



# TREC Advisor

The agency exists to safeguard the public interest and protect consumers of real estate services. In accord with state and federal laws the agency oversees real estate brokerage, appraisal, inspection, home warranty, right-of-way services and timeshare interest providers. Through education, licensing and regulation, the agency ensures the availability of qualified and ethical service providers, thereby facilitating economic growth and opportunity across Texas.

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## From the Director...

Broker license renewal fees will be reduced by \$300 due to passage of HB 7 to be effective 1 Sep 15. How's that for a headline? Due to the very hard work of a dedicated group from across our profession, especially the legislative team at TAR, the "occupation tax" - also called a "professional fee" - was repealed 24 years after it was implemented as a "temporary" revenue measure. With the cooperation of Senator Kevin Eltife and Representative John Kuempel, the funding for Texas' outstanding Real Estate Center at Texas A&M was preserved in SB 699 and the net result is a \$300 reduction in fees collected at broker license renewal. What a great accomplishment! Our gratitude goes out to all who played a part in this tremendous effort.

SB 699 also contains some other improvements you should be aware of. Starting on January 1, 2016, the Legal Update course that is a part of every license holder's continuing education (CE) requirement to renew a real estate license will be 8 hours and contain much more information on the content and use of promulgated contracts. The statutory notices that license holders are required to provide to clients and other consumers - the complaint filing process, the potential to access the recovery fund, and the "Information About Brokerage Services" (IABS) - will each be simplified and made more understandable. The Commission will also adopt new rules on when and how the notices will be provided to consumers.

Many other clarifications were included in the bill and, with the timely assistance of many of our license holders, we will be implementing those via rule amendments over the next few months. Thanks to all who participate in the truly collaborative process of shaping thoughtful recommendations for sound policy improvements. We have always invited a very high level of stakeholder input as we work to carry out our mission to ensure competent and ethical real estate service providers for

Texas' consumers.

Due to other requirements enacted by the legislature, some of the TREC promulgated contract forms will be updated to become effective September 1, 2015. We realize that is a short timeframe, but the legislature makes most of the laws it passes to be effective at the beginning of the next fiscal year, and the Texas fiscal year starts September 1<sup>st</sup>! Watch for the news releases in your email that will explain the contract changes and steer you to more resources to assist with rapid integration of these forms.

January 1 will also mark commencement of the requirement for instructors of "qualifying" and non-elective CE courses to provide proof of successful completion of a minimum of 8 hours of Instructor Training in Adult Education techniques in the last four years. Holding a current CREI, DREI or CDEI designation will satisfy this requirement. Other courses can be used to satisfy this requirement, if approved by TREC. This standard is critical to recognizing and maintaining the quality of the outstanding instructors who teach our most important professional courses. We appreciate those who commit to this level of expertise.

The next meeting of the Commission will be on Monday August 17th at 10 AM in Room 170 of our HQ. Rules will be proposed to implement much of SB 699 and we will consider our annual internal audit and FY16 budget. We are always happy to see interested license holders make the effort to be there, but you can also watch our live broadcast online at the TREC website [www.trec.texas.gov](http://www.trec.texas.gov). Aim high!



Douglas E. Oldmixon

## TREC Housekeeping Bill Overview

Senate Bill 699 amends Chapter 1101 of the Texas Occupations Code (Texas Real Estate Licensing Act), which regulates the licensing of real estate agents and brokers. The bill clarifies and expands various definitions to ensure TREC has the tools needed to adequately protect Texans, and conforms terminology throughout the Act to current TREC practices. The bill allows TREC Commissioners and staff to make uncompensated presentations to groups of license holders that would be able to qualify for continuing education credit. The bill provides TREC additional flexibility regarding various statutory notices to consumers.

The bill clarifies that a current license term period is 24 months. The bill requires additional education if an applicant fails the examination three times and requires legal and ethics update be taken before renewal of first sales license. It clarifies TREC's ability to set continuing education requirements by rule, subject to a minimum requirement of 15 hours and limits TREC's ability to increase hours by no more than three hours over a license term. It also expands legal

and ethics continuing education courses to include more content on promulgated contracts, and sets reporting restrictions to match the continuing education hours claimed.

The bill adds a two-year waiting period for reapplication after revocation, surrender, or denial of a license after the opportunity for a hearing. The bill allows the agency's investigative complaint files to remain confidential until the investigation is completed. It updates certain procedures regarding a respondent's failure to appear at hearing and authorizes cost recovery for the agency should a State Office of Administrative Hearings (SOAH) judge deem it appropriate.

The bill clarifies the process for contributions to, replenishment of, and claims against the recovery fund; clarifies that timely repayment of the fund is necessary to maintain a license; and establishes a connection between a designated broker and brokerage firm regarding claims against the recovery fund.

### CONTRACT CHANGES ARE HEADING YOUR WAY!

The Broker-Lawyer Committee is recommending changes to the contract forms based on new statutory requirements and other issues raised by stakeholder this past year. The Commission will consider promulgating these revised forms for use at their August 17, 2015 meeting.

Due to statutory effective dates, the revised forms are mandatory on September 1, 2015. Redline copies of the changes to the forms will be included in the materials for the commission meeting posted on our website 7-10 days before the meeting.

## Why Do I Have to Put My Broker's Name on My Advertisement?

Occasionally, a sales agent will ask us – “do I have to put my broker's name on MY advertisement? “It's my business or my business card or my listing and I'm doing all the work.” And, if we say “yes”, they ask “why?”

### The Short Answer – It's required

#### The Longer Answer – the Rules

Commission Rule 535.154(c) requires that an advertisement clearly and conspicuously contain the name of the broker, either a business entity or an individual. The broker's name must be at least half the size of the largest contact information on the sign. The sales agent may not imply that the agent is responsible for the operation of a real estate brokerage business – that's the broker's responsibility, not the sales agent's.

- Sometimes a sales agent forget this rule, either intentionally or by accident, and discipline may result when this happens.

### The Why Behind the Answer

TREC, a consumer, or anyone else in the public needs to find the person in charge. Under Texas law, a licensed real estate broker is in charge of real estate brokerage business. When there's a problem, the person in charge needs to know. And when there's a complaint, TREC (or the Courts or lawyers or anyone else) needs to be able

find the person responsible for the activity.

- No broker wants the first notice of a problem to be a letter from TREC (or service of a lawsuit) letting them know that a complaint exists.

### The Best Defense

The best defense to a complaint, whether it's a civil lawsuit or a TREC complaint, is that we (TREC or a court) never hear about it. If the complaint can be voluntarily resolved up front, before a lawsuit or TREC complaint, that's often best for all parties. Early on, sometimes even an apology or a heart-to-heart or some other customer service response can be enough. In some situations, a payment or some other arrangement may occur even though liability is unclear.

One way a complaint gets resolved up front is that the consumer or other allegedly aggrieved party speaks with the person in charge. When the broker's name is on the advertisement, it is much easier to find the person in charge.

For further information please see our rules or statute on our website (under [Forms, Laws & Contracts](#)) or the advertising FAQs under the “Complaints, Consumer Info” tab at [“Enforcement Frequently Asked Questions”](#).

## What's In A Nickname?

TREC's current advertising rule is not particularly clear on the use of and registration of nicknames. That will be rectified in the near future when the advertising rule is revised.

The Commission's current stance on nicknames is they do not need to be registered with the Commission if they are a common derivative of a name (like Jim for James and Kim for Kimberly). If the nickname is not easily recognized from the name under which the license holder is licensed, then the nickname needs to be registered with the Commission before use in advertising (like Skeeter for William).

License holders can list nicknames on their license application. If they decide to use one after becoming licensed, they can just send TREC an email notifying TREC of the nickname (or married name, etc.)

## Rules up for adoption at the August 17, 2015, meeting:

### **§535.217, Mailing Address and Other Contact Information.**

The proposed amendment corrects the rule from 10 days to 30 days to match Section 1102.118(b) in the Texas Occupations Code, which has a 30-day requirement.

### **§§535.400, Registration of Easement or Right-of-Way Agents and 535.402, Complaints, Disciplinary Action and Appeals.**

The proposed amendments correct terminology, renumber for consistency, and provide a timeframe for responding to complaints for easement or right of way agents consistent with other license types.

### **§539.81, Funded Reserves.**

The proposed amendment accommodates cross jurisdictional issues with the Texas Department of

Insurance, who regulate captive insurance companies, while continuing to ensure that the consumer protection afforded by the Residential Service Company Act, as originally passed, is not eroded. A captive insurance company is a fairly new type of admitted insurer that was not contemplated when Section 1303.152 of the Act was originally enacted and has not been previously used in Texas to reinsure funds currently held in the required funded reserve.

### **§539.150, Complaints.**

The proposed amendment clarifies terminology for consistency throughout the rules.

## TREC Enforcement Actions

The Texas Real Estate Commission has published enforcement actions. To read the full report and get access to all of the enforcement actions taken by the Commission, please go to the TREC website and click on, "Complaints, and Consumer Info" and then [click "Disciplinary Actions"](#).

### IMPORTANT DATES TO REMEMBER

**Broker Working Group Meeting— July 27**

**TREC Commission Meeting—August 17**

*Check the TREC website regularly for postings of all of our upcoming meetings.*

## TREC Employee Updates



**Jessie Galo**

*Reception and Communication Services*

Yesenia Galo (Jessie), joined TREC from Austin Energy where she worked as a Bilingual Customer Service Representative in the Commercial Department. She has been in the customer service industry for 10 years and is excited to join the Texas Real Estate Commission. Jessie is a go getter and a hard worker, always looking for the next opportunity and is looking to grow within the agency and succeed. Outside of work, her full attention is to her family, her 3 pups, and her friends. She loves being outdoors and I always find any excuse to be near the water tubing down the river or just being alongside the water on a hot day. She's always on the go.



**Amanda Worchel**

*Reception and Communication Services*

Amanda Worchel (Mandi) joined TREC after earning her degree from Austin Community College and Texas State University in Public Administration - all while being a single mom. She has worked as an intern for the City of Lakeway, conducting research on several local issues. Mandi worked for Wells Fargo as a teller and in 2015, obtained her Real Estate license. Mandi is recently engaged to her boyfriend of 10 years, and as luck would have it, she was able to gain employment in a promising career path at TREC that incorporates both her knowledge of public administration and real estate.



**Emily Kusnerik**

*Licensing and Education Services*

Emily Kusnerik, will be graduating from the University of Houston in August with a Bachelor's degree in political science. She just recently finished an internship working at the state capitol for the House Committee on Licensing and Administrative Procedures. She hopes to begin law school next fall at the University of Houston while continuing to learn and experience as many aspects of Texas politics throughout her career as possible.

## We Hope you "Like" Us!



Did you know TREC is on Social Media? We have a [Facebook page](#) and we are on [Twitter](#). Be sure to check us out and "like" us. We post regular updates and love to interact with our license holders!

