, TX 78215
210/227-1389
Fax 227-0716

TEXAS REAL ESTATE COMMISSION
Austin, Texas

Annual Internal Audit Report
Fiscal Year 2011

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To the Commission Members of the
Texas Real Estate Commission
Austin, Texas

We performed tests of management's assertion about the effectiveness and efficiency of Texas Real Estate Commission (Commission) internal control structure over the Public Funds Investment Act, Information Systems and HUB Compliance areas and its compliance with the applicable rules and regulations, and the Commission's established policies and procedures for the year ended August 31, 2011. The results of our tests disclosed that such controls were adequate and no instances of noncompliance were noted; however, we noted certain matters that are opportunities for strengthening internal controls, operating efficiency, and complying with the Commission's established policies and procedures. The report that accompanies this letter summarizes our comments and recommendations regarding these matters. We also performed a follow-up of prior year internal audits and this report reflects the implementation status of those matters, and includes all information required for the Annual Internal Audit Report.

We have discussed these comments, suggestions, and implementation status and the status of prior year recommendations with various Commission personnel, and we will be pleased to discuss them in further detail at your convenience, to perform additional study of these matters, or to assist you in implementing the recommendations.

We would like to take this opportunity to acknowledge the courtesy and assistance extended by Commission's personnel during the course of our audit.

Garza/Gonzalez & Associates

June 24, 2011

TEXAS REAL ESTATE COMMISSION

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INTRODUCTION

The Texas Real Estate Commission (the Commission), was created in 1939 under the Texas Real Estate Dealer's License Act and became an independent state Commission in 1949. The Real Estate License Act (the Act) is the legislative authorization for the Commission to license and regulate real estate brokers and salespersons and provides for the licensing and regulation of real estate inspectors. The Commission also regulates residential service companies and easement or right-of-way agents. The Commission is responsible for administering and enforcing the provisions contained in the Act. Chapter 221, Texas Property Code, confers authority to the Commission to register by application and regulate entities offering timeshares in Texas.

The Texas Real Estate Commission is composed of nine Commissioners who are appointed by the Governor, with concurrence by the Senate, for six-year overlapping terms. Six members must be licensed real estate brokers who have been engaged in the real estate brokerage business as their major occupations for at least five years preceding their appointments. Three members must be members of the general public who are not licensed under the Act and do not have, other than as consumers, a financial interest in the practice of a real estate broker or salesperson.

The Commissioners appoint an Administrator who serves as the Commission's chief administrative officer. The Commission's operating budget is prepared and approved by the Commission on an annual basis, whereas the State legislative appropriations are determined every two years. Appropriations are approved by the State Legislature. The Commission consists of the standards and enforcement division; the education and licensing services division; the information services division; reception and communication services division and the staff services division (includes accounting, human resources and cashier) who report directly to the administrator. The general counsel/deputy administrator serves in an administrative and an advisory position to the administrator.

The Commission is appropriated funds by the State for its operations. Revenues are primarily real estate license applications and renewals, education fees, and other charges derived from Commission operations. Funds collected by the Commission are not directly utilized in operations, but instead are passed on to the State.

We were engaged to perform internal audits of the following areas identified in Commission's fiscal 2011 Internal Audit Plan:

- Compliance with the Public Funds Investment Act
- Information Systems
- HUB Compliance
- Follow-up of Prior Year Internal Audits

This report contains the results of our audit of the Compliance with Public Funds Investment Act, the Information Systems, and HUB Compliance areas, reflects the follow-up performed in the current year, and meets the Annual Internal Audit Report requirements.

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INTERNAL AUDIT OBJECTIVES

In accordance with the **Standards for the Professional Practice of Internal Auditing**, the audit scope will encompass the examination and evaluation of the adequacy and effectiveness of the Commission's system of internal control and the quality of performance in carrying out assigned responsibilities. The audit scope includes:

- **Reliability and Integrity of Information** - Review the reliability and integrity of financial and operating information and the means used to identify, measure, classify, and report such information.
- **Compliance with Policies, Plans, Procedures, Laws, and Regulations** - Review the systems established to ensure compliance with those policies, plans, procedures, laws, and regulations which could have a significant impact on operations and reports, and determine whether the organization is in compliance.
- **Safeguarding of Assets** - Review the means of safeguarding assets and, as appropriate, verify the existence of such assets.
- **Economical and Efficient Use of Resources** - Appraise the economy and efficiency with which resources are employed.
- **Accomplishment of Established Objectives and Goals for Operations or Programs** - Review operations or programs to ascertain whether results are consistent with established objectives and goals and whether the operations or programs are being carried out as planned.

TEXAS REAL ESTATE COMMISSION

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EXECUTIVE SUMMARY

Compliance with the Public Funds Investment Act

Background

Effective May 19, 1975, the Real Estate Recovery fund (Real Estate Recovery Trust Account effective June 1, 2003) was established by an amendment to the Real Estate License Act. The Commission was directed to use the fund for reimbursing aggrieved persons who suffer monetary damages by reason of certain acts committed by a duly licensed real estate broker or salesperson, or by an unlicensed employee or agent of a broker or salesperson.

A \$10.00 Recovery Trust Account fee is collected from each new applicant for a license in addition to the regular License filing fee. On a determination by the Commission at any time that the balance remaining in the Real Estate Recovery Trust Account is less than \$1 million, each broker and salesperson will be required to pay an additional fee of \$10.00 or a pro rata share of the amount necessary to bring the Recovery Trust Account to \$1.7 million dollars, whichever is less. To ensure the availability of a sufficient amount to pay anticipated claims on the fund, the commission by rule may provide for the collection of assessments at different times and under different conditions other than those specified by this Act.

As set forth in the Real Estate License Act, as amended, the deposits to the Recovery Trust Account may be invested and reinvested in the same manner as funds of the Employee Retirement System of Texas, except that an investment may not be made that would impair the liquidity necessary to make payments from the trust account as required by this Act. All investment transactions are conducted through the State Treasury. In addition, the Real Estate Inspection Recovery Fund is maintained with monies collected from real estate inspectors. The fees are deposited in the State Treasury and earn statutory interest. Similar legislative provisions are present for the Real Estate Inspection Recovery Fund.

According to the Public Funds Investment Act (PFIA), Texas Government Code Chapter 2256, the governing body of state agencies may purchase, sell, and invest its funds and funds under its control in investments authorized under this subchapter in compliance with investment policies approved by the governing body and according to the standard of care prescribed by Section 2256.006.

Investment Polices & Investment Officer

In accordance with Texas Government Code §2256.005, the Commission has established investment policies which contain the elements required by the PFIA. Investment policies are reviewed and adopted by their governing board annually. In addition, the governing board has designated an investment officer and an alternate investment officer who are responsible for the investment of funds consistent with the investment policies adopted by the Commission and with the PFIA.

TEXAS REAL ESTATE COMMISSION

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Investment Training

The investment officers attend a PFIA investment training session at least once in a two-year period as required by Texas Government Code §2256.007. Additionally, each member of the Commission's governing board is required to attend at least one training session relating to the person's responsibilities under PFIA. The required training must be obtained within six months after taking office or assuming duties. The Commission maintains training certifications to document that investment officers and Commissioners have met the minimum training requirements established by the PFIA.

Investment Reports

In compliance with Texas Government Code §2256.007, the investment officers prepare quarterly investment reports of investment transactions for all funds for the proceeding reporting period and describe in detail the investment position of the Commission on the date of the report. The reports are prepared jointly and signed by both investment officers. The investment reports are submitted to the governing body quarterly.

Audit Scope

The objective of our audit was to perform a compliance audit of management controls on investments and the Commission's adherence to its established investment policies and its compliance with the PFIA.

The procedures performed to achieve the scope of our audit were as follows:

1. Obtained and reviewed the Commissions policies and procedures for compliance with the Public Funds Investment Act (Government Code 2256) and determined that such policies and procedures were appropriate and reasonable for the Commissions investment types, goals and strategies.
2. Determined that the Commissions policies and procedures and established internal controls are sufficient to safeguard investments, ensure proper conduct by participants in the investment process, and effectively eliminate conflicts of interest over the investments of the Commission.
3. Determined that the Commissions policies and procedures limit political and personal interference in the investment decision-making process.
4. Considered the appropriateness of the Commissions investments as reflected in the policies, strategies and plans.
5. Selected a sample of two investment reports submitted to the governing board to ensure compliance with the PFIA and the Commissions investment policies.
6. Obtained the investment officers and board's investment training certifications to ensure minimum training requirements established by the PFIA have been met.

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The compliance testing was performed in accordance with the Standards for the Professional Practice of Internal Auditing, generally accepted governmental auditing standards, the Certified Internal Auditor Code of Professional Ethics, the Statement of Responsibilities of Internal Auditing of the Institute of Internal Auditors, and the Texas Public Funds Investment Act. Our tests of the policies, procedures, administrative and accounting systems and controls used to administer compliance with the Public Funds Investment Act disclosed no material instances of noncompliance with the requirements listed above.

Information Systems

Background

Organizational Structure

The Information and Technology Services Department (Department) is comprised of a Director, computer operations technician, network specialist, 5 systems analysts, and 3 administrative assistants.

Systems

The Commission uses the Uniform Statewide Accounting System (USAS), Uniform Statewide Payroll/Personnel System (USPS), and Statewide Property Accounting (SPA) System provided by the Texas Comptroller of Public Accounts (Comptroller); a series of database programs administered by the Commission; a modified off-the-shelf licensing management system; and an imaging system administered by the vendor.

Passwords

Several layers of passwords are present within the Commission. The boot/network password is used to logon to all desktops and laptops, and is synchronized to logon to the network to gain access to the servers and wide area network. This password is required to contain at least 6 characters comprised of letters, numbers, and/or symbols. Every 6 months, the system will prompt the user to change their password and will not allow the same password to be used within 7 password change intervals. If a password is incorrectly entered 7 consecutive times, the user will be unable to logon to their computer for 2 hours.

A password is required to logon to the licensing management system. This password is required to be at least 6 characters comprised of letters and numbers and expires after 6 months.

Passwords are also used to logon to the imaging system. Since this system is not administered by the Commission, the password requirements are controlled by the contracted vendor.

User Account Setup/Termination

Upon hiring an employee, the hiring manager or purchasing agent notifies the Department of the employee's name, start date, office location, and if applicable, the name of the former employee that previously held the position. With this information, the Department creates an email account and reactivates the login ID previously used for the employee's position. In the event that a new position is established a new login ID is created. The Staff and Support Services Department is responsible for submitting a request to the Comptroller to add the employee as a user in USAS, USPS, or SPA, as applicable.

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When an employee terminates employment, his/her departmental director notifies the Department to disable the user's account(s). The Staff and Support Services Department is responsible for submitting a request to the Comptroller to remove the employee as a user from USAS, USPS, or SPA, as applicable.

User Access

The Comptroller requires that a Semiannual Verification of Users' Security Access Levels be conducted for the state government accounting systems (USAS, USPS, SPA, etc.) to determine whether user privileges are proper. The most recent self review was completed by the Commission in April, 2011.

Physical Security Controls

All critical hardware and related software applications are housed in a locked server room located within the Commission's offices, with access granted through the use of a numbered key code entry.

A fire extinguisher is present in the server room which could help prevent a total loss of equipment and data in the event of a fire within the server room.

All servers are connected to a battery backup device which is planned to run approximately 45 minutes in the event of a power loss. When employees are present, the battery backup allows for a manual shutdown process to be performed; however, when employees are not present (after hours), the battery backup would naturally run out of power and the servers turn off.

Data Backup

Tape backups are performed weekly and incremental backups are done daily. The backups are transported to the Texas State Library, who picks-up the tape Tuesday of each week. The transport is documented through the use of a manual log sheet.

Business Continuity Plan (Plan)

The Department's Plan provides detailed instructions on recovery operations, equipment and supplies needed, and recovery time objectives. It is the Commission's practice to replace servers every 5 years.

Security Incidents

Texas Administrative Code (TAC) Rule §202.26 requires that security incidents be promptly investigated and documented. The Commission is required to provide the Texas Department of Information Resources (DIR) with monthly summary reports concerning violations of security policy that come to the Commission's attention. The monthly summary reports are due no later than nine calendar days after the end of the month. Examples of events to be reported include virus and Trojan attacks, denial of service attacks, and unauthorized use or storage of data. The Commission uses a firewall to detect and prevent attacks.

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DIR Standards and Testing

DIR establishes information technology security standards for all state agencies and assists agencies in providing secure IT operations.

DIR conducts network security controlled penetration tests on state agencies to assess network security by attempting to identify and retrieve proprietary information and establish control of resources such as network devices and servers. During February, 2011 DIR conducted this test and the results indicated that the "Commission provides a *good* Internet perimeter security, minimizing the number of service ports open to internet users."

Risk Assessment

TAC §202.22 requires that a security risk analysis of information resources be performed and documented. Security risk assessment, vulnerability reports, and similar information shall be documented and presented to the agency head. The Commission's risk assessment is included in the Plan.

Training

The Director is the designated Information Resource Manager (IRM). The IRM is required to complete 18 hours of training/education and report the completion of qualified training to DIR by August 31st each fiscal year via an online tool.

DIR requires the IRM to retain proof of attendance/completion for each educational event; such as, a certificate of completion, statement by the sponsoring body, or copy of registration confirmation with actual course materials. The documentation is not submitted to DIR unless specifically requested.

Audit Scope

The scope of our audit was to gain an understanding of the processes and controls over the Information Systems (IS) area to ensure that the Commission consistently applies and complies with established policies and procedures and applicable rules and regulations.

The procedures performed to achieve the scope of our audit were as follows:

1. Reviewed and obtained an understanding of the applicable sections of the Texas Administrative Code (TAC).
2. Obtained and reviewed the Department's policies and procedures, conducted interviews, and collected various documents to obtain an understanding of the current practices in place over the IS area.
3. Identified key systems used by the Commission.
4. Obtained a list of current employees and imaging system and selected database users to ensure only current employees have access.

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5. Selected ten (10) employees and reviewed their network and licensing management system account to ensure adequacy based on job responsibilities.
6. Obtained a list of terminated employees as of April 30, 2011 and selected five (5) employees to ensure the Department properly terminated their access to various systems.
7. Obtained an understanding and assessed the sufficiency of the backup procedures, location, frequency, and testing.
8. Reviewed security controls in place for compliance with TAC §202.25, *Information Resources Security and Safeguarding*.
9. Identified the Information Resource Manager (IRM), obtained an understanding of DIR training requirements, and reviewed documentation to support the IRM's attendance of fiscal year 2010 training/education and through April, 2011 of fiscal year 2011, as reported to DIR.
10. Reviewed the disaster recovery plan to ensure safeguarding of data.
11. Conducted physical observations of the critical system servers to ensure proper safeguards are in place against loss.
12. Obtained an understanding of the process in place for preparing the security incident reports sent to DIR.
13. Reviewed the results and recommendations of the most recent DIR penetration test.
14. Reviewed the most recent Semiannual Verification of Users' Security Access Levels to ensure it was properly completed and submitted to the Comptroller, as required.

HUB Compliance

Background

In accordance with the Texas Government Code Chapter 2161, the Office of the Comptroller of Public Accounts (comptroller) is responsible for managing the Statewide Historically Underutilized Business (HUB) Program for minority- and woman-owned businesses. The purpose of the statewide HUB Program activities are designed to promote full and equal business opportunities for all businesses in state contracting in accordance with the goals specified in the State of Texas Disparity Study dated 1994.

According to the Texas Government Code, Sections 2161.181 and 2161.182, each state agency shall make a good faith effort to utilize HUBs in contracts for construction, services (including professional and consulting services) and commodities purchases. Each agency may achieve the annual procurement goals by contracting directly with HUBs or indirectly through subcontracting opportunities.

The Commission is committed to making a good faith effort to increase business with Historically Underutilized Businesses (HUBs). The Commission actively encourages purchasing from HUBs to provide goods and services for the agency's operations.

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In addition to complying with the Texas Procurement and Support Services (TPASS) HUB program rules, the Commission's good faith efforts to promote HUB participation include the following:

- Utilizing HUB vendors for non-competitive spot purchases of \$5,000 or less, whenever possible;
- Soliciting a minimum of three (3) certified HUB vendors for purchases over \$5,000;
- Attending HUB related meetings and forums to network with vendors and gain new knowledge of HUB vendors;
- Encourage non-HUB vendors to sub-contract with certified HUB vendors;
- Maintaining positive working relationships with current HUB vendors;
- Implementing a HUB Mentor Protégé program

In accordance with 34 TAC Rule 20.13(d), TREC also demonstrates good faith effort under this section by submitting a supplemental letter along with its HUB Report outlining initiatives regarding procurement opportunities for HUBs.

Texas Government Code §2161.121 requires the HUB program to submit annual and semi-annual basis HUB Reports, which summarize and analyze expenditures made to certified HUBs by state agencies. The TPASS division of the Office of the Comptroller of Public Accounts is responsible for reporting the expenditures for state agencies obtained from the USAS system. The HUB reports include state agency rankings, expenditure data and supplemental reports and letters from state agencies documenting their continued effort to educate HUBs about procurement opportunities.

To comply with Texas Government Code §2161.122, TREC maintains and compiles monthly HUB report spreadsheets for the purpose of preparing the Annual and Semi-Annual Supplemental HUB Reports detailing TREC's use of historically underutilized businesses. On a semi-annual and annual basis, TREC submits the total number of HUB and non-HUB contracts awarded for the purchase of goods and services and the total number of HUBs submitting bids and/or proposals for the purchase of goods and services. TREC submits the supplemental data on-line through the HUB Contact System.

Audit Scope

The scope of the audit of the HUB Compliance audit area is to determine that the Commission complies with the policies and procedures for purchases related to HUB compliance including the Commission's efforts in ensuring a "good faith effort" to promote HUB participation.

The procedures performed to achieve the scope of our audit were as follows:

1. Obtained and reviewed the Commission's written policies and procedures and ascertain that they are consistent with the purpose, goals, and policies of the Texas Procurement and Support Services as it relates to HUB.
2. Interviewed Commission personnel responsible for HUB compliance to obtain an understanding of the Commission's current practices and the adequacy of accountability maintained over procurement and reporting requirements.

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3. Obtained the Semi-Annual and Annual HUB Reports and determined whether the reports were prepared and submitted on a timely manner, are accurate based on support documentation and that the HUB supplemental reports are properly supported.
4. Selected a sample of five (5) procurement actions included in the monthly reports and tested the accuracy of the information reported on the monthly reports and determined whether HUB vendors were selected as reported.

I. Internal Audit Plan for Fiscal Year 2011

The fiscal year 2011 internal audit plan for the Commission is based on the Risk Assessment performed for the fiscal year ended 2011. The internal audit plan includes three (3) audits to be performed during the fiscal year and other internal audit activities as assigned by the Commissioners. The internal audit plan also includes preparation of the Annual Internal Audit Report for fiscal year 2011 and conducting a follow-up of the prior year internal audit reports.

Risk Assessment

Based on the review of significant documents, inquiries of management and the Commission's current practices and procedures seventeen (17) audit areas have been identified in the Internal Audit Plan for fiscal year 2011. We performed an assessment of the potential audit areas using risk assessment techniques. Following are the results of the risk assessment performed:

High	Moderate	Low
Information Systems	Purchasing and Receiving	Cash Disbursement and Travel Processing
Cash Collection Fee Process/Remittance	Residential Service Companies	Complaint/Investigation Process
License Application & Registration Process	Performance Measures	Examination Process
	Education Program	Reporting and Budgeting
	Customer Communications	Fixed Assets
		Payroll and Personnel Process
		Recovery Fund
		Records Retention
		HUB Compliance

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In prior years, the following internal audits were performed:

Fiscal Year 2010

1. Residential Service Companies
2. Fixed Assets

Fiscal Year 2009

1. Compliance with the Texas Public Funds Investment Act
2. License Application and Registration Process
3. Recovery Fund

Fiscal Year 2008

1. Compliant/Investigation Process
2. Education Program

Based on the risk assessment process an Internal Audit Plan was developed that includes the following recommended internal audits for fiscal year 2011, the proposed audit procedures are as follows:

Fiscal Year 2011

1. Compliance with the Texas Public Funds Investment Act
2. Information Systems
3. HUB Compliance
4. Follow-up of Prior Year Internal Audits and Other Commission Audits
5. Other Potential Internal Audit Activities
Perform other audits as may be directed by the Commission during the fiscal year.

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II. External Quality Assurance Review

The internal audit department's *System Review Report*, dated September 30, 2009, indicates that its system of quality control has been suitably designed and conforms with applicable professional standards in all material respects.

III. List of Audits Completed by High Level Audit Objectives

Report No.	Report Date	Name of Report	High Level Audit Objectives
1	6/24/10	Compliance with Public Funds Investment Act	<ul style="list-style-type: none">Perform a compliance audit of management controls on investments and the Commission's adherence to its established investment policies and the applicable requirements of the Texas Public Funds Investment Act.
2	6/24/10	Information Systems	<ul style="list-style-type: none">To determine whether the processes and controls are in place over the Information Systems area and that Commission consistently complies with established policies and procedures and applicable rules and regulations.
3	6/24/10	HUB Compliance	<ul style="list-style-type: none">To determine whether the process and controls are in place over the HUB Compliance area to ensure compliance with the applicable rules and regulations.

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IV. Key Audit Findings/Recommendations

Report No.	Report Date	Name of Report	Observations/Findings and Recommendations	Current Status (Fully Implemented, Substantially Implemented, Incomplete/ Ongoing, or Not Implemented) with brief description if not yet implemented	Fiscal Impact/Other Impact
2	6/24/11	Information Systems	<p>1. Monthly Incident Reports</p> <p>DIR requires summary reports of security-related events be reported on a monthly basis. The Commission does not report incidents detected and prevented by the firewall, as required by DIR.</p> <p>Recommendation We recommend the Commission ensure incidents detected and prevented by the firewall are reported in the monthly incident reports.</p> <p>Management's Response Management agrees with the intent of the recommendation. Based upon subsequent discussion with the DIR they require that the agency reports monthly to the level of detail that technical and human resources permit. ITS will reevaluate the current procedure to expand the level of detail reported to DIR.</p> <p>2. Password Procedures</p> <p>The Commission does not have written password procedures for all systems and applications used, such as licensing management system, imaging system, etc.</p> <p>Recommendation We recommend the Commission develop written password procedures for all systems and applications used.</p> <p>Management's Response Management agrees with the recommendation and is working to consolidate and coordinate the password processes and formalize procedures for the various vendor products utilized by the agency.</p> <p>3. Business Continuity Plan (Plan)</p> <p>The Plan was last updated in November, 2008, prior to the replacement of the licensing management system and implementation of the imaging system.</p> <p>Recommendation We recommend the Commission review and update the Plan to ensure the new systems are addressed.</p> <p>Management's Response Management agrees with the recommendation and is actively performing the annual update of the Business Continuity Plan with a test in connection with the agency's move of office location.</p>		<p>To improve compliance with DIR requirements.</p> <p>Ensure comprehensive procedures.</p> <p>Ensure comprehensive Plan.</p>

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Report No.	Report Date	Name of Report	Observations/Findings and Recommendations	Current Status (Fully Implemented, Substantially Implemented, Incomplete/ Ongoing, or Not Implemented) with brief description if not yet implemented	Fiscal Impact/Other Impact
3	6/24/11	HUB Compliance	<p>1. Semi-Annual HUB Report Data</p> <p>We tested the supporting documentation for the Semi-Annual HUB Report data period ending February 2011, however, we were unable to agree the total number of HUB bids/proposals received for four (4) out of the nine (9) ethnicity/gender categories reported on the Semi-Annual HUB Report</p> <p>Recommendation We recommend the Commission ensure accurate data is submitted for the HUB reports. We recommend the Commission develop a more effective and efficient method of compiling and maintaining the required HUB report data or enhance the method currently being utilized to include year to date totals. To ensure accuracy the report should be reviewed by management and documented through an approval process prior to submission.</p> <p>Management's Response The Commission agrees that some of the categories on the Semi-Annual HUB Report were reported inaccurately. As a result, HUB participation was underreported. At the time the Annual HUB Report is prepared after fiscal year close, those numbers will be corrected and will supersede the Semi-Annual Report. The HUB Report will now be prepared by a purchasing employee and reviewed by a manager.</p>		To ensure accuracy of HUB data reported

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 Fiscal Year 2010

Report No.	Report Date	Name of Report	Observations/Findings and Recommendations	Current Status (Fully Implemented, Substantially Implemented, Incomplete/Ongoing, or Not Implemented) with brief description if not yet implemented	Fiscal Impact/Other Impact
		Follow-up of prior year audits	<p>Following is the status of recommendation made during previous fiscal years that had not been fully implemented.</p> <p>1. Record Management</p> <p>We recommend that the Commission supplement the Record Retention Schedule by preparing a listing that includes the date series, the location and a "container number" (box number, file cabinet number and/or shelf location) where the applicable records are stored. Records held for active use in the division/section area may not require location data until considered inactive or moved outside the division/section. To ensure the listing remains accurate a record inventory or survey process should be initiated. In addition, we recommend that the Commission amend the Record Retention Schedule when information changes occur or if inconsistent data is noted.</p> <p><i>Agency Response:</i> When the imaging of master files has been completed, the remaining paper files will be inventoried and listed with the date series, the location and a container number and an inventory will be conducted periodically. The Commission has updated the Records Retention Schedule twice since this audit recommendation was made, and has plans to update again in the near future. The imaging of records has resumed with the availability of funding secured by appropriation.</p>	<p>Incomplete/Ongoing</p> <p>The Commission has re-organized the central file room and is performing electronic imaging of files using updated storage process. Although the project was temporarily placed on hold due to the mandatory 5% Budget Reduction, the project has now been resumed in anticipation of the move to state office space.</p>	Improved Record Management

TEXAS REAL ESTATE COMMISSION
 Annual Internal Audit Report
 Fiscal Year 2010

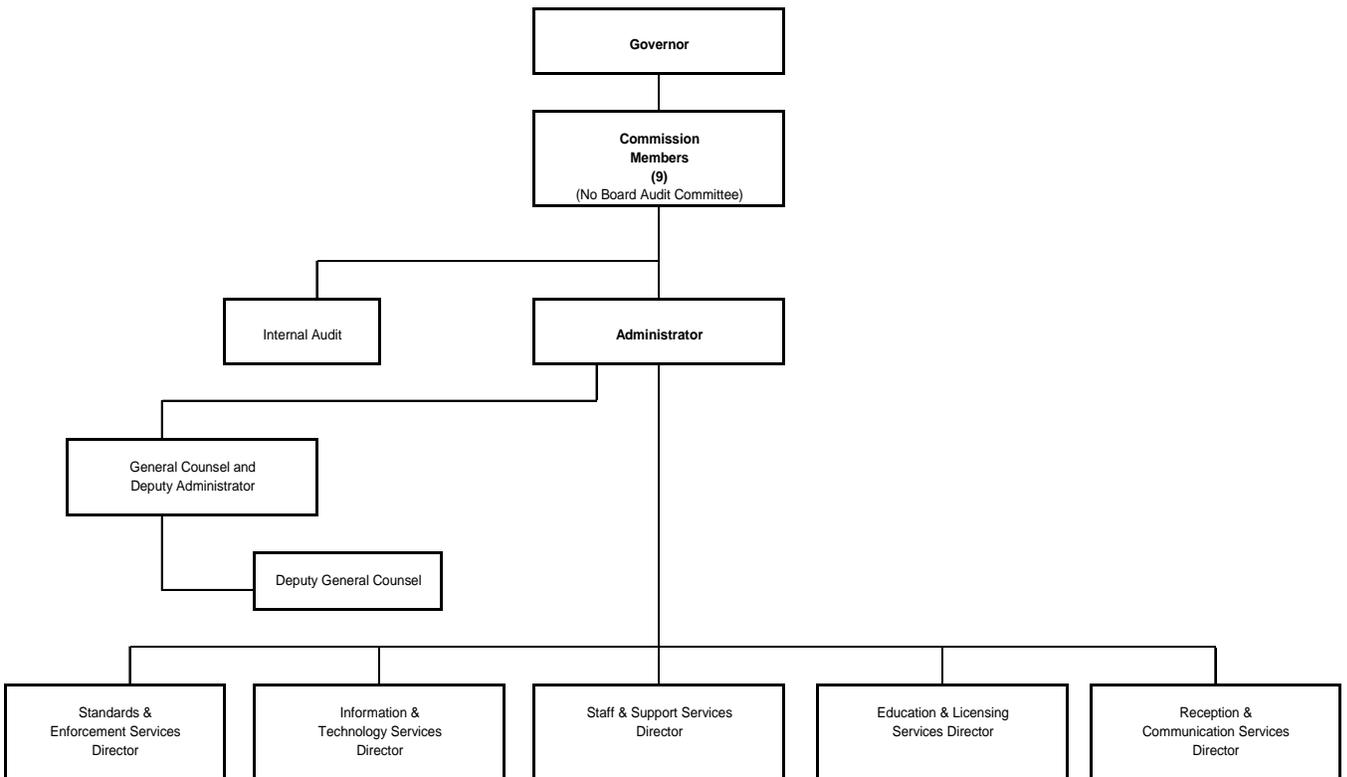
Report No.	Report Date	Name of Report	Observations/Findings and Recommendations	Current Status (Fully Implemented, Substantially Implemented, Incomplete/ Ongoing, or Not Implemented) with brief description if not yet implemented	Fiscal Impact/Other Impact
		Follow-up of Other Commission Audits (State Auditor's Office Report on Performance Measures)	2. General Information Technology and Application Controls The Commission should: <ul style="list-style-type: none"> • System related upgrades and improvements <ul style="list-style-type: none"> - Improve logical access controls to TRELIS and its data. - Develop documentation of TRELIS, including the relevant fields, tables, and their relationships. - Improve the controls over key data fields in TRELIS, or develop compensating controls. 	Fully Implemented	Improved security; production environment; disaster preparedness; hazard safety and control environment

TEXAS REAL ESTATE COMMISSION
Annual Internal Audit Report
Fiscal Year 2010

V. List of Consulting Engagements and Non-audit Services Completed

None to report.

VI. Organizational Chart



TEXAS REAL ESTATE COMMISSION

Annual Internal Audit Report

Fiscal Year 2010

VII. Report on Other Internal Audit Activities

None

VIII. Proposed Internal Audit Plan for Fiscal Year 2012

- Cash Collection Fee Process and Remittance
- Performance Measures
- Examination Process
- Other Tasks as May Be Assigned by the Commission

IX. External Audit Services Procured in 2011

The Commission procured the following external audit services:

- Annual Risk Assessment
- Current year Internal Audit Services
- Financial data analysis for Residential Service Company (RSC)

X. Reporting Suspected Fraud and Abuse

The Commission has implemented the requirements of Article IX, Section 17.05 and Article XII, Section 5 (c) of the General Appropriations Act by providing information on their home page regarding how to report suspected fraud, waste, and abuse to the State Auditor's Office (SAO), posting a link to the SAO's fraud hotline, and including in their policies information on how to report suspected fraud involving state funds to the SAO. During fiscal year 2011, the Commission did not have any suspected fraud waste or abuse to report to the SAO, as required by Texas Government Code, Section 321.022.



Agenda Item 20:

Executive session to discuss personnel matters regarding the TREC administrator position under Texas Government Code, §551.074

SUMMARY Will be presented at the meeting.

Agenda Item 21:

Discussion and possible action on items considered in executive session



Agenda Item 22:

Discussion and possible action to establish policies related to self-directed semi-independent status, including:

- a. Operating reserves
- b. Technology replacement reserves
- c. A target reserve balance in excess of which the agency may reduce fees

SUMMARY See Memo dated July 22, 2011 attached.

STAFF
RECOMMENDATION Discussion item only

TEXAS



REAL ESTATE COMMISSION

APPRAISER LICENSING & CERTIFICATION BOARD

MEMORANDUM

TO: Commissioners and Board Members

FROM: Douglas E. Oldmixon

RE: Proposed Policies regarding Financial Reserves

DATE: 22 July 2011

DISCUSSION

As an SDSI agency for FY 2012 and going forward, it is important that the agency establish sufficient financial reserves to deal with anticipated revenue fluctuations based on seasonal license renewal volumes and economic trends, as well as unexpected contingencies. For the first two years, we will have annual appropriations of approximately \$3.8 Million to manage any contingencies, although these funds must be repaid to the General Fund at the end of each fiscal year, along with the agency's required \$750,000 annual statutory contribution ("ransom"). Further, technology has a fairly predictable life cycle and needs scheduled replacement that can and should be reserved for. Lastly, based on potential cost savings, efficiencies and potential license number increases, it would be prudent to establish an overall target for "excess" reserves, that if reached, would require the staff to bring to the Commission and Board a proposed rule adjusting the application and renewal fee rates to provide a reduction sufficient to reduce the excess to nil. This also potentially avoids the criticism that would surely follow from legislators and other leadership if the agency accumulated reserves in excess of that reasonably needed.

RECOMMENDATIONS (initial estimates of policies to be proposed after a comprehensive fee review)

- a. Operating Reserve - An amount equal to 25% of the amount expended over the past 4 fiscal quarters, excluding "pass-throughs". (approximately enough to cover operating expenses for a 3 month period)
- b. Technology Replacement Reserve - An amount equal to 25% of the amount expended over the past 4 years for technology purchases. (sufficient to update and/or replace most technology every 4 years)
- c. Target Reserve for Fee Reduction - An amount sufficient to provide a reduction of not less than \$2.00 in each renewal fee for all license and registration types administered by the agency, based on the actual volume of license and registrations renewed in the prior 8 fiscal quarters. (for example, if the total number of license renewed in the past 8 quarters totals 150,000, then when the reserve accumulated an excess of \$300,000, the staff would proposed a \$2.00 fee reduction)

No action is required at this time. This is merely a discussion of future proposals to allow Commission and Board members to provide any desired guidance to the staff for consideration.



Agenda Item 23:

Discussion and possible action to adopt a budget

SUMMARY Will be presented at the meeting.

STAFF
RECOMMENDATION

MOTION MOVED, that the Commission does hereby adopt the budget as submitted under this agenda item

**Texas Real Estate Commission
FY2012 Proposed Budget**

Expenditure Category	FY2010 Budget	FY2011 Budget	Proposed Budget FY2012	Variance From FY2011	% Variance From FY2011	Comments
Salaries & Wages	\$4,106,928	\$4,095,601	\$4,240,700	\$145,099	3.5%	Bring employees on average to first quartile of pay grade
Employee Benefits	1,255,590	1,379,845	1,407,800	27,955	2.0%	
Other Personnel Costs	126,400	150,420	136,200	(\$14,220)	-9.5%	Unemployment compensation paid in FY2010-11
Professional Fees & Services	72,800	58,907	195,700	\$136,793	232.2%	\$160,000 in retainers to State Auditors Office, Office of the Attorney General, State Office of Administrative Hearings
Consumables	55,800	55,800	40,000	(\$15,800)	-28.3%	Savings from conversion to digital communications
Utilities	43,000	40,800	12,000	(\$28,800)	-70.6%	Telecomm service now under Communication Services
Travel	67,300	67,300	58,700	(\$8,600)	-12.8%	
Office Rent	426,100	426,845	462,200	\$35,355	8.3%	Amortize modular furniture costs of \$106,300 in FY2012 and FY2013
Equipment Rental	34,600	33,900	19,800	(\$14,100)	-41.6%	Reduced number of copiers
Registration & Memberships	13,200	14,250	14,300	\$50	0.4%	
Maintenance & Repairs	52,600	31,777	37,200	\$5,423	17.1%	Versa maintenance
Reproduction & Printing	16,200	16,199	4,000	(\$12,199)	-75.3%	Savings from conversion to digital communications
Contract Services	18,200	20,180	9,400	(\$10,780)	-53.4%	Savings on mail processing from conversion to digital communications; FY2011 had budget for movers after building remodeling
Postage	136,400	136,400	32,800	(\$103,600)	-76.0%	Savings from conversion to digital communications
Supplies & Equipment (Non-capitalized)	38,800	35,182	95,900	\$60,718	172.6%	Equipment for new FTEs; software upgrades & PC Refresh in FY2012
Communication Services	50,400	49,700	56,300	\$6,600	13.3%	Telecomm service now categorized as Communication Services
Other Operating Expenses	16,200	56,213	19,000	(\$37,213)	-66.2%	FY2011 had budget for building remodeling
DPS Criminal History Background Checks	3,000	3,000	3,000	\$0	0.0%	
FBI Criminal History Background Checks	1,089,550	1,449,525	1,175,000	(\$274,525)	-18.9%	Adjusted budget
Texas Online Fees	300,000	300,000	300,000	\$0	0.0%	
Contingency Reserve	0	162,173	0	(\$162,173)	-100.0%	Expenses for move in FY2011
Master Lease Program Payments	68,700	14,700	14,700	\$0	0.0%	
Imaging Project Costs	156,000	416,569	243,000	(\$173,569)		
Computer System Related Costs	275,000	104,862	138,800	\$33,938	32.4%	Includes development costs & software maintenance
Contribution to General Revenue	0	0	720,000	\$720,000		Not applicable until FY2012.
Total	\$8,422,768	\$9,120,148	\$9,436,500	\$316,352	3.5%	
Budgeted Full Time Employees	94.0	91.4	87.4	(4.0)	-4.4%	

Other Operating Expenses

**Texas Real Estate Commission
FY2012 Proposed Budget**

Revenue	FY2010	FY2011 Est.	FY2012 Est.	
Licensing Fees	\$8,903,443	\$8,804,335	\$8,804,335	
Projected Revenue from \$7 Annual Fee Increase on Renewals & Applications (see table below)			870,508	
TX Online	301,948	300,000	300,000	
Appropriated Receipts	194,395	190,000	0	
Total Revenue	\$9,399,786	\$9,294,335	\$9,974,843	
Projected Revenue Over/(Under) Expenditures & Transfers			\$538,343	
Allocation of Revenue Over Expenditures & Transfers:				
Reserve for Capital Equipment			\$51,000	
Reserve for Operations			\$300,000	
Unreserved			\$187,343	Any excess revenue will go toward building the reserve for capital equipment and reserve for operations.

Operating Reserve Calculation:			
Total Projected Expenditures		\$	9,436,500
Less:			
TX Online			(300,000)
Criminal History Background Checks			(1,175,000)
Annual Cost of Operations		\$	7,961,500
Operating Reserve - 3 months		\$	1,990,375

	Annual #	Increase	FY2012 Revenue Effective 11/1/2011
Original Applications	10,000	\$14	\$116,667
Renewals	60,000	\$14	700,000
Late Renewal Penalties		\$3.50 - \$14	53,841
Total Projected Revenue Increase			\$870,508

Description of Expense Categories

Salaries & Wages	Salaries of exempt & classified employees
Employee Benefits	OASI, retirement, insurance and benefit replacement pay
Other Personnel Costs	Compensatory per diem, lump sum payments, longevity, and unemployment compensation
Professional Fees/Services	Employee assistance program, internal auditor, residential service company audits and exams, computer programming, and temporary employees
Consumables	Paper, pens, toner cartridges, etc.
Utilities	Local and long distance phone service for field investigators, paper shredding.
Travel	Travel for board members, advisory committees, and employees
Office Rent	Office lease payments
Equipment Rent	Lease of copiers, postage meter, and folder inserter
Registration & Memberships	Membership dues, registration fees for conferences, training, attorney CLE
Maintenance & Repair	Maintenance contracts on computer hardware and software, miscellaneous repairs on office furniture, printers, etc.
Reproduction & Printing	Envelopes, business cards, miscellaneous printing
Contract Services	Mail presort service, movers, court reporters, transcripts, subpoenas, security guards, computer code escrow fee
Postage	Meter, deposits to permit account, post office box rental, postage due account
Supplies & Equipment	Equipment which costs less than \$5,000
Communication Services	Electronic subscriptions, internet connections for field investigators, telecommunications & internet charges for TREC headquarters provided by the Department of Information Resources (DIR)
Other Operating Expenses	Certified copies, freight and delivery service, attorney state bar dues, and miscellaneous other expenses
DPS Criminal History Checks	\$1 per license application and renewal for criminal history background check (Texas)
FBI Criminal History Checks	FBI criminal history background checks
Texas Online Fees	Funds the internet portal for online transactions
Master Lease Program Payments	Payments to Texas Public Finance Authority for capital equipment financed through that agency
Capital Expenditures	Equipment which costs \$5,000 or more.

TEXAS



REAL ESTATE COMMISSION

Agenda Item 24:

Consideration and possible action regarding Proposal for Decision from State Office of Administrative Hearings in the matter of SOAH Docket No. 329-10-3045.REC

SUMMARY See attached materials.

STAFF
RECOMMENDATION

MOTION



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

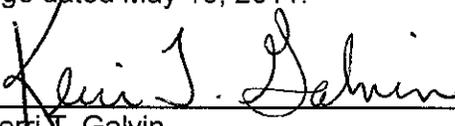
Date: JUNE 30, 2011

**Subject: PROPOSAL FOR DECISION
IN THE MATTER OF
MELVIN BRYAN JAMES**

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-10-3045.REC. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for August 1, 2011, at 10:00 a.m. in Conference Room 170, Texas Real Estate Commission Offices, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

Enclosed for your consideration are copies of the following:

- 1) Proposal for Decision dated April 7, 2011;
- 2) Letter by the Administrative Law Judge dated April 26, 2011;
- 3) Respondent's fax dated April 26, 2011;
- 4) Letter by the Administrative Law Judge dated May 10, 2011.


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



RECEIVED

APR 08 2011

Cathleen Parsley
Chief Administrative Law Judge

Texas Real Estate Commission

April 7, 2011

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

INTER-AGENCY

RE: Docket No. 329-10-3045.REC; Texas Real Estate Commission v. Melvin Bryan James

Dear Mr. Oldmixon:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerrie Jo Qualtrough".

Kerrie Jo Qualtrough
Administrative Law Judge

KJQ/llg
Enclosure

xc: Sharon Harris, Attorney, 1101 Camino La Costa, Austin TX 78752 – VIA INTER-AGENCY
Melvin Bryan James, 217 N. Avenue D., Springtown, TX 76082 - 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. 329-10-3045.REC

TEXAS REAL ESTATE COMMISSION,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
MELVIN BRYAN JAMES,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Real Estate Commission (TREC) brought action against Melvin Bryan James (Respondent) seeking to revoke Respondent's real estate broker license, number 500346. Staff alleged that it paid \$50,000 from the Real Estate Recovery Trust Account (Trust Account) on behalf of Respondent, and Respondent failed to repay that amount, plus interest. After reviewing the law and the evidence presented, the Administrative Law Judge (ALJ) has determined that Staff has met its burden of proof, and recommends that Respondent's license be revoked.

I. JURISDICTION AND NOTICE

On February 22, 2011, ALJ Kerrie Jo Qualtrough convened the hearing on the merits in the hearing rooms of the State Office of Administrative Hearings (SOAH), 300 West 15th Street, Austin, Texas. Sharon S. Harris, Staff Attorney, represented the Staff, and Respondent appeared on his own behalf by telephone.

No one raised issues regarding jurisdiction and the sufficiency of notice. Therefore, the ALJ sets out those matters in the Findings of Fact and Conclusions of Law.

II. BACKGROUND

This case involves reimbursement of the Trust Account and the following facts are largely undisputed. On April 30, 2008, a final judgment was entered in *Thomas W. Ozgo v. Bryan James, et*

al., Cause No. 2005-49386, 234th Judicial District, Harris County, Texas (the underlying lawsuit).¹ The court ordered that the plaintiff, Thomas W. Ozgo, “recover damages from [Respondent] for his fraudulent conduction [sic] in connection with a real estate transaction in the amount of \$178,200” Respondent did not dispute that he was the named defendant, “Bryan James.” However, Respondent argued that the court did not provide him with notice of the trial setting, and that is why he did not appear to defend himself in the underlying lawsuit. Since Respondent did not have notice of the entry of a final judgment, his time to appeal that judgment expired.

To challenge the final judgment in the underlying lawsuit, Respondent filed a bill of review.² At the time of the evidentiary hearing in this proceeding, Respondent had lost on a motion for summary judgment on his bill of review, and was appealing that decision.

On April 1, 2009, Mr. Ozgo filed an “Application for Order Directing Payment Out of the Real Estate Recovery Trust Account” (Application) with the district court in Harris County.³ Staff notified Respondent of the Application on April 9, 2009.⁴ Although TREC contested the Application before the Harris County district court, the court apparently did not agree with TREC’s position and issued a November 10, 2009 order directing payment from the Trust Account to Mr. Ozgo.⁵ On December 16, 2009, Mr. Ozgo executed a Partial Assignment of Judgment to TREC, in consideration of his receipt of payment from the Trust Account.⁶ On January 25, 2010, TREC made a \$50,000 payment from the Trust Account to Mr. Ozgo.⁷

On February 19, 2010, Staff sent Respondent a Notice of Alleged Violation and Original Petition, seeking repayment of the \$50,000. Staff stated that it would seek revocation of

¹ Staff Ex. C-4, Att. C.

² The style, cause number, and date of filing of Respondent’s bill of review is not found in the evidentiary record.

³ Staff Ex. C-4, Att. D.

⁴ Staff Ex. C-4, Att. C.

⁵ Staff Ex. C-4, Att. G.

⁶ Staff Ex. C-4, Att. H.

Respondent's broker license if Respondent failed to repay the \$50,000. After receiving Respondent's hearing request, Staff issued its Notice of Administrative Hearing on March 11, 2010, informing Respondent that his requested hearing was scheduled for April 27, 2010.

Respondent filed two written motions for continuance during this proceeding. The basis of these motions was that Respondent needed accommodation for his disability, he needed additional time to prepare, and he wanted to wait until his bill of review had been ruled upon by the district court in Harris County. Both motions were granted and the hearing on the merits was eventually re-scheduled for November 17, 2010. A prehearing conference was also scheduled for November 16, 2010.

During the pendency of the administrative hearing, Respondent filed documents to support his various motions. At the November 16, 2010 prehearing conference in this case, Respondent indicated that he wanted those documents admitted into evidence. Prior to the prehearing conference, it was not clear that Respondent had submitted any exhibits for consideration at the hearing on the merits.

At the November 16, 2010 prehearing conference, Respondent stated that he did not wish to request a continuance of the November 17, 2010 hearing on the merits. To remedy the issues with his exhibits, Respondent agreed to provide the ALJ and Staff with an exhibit list, indicating which documents he intended to offer into evidence. On November 17, 2010, before the evidentiary hearing, Respondent provided to Staff and the ALJ a "List of Evidence Documents Filed."

On November 17, 2010, at 9:00 a.m., the ALJ convened the hearing on the merits. Respondent and Jack Vaughan, an attorney, participated by telephone. Ms. Harris was present in the hearing rooms of SOAH in Austin, Texas.

⁷ Staff Ex. C-4, Att. I.

At the beginning of the November 17, 2010 hearing on the merits, the parties attempted to go through Respondent's "List of Evidence Documents Filed" to determine whether the ALJ had all his documents. When it became apparent that it would be difficult to determine which documents were on file with SOAH, Respondent orally moved for a continuance, and the ALJ granted Respondent's motion over Staff's objection.

In Order No. 4, the ALJ scheduled another prehearing conference for February 9, 2011, and rescheduled the hearing on the merits for February 22, 2011. Order No. 4 gave Respondent a January 14, 2011 deadline to submit the exhibits he wanted admitted into evidence. However, Respondent did not submit any exhibits to SOAH by that deadline.

On February 8, 2011, Respondent filed a motion seeking appointment of counsel based on his disability,⁸ indigent status, and inability to adequately represent himself in the hearing. In addition, Respondent's February 8, 2011 motion asserted that he tried to submit his documents "electronically but firewalls did not allow for delivery." It was not clear from Respondent's motion whether he had attempted to send his exhibits to the ALJ by submitting them to SOAH's electronic filing system. There was no indication that Respondent attempted to submit his exhibits to the ALJ as required by Order No. 4, and Respondent had no exhibits on file at the time of the second prehearing conference and the hearing on the merits.

On February 9, 2011, the ALJ convened a second prehearing conference. Respondent was unable to participate but did not request a continuance. At the prehearing conference, Staff stated its objection to Respondent's request to have counsel appointed. After considering Respondent's motion and Staff's objections, the ALJ denied Respondent's request on February 11, 2011.

On February 23, 2011, the ALJ convened the hearing on the merits. Staff participated in person and Respondent participated by telephone. The ALJ admitted Staff's Exhibits C-1, C-2, C-3, and C-4. Respondent testified on his own behalf but did not offer any exhibits into evidence.

⁸ The ALJ was not informed of the exact nature or extent of Respondent's physical or cognitive disabilities.

III. ISSUES

A. Allegations

In its February 19, 2010 Notice of Alleged Violation and Original Petition, Staff made several allegations, including:

On or about May 2, 2008, a judgment was rendered against Respondent in Cause No. 2005-49386 in the 234th District Court, Harris County, Texas (“Judgment”).

On or about November 10, 2009, in said cause and court, [TREC] was ordered by the court, to pay the amount of \$50,000.00 towards satisfaction of the Judgment from the [Trust Account].

On or about January 25, 2010, [TREC] paid \$50,000.00 from the [Trust Account] in accordance with this order.

On or about February 19, 2010, [TREC] sent a Notice of Alleged Violation with a request for payment of \$50,000.00 plus applicable interest to the Respondent.

As of the date herein, Respondent has not repaid the [Trust Account] the \$50,000.00 plus applicable interest.⁹

B. Legal Authority

Subchapter M, Chapter 1101 of the Texas Occupation Code sets out the requirements for the administration of the Trust Account, and specifies the actions that must occur before TREC can make payments from that account. An aggrieved person who obtains a judgment against a TREC licensee must file an application for payment from the Trust Account with the court that entered the judgment.¹⁰ In a hearing on the application for payment before the district court, TREC “may relitigate . . . any material and relevant issue that was determined in the action that resulted in the judgment in favor of the aggrieved person.”¹¹ If the court finds in the aggrieved person’s favor on

⁹ Staff Notice of Administrative Hearing, Ex. A.

¹⁰ TEX. OCC. CODE § 1101.606(b).

¹¹ TEX. OCC. CODE § 1101.608(c).

the application, the court must order TREC to make a payment from the Trust Account.¹² There is no provision that allows TREC to re-litigate an issue once a district court has ordered payment.

“[TREC] may revoke a license . . . if [TREC] makes a payment from the [Trust Account] to satisfy all or part of a judgment against the license . . . holder.”¹³ A person is not eligible for another license until the person has repaid the amount paid out from the Trust Account, plus interest.¹⁴

C. Staff's Position

Staff argues that it has proved the requirements necessary for revocation of Respondent's license:

1. Respondent had a judgment against him entered by a district court;
2. The aggrieved person filed an application for payment from the Trust Account with that district court;
3. The district court ordered payment from the Trust Account to the aggrieved person;
4. TREC made a payment from the Trust Account as directed by the district court;
5. TREC gave notice to Respondent and sought repayment; and
6. Respondent failed to repay the Trust Account in full, plus interest.

It is Staff's position that under section 1101.655 of the Texas Occupation Code, Respondent's license should be revoked.

D. Respondent's Position

Respondent testified on his own behalf, but did not dispute the facts presented in Staff's direct case. However, it is Respondent's position that certain facts in the underlying lawsuit were “strategically omitted”; thereby causing the resultant judgment against Respondent to be based on incomplete facts.

¹² TEX. OCC. CODE § 1101.609.

¹³ TEX. OCC. CODE § 1101.655(a).

¹⁴ TEX. OCC. CODE § 1101.655(c).

Respondent argues that if he had been able to present all the facts to the district court, there might have been a different outcome in the underlying lawsuit. His argument focuses on the allegation that the district court should have reasonably accommodated his disability by effectively communicating with him regarding rules and deadlines. Had the district court sent orders to Respondent by facsimile as an accommodation, Respondent would have known of the hearing date and could have presented his facts to the district court. Therefore, Staff's facts in this administrative proceeding, while accurate, are based on the underlying judgment where the facts were not fully developed. In addition, it is Respondent's position that this administrative hearing should have been abated until the appeal of his bill of review was completed.

Respondent further argues that because of his accident, he has a disability that impairs his mental ability to organize facts and prepare responses in this case. Therefore, Respondent requires additional time for him to participate in a hearing. According to Respondent, an attorney should have been appointed for him as required by the Americans with Disabilities Act to help with his administrative case. It is his position that he is unable to adequately represent himself because he cannot comply with the rules applicable to this case.

Respondent also argues that his disability requires extensive rehabilitation with many doctor's appointments. He stated that these appointments may have conflicted with legal deadlines. Therefore, Respondent maintains that his rehabilitation should have taken precedence in this proceeding.

E. Analysis

Staff has met its burden of proof that Respondent's license should be revoked. A plaintiff obtained a judgment against Respondent, and subsequently filed an application with the district court seeking payment from the Trust Account. The district court ordered TREC to pay \$50,000 to the plaintiff from the Trust Account. TREC gave notice to Respondent that it was seeking reimbursement and Respondent did not repay the \$50,000 to the Trust Account. The procedures in

sections 1101.601 through 1101.615 of the Texas Occupations Code were followed and Respondent's license should be revoked.

The ALJ sympathizes with Respondent's position. Respondent feels that he did not receive due process at the district court in Harris County. He argues that had the district court given him notice as he had requested, there may have been a different outcome to the underlying lawsuit, and therefore, a different outcome in this administrative case. However, the ALJ's authority is set out in chapter 2003 of the Texas Government Code. The Texas Legislature has not given the ALJ the authority to rehear or overturn a district court's decision. Furthermore, there is no grant of authority to empower the ALJ with the ability to appoint counsel to represent Respondent.

The Respondent requested and was granted three continuances in this matter. Each time Respondent moved for a continuance, an ALJ granted that request. There is no record that Respondent requested relief from a deadline and had that request denied. Also, a previous ALJ granted Respondent a continuance to allow the district court to rule on his bill of review. However, the district court denied his bill of review and that decision is on appeal. Respondent did not request another continuance to allow the appeal process to reach its conclusion. Nevertheless, the fact that the appeal process is ongoing does not require a halt to this proceeding.

IV. RECOMMENDATION

The ALJ concludes that based upon the record in this case, Staff has met its burden of proof that the prerequisites for revocation based on a license holder's failure to repay funds into the Trust Account have been met. Therefore, the ALJ recommends that Respondent's license be revoked and that he be found ineligible to receive a new license until he has repaid the full amount, plus interest, to the Trust Account.

V. PROPOSED FINDINGS OF FACT

1. Melvin Bryan James (Respondent) holds real estate broker license number 500346 issued by the Texas Real Estate Commission (TREC).

2. On April 30, 2008, a final judgment was entered in *Thomas W. Ozgo v. Bryan James, et al.*, Cause No. 2005-49386, 234th Judicial District, Harris County, Texas. The district court ordered that the plaintiff, Thomas W. Ozgo, “recover damages from [Respondent] for his fraudulent conduction [sic] in connection with a real estate transaction in the amount of \$178,200”
3. On April 1, 2009, Mr. Ozgo filed an “Application for Order Directing Payment Out of the Real Estate Recovery Trust Account” (Application) with the district court in Harris County. TREC notified Respondent of the Application on April 9, 2009. The district court issued a November 10, 2009 order directing TREC to pay \$50,000 from the Real Estate Recovery Trust Account (Trust Account) to Mr. Ozgo.
4. On December 16, 2009, Mr. Ozgo executed a Partial Assignment of Judgment to TREC, in consideration of his receipt of payment from the Trust Account.
5. On January 25, 2010, TREC made a \$50,000 payment from the Trust Account to Mr. Ozgo.
6. On February 19, 2010, Staff sent Respondent a Notice of Alleged Violation and Original Petition, stating that Staff was seeking repayment of the \$50,000, and that TREC would revoke Respondent’s broker license if Respondent failed to repay the Trust Account.
7. After receiving Respondent’s hearing request, Staff issued its Notice of Administrative Hearing on March 11, 2010, informing Respondent that his requested hearing was scheduled for April 27, 2010.
8. The Notice of Administrative 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; and reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
9. Respondent was ordered to submit his exhibits for admission into the evidentiary record by January 14, 2011. Respondent did not submit any exhibits to the State Office of Administrative Hearings (SOAH) by that deadline.
10. On February 23, 2011, the Administrative Law Judge convened the hearing on the merits. Staff participated in person in SOAH’s hearing rooms, 300 W. 15th Street, Austin, Texas. Respondent participated by telephone. The ALJ admitted Staff’s Exhibits C-1, C-2, C-3, and C-4.
11. Respondent has not repaid the \$50,000 paid to the Mr. Ozgo from the Trust Account.

VI. PROPOSED CONCLUSIONS OF LAW

1. TREC has jurisdiction over the licenses of real estate brokers, salespersons, and inspectors, pursuant to the TEX. OCC. CODE. Chapter 1101.
2. SOAH has jurisdiction over all matters related to conducting a contested case hearing in this matter, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to 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 § 1101.655, TREC may revoke a license if it makes a payment from the Trust Account to satisfy all or part of a judgment against the license holder.
5. Based on the above Findings of Fact and Conclusions of Law, Respondent's real estate broker license number 500346 should be revoked and he should be ineligible to receive a new license until he has repaid in full the amount paid from the Trust Account, plus interest.

SIGNED April 7, 2011.



KERRIE JO QUALTROUGH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

RECEIVED
TEXAS REAL
ESATE COMMISSION

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

11 APR 26 AM 10:41

REC ENFORCEMENT

DATE: 04/26/2011
NUMBER OF PAGES INCLUDING THIS COVER SHEET: 2
REGARDING: EXCEPTIONS LETTER (BY ALJ)
DOCKET NUMBER: 329-10-3045.REC

JUDGE KERRIE QUALTROUGH

FAX TO:

FAX TO:

SHARON HARRIS

(512) 465-3962

MELVIN BRYAN JAMES

(832) 550-2782

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT LISA MARTINEZ(lma) (512) 475-4993

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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 26, 2011

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

VIA-FACSIMILE: 512-465-3910

RE: Docket No. 329-10-3045.REC; Texas Real Estate Commission v. Melvin Bryan James

Dear Mr. Oldmixon:

The Proposal for Decision (PFD) was issued on April 7, 2011. No exceptions were received by April 22, 2011. Therefore, this PFD is ready for final action.

Sincerely,

A handwritten signature in black ink, appearing to read "Kerrie Jo Qualtrough".

Kerrie Jo Qualtrough
Administrative Law Judge

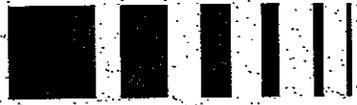
KJQ/llg

xc: Sharon Harris, Attorney, 1101 Camino La Costa, Austin TX 78752 – VIA FACSIMILE: 512-465-3962
Melvin Bryan James, 217 N. Avenue D., Springtown, TX 76082 - VIA FACSIMILE: 832-550-2782
Kerri Galvin, Director of Standards & Enforcement Services, TREC, 1101 Camino La Costa, Austin, TX 78752 – VIA FACSIMILE: 512-465-3962

** INBOUND NOTIFICATION : FAX RECEIVED SUCCESSFULLY **

TIME RECEIVED April 26, 2011 3:53:15 PM CDT	REMOTE CSID 8325502782	DURATION 51	PAGES 1	STATUS Received
To: Judge Kerrie Qualtrough Page 1 of 1	2011-04-26 20:50:31 (GMT)	8325502782 From: Bryan James		

CONFIDENTIAL FAX



To: Judge Kerrie Qualtrough

From: Bryan James

Company:

Fax Number: 8325502782

MESSAGE

To Whom It May Concern:

I have gathered sufficient case law to support the assignment of an attorney in my case or any other similar peroson of same protected class. Therefore, I respectfully request again that counsel be provided and the recommendations rendered recently be reviewed once an attorney has been able to examine the global perspective and issues. I will put the organized material together as I can more fully research the proper procedure. My 2nd year has been extended to May 13, 2011 for coursework and July 2 final exams.

Sincerely,
Melvin Bryan James

Date: 2011-04-26 20:50:23 GMT

2011/05/10 11:55:00 1 74

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

May 10, 2011

TEXAS REAL
ESTATE COMMISSION

11 MAY 10 AM 11:57

REC ENFORCEMENT

Melvin Bryan James
217 N. Avenue D
Springtown, TX 76082

VIA FACSIMILE: 832-550-2782

RE: Docket No. 329-10-3045.REC; Texas Real Estate Commission v. Melvin Bryan James

Dear Mr. James:

I have received your April 26, 2011 fax that is attached to this correspondence. However, after I issued the proposal for decision and the period for exceptions expired, the State Office of Administrative Hearings no longer has jurisdiction over your case. Therefore, I am unable to review or act on your request for assignment of counsel.

Sincerely,

Kerrie Jo Qualtrough
Administrative Law Judge

KJQ/llg

Xc: Douglas E. Oldmixon, Administrator, Texas Real Estate Commission, 1101 Camino La Costa, Austin, Texas 78752, - VIA FACSIMILE 512-465-3910
Sharon Harris, Attorney, TREC, 1101 Camino La Costa, Austin TX 78752 - VIA FACSIMILE 512-465-3962
Kerri Galvin, Director of Standards & Enforcement Services TREC, 1101 Camino La Costa, Austin, TX 78752 - VIA FACSIMILE 512-465-3962



Agenda Item 25:

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 Will be presented at the meeting.

Agenda Item 26:

Discussion and possible action to schedule future meetings

SUMMARY Tentative meeting for October 10, 2011 and December 5, 2011.

MOTION MOVED, that the Commission approves the scheduling of a regular meeting for October 10, 2011 and December 5, 2011.

Agenda Item 27:

Adjourn

Texas Real Estate Commission

August 1, 2011

August 11						
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August
1 *Commission Meeting*

September
5 Labor Day

October
10 Columbus Day (Observed)
Commission Meeting

30 Daylight Savings--set back 1 hour

31 Halloween

November
1 Election Day

11 Veterans Day

24 Thanksgiving

December
5 *Commission Meeting*

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

May
1 May Day

5 Cinco de Mayo

13 Mother's Day

17 Ascension Day

19 Armed Forces Day

27 Pentecost

28 Memorial Day (Observed)

June
7 Corpus Christi

14 Flag Day

17 Father's Day

July
4 Independence Day

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July 12						
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