



# Commission Member Training Guide

November 2020

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# Introduction

Thank you for your service on the Texas Real Estate Commission (TREC or Commission). This guide will provide necessary training, helpful information, and ongoing support for common questions and issues that may arise during your tenure on the Commission.

This guide is divided into four sections:

- Section 1 – Law and Rules provides an overview of the various laws governing the Commission and the administrative rules the Commission has adopted.
- Section 2 – TREC: An Overview provides an overview of TREC, including the agency's organization, management, operations, and roles.
- Section 3 – Policies, Procedures and Agreements provides policies of the Commission that directly relate to the work of TREC and its Commissioners.
- Appendix – Additional Reports & Resources provides links to the FY2021-25 Strategic Plan, FY2019 SDSI Report, and Sunset Advisory Commission 2019 Staff Report with Final Results, as well as online links to additional resources.

Section 1101.059 of the Texas Occupations Code specifies the annual training requirements for TREC Commissioners. This training covers:

- Laws governing Commission Operations
  - [Texas Occupations Code, Chapter 1101](#)
  - [Texas Occupations Code, Chapter 1102](#)
  - [Texas Occupations Code, Chapter 1303](#)
  - [Texas Property Code, Chapter 221](#)
  - [Texas Occupations Code, Chapter 1105](#)
  - [TREC Rules](#) & Rulemaking Authority; including scope and limitation
- [Texas Open Meetings Act](#)
- [Texas Public Information Act](#)
- [Texas Administrative Procedure Act](#)
- Antitrust Laws
- Conflict of interest, disclosure, and other laws relating to public officials
- Financial Management of TREC
  - Annual Budget
  - Reserves and Investments
  - TREC-TALCB MOU
- Audits
- TREC Policies

Every new Commission member must complete specific trainings within certain statutory timeframes. The first two required trainings are published by the Office of the Attorney General and can be found [here](#). They provide detailed information regarding Open Government, including the Public Information Act and the Open Meeting Act, and must be completed within **90 days** after the date that you assume your responsibilities as a member of the TREC Commission. [Tex. Gov't Code §551.005](#); [Tex. Gov't Code §552.012](#). When you have completed these courses, ***please provide the TREC Recording Secretary with a copy of your course completion certificate for TREC's records.***

The third required training is published by the Comptroller of Public Accounts (CPA) and can be found [here](#). [Tex. Gov't Code §656.053](#). This training details the ethical and professional responsibilities associated with state contracting. It must be completed promptly upon appointment. To complete this training, please review the Governing Bodies Webinar PDF, located [here](#). ***When you have completed the course, please forward the form to the CPA email address provided on the acknowledgement form and also email a copy of your completed course certificate to the TREC Recording Secretary.***

The fourth required training course is an online video published by the University of North Texas regarding the Public Funds Investment Act, Chapter 2256, Texas Government Code. The Act governs the investment of government funds in Texas and requires education investment controls, security risks, strategy risks, market risks, diversification of investment portfolio, and compliance with the Act. You may access this online video using the information provided in the chart below. ***When you have completed this video, please email the course completion certificate to the TREC Recording Secretary.***

Additionally, the 86<sup>th</sup> Texas Legislature passed HB 3834, requiring all appointed state officials to complete cybersecurity training annually. The Department of Information Resources certifies the training programs to satisfy this statutory obligation. An online link will be sent to all Commission members with instructions to complete this training course annually.

The final training requirement is unique to TREC's Commission members. [Tex. Occ. Code §1101.059](#). This training guide you are currently reviewing contains all information required to meet this obligation. It provides an overview of TREC programs, finances, operations, rulemaking authority, etc. Review of this document must be completed prior to voting, deliberating or being counted as a member in attendance at a Commission meeting. The law also requires these training materials to be updated annually and provided to Commission members each year. If you prefer, detailed information can be presented to you in person at your convenience. ***When you have completed your review of the TREC Commission Member Training Guide, please sign the statement form acknowledging receipt and review of this training guide found at the end of this guide and email a scanned copy to the TREC Recording Secretary.***

The table below lists all required training, including a description, the location, how to verify completion, and the deadlines for completion. It is also your responsibility to ensure that you complete all required financial and conflict of interest disclosures as described in this guide.

Required Training	Description	Location	Verification to TREC Recording Secretary	Due Date
1. <a href="#">Texas Open Meetings Act</a>	Covers the basics of the Open Meetings Act	Texas Office of the Attorney General (OAG) Website	Send <a href="#">Course Certificate</a> to <a href="#">TREC Recording Secretary</a> upon completion	90 days after first day of service
2. <a href="#">Texas Public Information Act</a>	Covers the basics of the Public Information Act	OAG Website	Send <a href="#">Course Certificate</a> to <a href="#">TREC Recording Secretary</a> upon completion	90 days after first day of service
3. <a href="#">Texas Comptroller of Public Accounts (CPA)</a> (must register)	Contract training for the procurement and contracting processes of a state agency	Texas Comptroller of Public Accounts (CPA) website	Send acknowledgement form (available at end of training) to <a href="#">TREC Recording Secretary</a> and the identified CPA email address	Promptly
4. <a href="#">Public Funds Investment Act Training</a>	Government funds/ investment training	TREC SharePoint server <i>user name: trecboard</i> <i>pw: 3vJ7jUEY2XFP</i> <a href="#">Training PowerPoint</a>	Send <a href="#">Course Certificate</a> to <a href="#">TREC Recording Secretary</a> upon completion	6 months after assuming duties
5. Cybersecurity Training		Instructions and link will be emailed to you	Completing the course will generate automatic notification	Annually
6. TREC Commission Member Training Guide	TREC Training	Emailed to you and available on the TREC website	Email signed acknowledgment statement to <a href="#">TREC Recording Secretary</a> upon completion	Prior to voting, deliberating or being counted as a member/ Annually

## **Section 1 – Laws and Rules**

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This section provides the requisite information to train new Commission members on the following topics:

- Laws Governing TREC Operations,
- TREC Rules & Rulemaking Authority,
- Texas Open Meetings Act,
- Texas Public Information Act,
- Texas Administrative Procedure Act,
- Antitrust Laws, and
- Other laws affecting public officials, including public disclosure and conflict of interest requirements.

## 1.1 Laws Governing TREC Operations

The Legislature has enacted three chapters of the Texas Occupations Code that govern the operations of TREC. Chapter 1101 is the Texas Real Estate License Act (TRELA), which provides for the licensing and regulation of real estate brokers and sales agents in Texas. Chapter 1102 provides for the licensing and regulation of real estate inspectors in Texas. Chapter 1303 provides for the licensing and regulation of Residential Service Companies and Texas. Chapter 221 of the Texas Property Code is the Texas Timeshare Act and provides for the registration of timeshare developers and timeshare plans. Chapter 1105 grants self-directed, semi-independent (SDSI) status to the Commission. This chapter further discusses the authority and reporting requirements applicable to the Commission and Board as an SDSI agency. While not directly related to TREC operations, Chapter 1103 outlines the relationship between TREC and the Texas Appraiser Licensing and Certification Board (TALCB or Board), which is an independent subdivision of TREC.

### 1.1.1 Enabling Legislation

#### **[Texas Occupations Code 1101: Real Estate Brokers and Sales Agents](#)**

[Subchapter A: General Provisions](#)

[Subchapter B: Texas Real Estate Commission](#)

[Subchapter C: Executive Director and Other Commissioner Personnel](#)

[Subchapter D: Commission Powers and Duties](#)

[Subchapter E: Public Interest Information and Complaint Procedures](#)

[Subchapter F: Texas Real Estate Broker-Lawyer Committee](#)

[Subchapter G: Approval of Real Estate Educational Programs and Courses of Study](#)

[Subchapter H: License Requirements](#)

[Subchapter I: Examinations](#)

[Subchapter J: License Renewal](#)

[Subchapter K: Certificate Requirements](#)

[Subchapter L: Practice by License Holder](#)

[Subchapter M: Real Estate Recovery Trust Account](#)

[Subchapter N: Prohibited Practices and Disciplinary Proceedings](#)

[Subchapter O: Administrative Penalty](#)

[Subchapter P: Other Penalties and Enforcement Provisions](#)

[Subchapter Q: General Provisions Relating to Liability Issues](#)

## **Texas Occupations Code 1102: Real Estate Inspectors**

[Subchapter A: General Provisions](#)

[Subchapter B: Texas Real Estate Inspector Committee](#)

[Subchapter C: License Requirements](#)

[Subchapter D: License Examination](#)

[Subchapter E: License Renewal](#)

[Subchapter F: License Fees](#)

[Subchapter G: Prohibited Acts](#)

[Subchapter H: Real Estate Inspection Recovery Fund](#)

[Subchapter I: Disciplinary Proceedings, Penalties, and Enforcement Provisions](#)

## **Texas Occupations Code 1303: Residential Service Companies**

[Subchapter A: General Provisions](#)

[Subchapter B: Commission Powers and Duties](#)

[Subchapter C: License Requirements](#)

[Subchapter D: Financial Requirements](#)

[Subchapter E: General Powers and Duties of License Holder](#)

[Subchapter F: Residential Service Contracts](#)

[Subchapter G: Prohibited Practices](#)

[Subchapter H: Disciplinary Action and Other Procedures](#)

[Subchapter I: Penalties and Enforcement Provisions](#)

## **Texas Property Code 221: Texas Timeshare Act**

[Subchapter A: General Provisions](#)

[Subchapter B: Creation of Timeshare Regime](#)

[Subchapter C: Registration](#)

[Subchapter D: Disclosure](#)

[Subchapter E: Cancellation of Purchase Contract](#)

[Subchapter F: Exchange Program](#)

[Subchapter G: Escrow Deposits](#)

[Subchapter H: Miscellaneous Provisions](#)

[Subchapter I: Timeshare Owners' Associations](#)

[Subchapter J: Service Agreements to Transfer or Terminate a Timeshare Interest](#)

**[Texas Occupations Code 1105: Self-Directed and Semi-Independent Status of TREC / TALCB](#)**

## 1.2 TREC Rules & Rulemaking Authority

TREC promulgates new rules or amends or repeals old rules to accomplish its mission as required by statute. This procedure is guided by the [Texas Administrative Procedures Act](#). Once properly adopted, TREC rules have the full force and effect of law.

The Legislature granted rulemaking authority to TREC throughout its enabling legislation. This rulemaking authority includes authority to adopt rules related to education, licensing, charging and collecting reasonable and necessary fees, establish a compliant process, and promulgate forms.

Rules below can be found in the [Texas Administrative Code](#):

- 1.2.1 Texas Administrative Code, Chapter 531**  
[Canons of Professional Ethics and Conduct](#)
- 1.2.2 Texas Administrative Code, Chapter 533**  
[Practice and Procedure](#)
- 1.2.3 Texas Administrative Code, Chapter 534**  
[General Administration](#)
- 1.2.4 Texas Administrative Code, Chapter 535**  
[General Provisions](#)
- 1.2.5 Texas Administrative Code, Chapter 537**  
[Professional Agreements and Standard Contracts](#)
- 1.2.6 Texas Administrative Code, Chapter 539**  
[Rules Relating to the Residential Service Company Act](#)
- 1.2.7 Texas Administrative Code, Chapter 541**  
[Rules Relating to the Provisions of Texas Occupations Code](#)
- 1.2.8 Texas Administrative Code, Chapter 543**  
[Rules Relating to the Provisions of the Texas Timeshare Act](#)

## 1.3 Texas Administrative Procedure Act

TREC's enabling legislation provides that certain matters, including rulemaking, appeals of a license denial, and contested case hearings when requested in a disciplinary action, are subject to the [Texas Administrative Procedure Act \(APA\)](#), found in [Chapter 2001, Texas Government Code](#). The purpose of the APA is to provide minimum standards of uniform practice and procedure for state agencies, public participation in the rulemaking process, and confirmation of the state law for judiciary review. [Tex. Gov't Code §2001.001](#).

### **Rulemaking:**

TREC staff draft or revise rules upon Commission request, as needed, or as required by statute. Once drafted, the rulemaking process begins, in which consensus is sought from various stakeholders. Draft rules or amendments, where appropriate, are vetted through the Commission's various advisory committees prior to consideration by the Commission. After stakeholder input is received and accounted for in the draft language of a new or revised rule, the rule is brought to the Commission for consideration during an open Commission meeting.

When considering a committee recommendation for a new rule or amendments to an existing rule, the Commission may accept the recommendation, make changes to the recommendation, send the recommendation back to the committee for further development and stakeholder input, or reject the recommendation altogether. Upon approval of a new or amended rule, the Commission authorizes publication of the rule in the [Texas Register](#) for 30 days to provide the public with the opportunity to comment and give feedback. Following this 30-day period, the Commission considers any public feedback or comments received, and the new or amended rule is again brought before the Commission for final approval. Upon final adoption, the new or amended rule is submitted for publication in the *Texas Register* for publication. The rule becomes law 20 days after submission to the *Texas Register* or on another date specified by the Commission.

In addition, all TREC rules must be reviewed every four years for relevancy and to avoid redundancy. During a rule review, TREC follows the same process regardless of whether changes have occurred: the Commission must approve both a publication of the rule for public comment and, in a later meeting, vote to adopt or repeal the rule.

Included among the standards of uniform practice and procedure, the APA establishes the procedures for emergency rulemaking, notice and comment rulemaking, as well as rule challenges.

### **Contested Cases:**

The APA also establishes requirements and procedures for contested case hearings, including the circumstances in which TREC may reject or modify a proposal for decision received from an Administrative Law Judge (ALJ) after an administrative hearing is held by the State Office of Administrative Hearings. Specifically, the Commission can change findings of facts or conclusions of law if the ALJ: (1) did not properly apply law, rules, policies or prior administrative decisions; (2) relied on a prior administrative decision that is incorrect or should be changed; or (3) made a technical error in a finding of fact. [Tex. Gov't Code §2001.058\(e\)](#).

Finally, the APA establishes the procedures and requirements for seeking judicial review in a Travis County District Court after TREC enters a final order in a contested case.

## 1.4 Texas Open Meetings Act

The [Texas Open Meetings Act](#) (Open Meetings Act) governs the conduct of governmental bodies to ensure that governmental actions taken on public business and policy are accessible to the public, unless expressly authorized otherwise by statute. Violation of the Act can carry [criminal penalties and civil remedies](#).

The Open Meetings Act prohibits a governmental body from meeting or communicating privately on agency business. This includes individual Commission member interactions if such a meeting or communication—including emails—would result in a quorum, directly or through any such chain of communications, which is referred to as a “walking quorum.” To avoid such an occurrence, Commission members should be mindful of “reply all” responses to email messages that include other Commission members as addressees and sharing conversations with one or two Commissioners that may be repeated to other Commissioners thereby resulting in a conversation about agency business with a quorum of Commissioners.

The Commission traditionally meets once each quarter or as called by the Commission chair. When meeting, the Commission must adhere to all requirements of the Open Meetings Act. The Commission must comply with the following:

- A [timely notice](#) of the matters to be considered must be published in the [Texas Register](#).
- A quorum of five must be present for action or deliberation by the Commission.
- Members of the Commission must abstain from discussing official business during breaks or recesses.
- Minutes of all Commission meetings must be maintained. This includes certified agendas of any matters considered in closed or executive session.
- A TREC attorney should be present for all Commission meetings to ensure full compliance with the Open Meetings Act.

The Open Meetings Act expressly provides for certain circumstances when a Commission may discuss matters in a closed meeting or executive session because an open meeting would not be appropriate. Instances when this is allowed include, but are not limited to:

- Consultations with an attorney; and
- Certain personnel matters.

Whenever a closed or executive session is held, the following requirements must be met:

- Only issues pertaining to the above-referenced exceptions shall be discussed;
- Decisions, votes, or “straw” votes on matters shall be avoided; and
- A certified agenda must be created and maintained for a minimum of two years **except** when the Commission consults with an attorney in the closed session.

## Texas Open Meetings Act: Subcommittees

Generally, subcommittees are not subject to the [Open Meetings Act](#) if:

- The subcommittee is not attended by a Commission quorum; *and*
- The subcommittee does not have the authority to vote or otherwise take final action on a matter of agency business; *and*
- The Commission does not routinely “rubber stamp” the recommendation of its subcommittees.

Notwithstanding, in the interest of openness and transparency, TREC regularly posts public notice of agendas, materials, and minutes of subcommittee meetings.

## 1.5 Texas Public Information Act

The [Texas Public Information Act](#) (Public Information Act) creates transparency in governmental action with the foundational belief that most government records, including those held by TREC Commission members, should be open to the public upon request. As with the Open Meetings Act, failure to provide documents or take appropriate measures to protect them may result in criminal or civil penalties.

If a Commission member receives a written request for public information, the Commission member must immediately notify TREC's General Counsel and Public Information Officer. The Commission member should also respond to the requestor and direct the requestor to submit the request for public information via email to [public.information@trec.texas.gov](mailto:public.information@trec.texas.gov). By asking the requestor to submit their request for information through the proper channels, a Commission member allows TREC staff to fulfill the request and remain in full compliance with the Public Information Act.

Although the Public Information Act provides numerous exceptions in which information responsive to a request may be withheld, TREC must request an opinion as to whether an exception applies from the Office of the Attorney General (OAG) prior to withholding such information. TREC is subject to and must comply with specific statutory deadlines to request an opinion from the OAG. If TREC fails to comply, the ability to withhold requested information based on a specific exception may be lost. Therefore, timely notification to TREC's Executive Director, Public Information Officer, or General Counsel is imperative.

Lastly, all or a portion of a Commission member's business calendar is subject to disclosure under the Public Information Act if Commission business is maintained on the personal email account or business calendar. Commission members are strongly encouraged to maintain separate email accounts and calendars for Commission business. Emails regarding TREC business must be kept for 2 years, and calendars recording TREC-related business shall be retained for one year.

For information regarding a public information request, please contact [TREC's General Counsel](#) or [Public Information Officer](#).

## 1.6 Antitrust Laws

Antitrust laws were enacted by Congress to protect consumers and promote fair competition in the marketplace. Such laws are based on the premise that free and fair competition best promotes consumer welfare. Antitrust laws encourage fair competition by prohibiting businesses and individuals from engaging in anticompetitive behavior, such as collusion, price fixing, or mergers that would give substantial market power to a single company or only a few companies.

### 1.6.1 History

Congress passed the first antitrust laws in the late 1800s and early 1900s to combat the growth and anticompetitive behaviors of big businesses known as “trusts.”<sup>1</sup> Many of these so-called trusts controlled entire segments of the economy, such as railroads, oil, steel, and sugar. Two of the most famous trusts were U.S. Steel and Standard Oil. Other more recent examples of large companies to come under government scrutiny for anticompetitive behavior are American Telephone & Telegraph (AT&T) and Microsoft.

President Theodore Roosevelt “busted” or broke up many of these trusts by enforcing the antitrust laws enacted by Congress. The three core antitrust laws enacted by Congress are:

- **The Sherman Act**

This the nation’s oldest antitrust law. Passed by Congress in 1890, the Sherman Act makes it illegal for competitors to make agreements with each other that would limit competition. In particular, the Sherman Act outlaws “every contract, combination, or conspiracy in restraint of trade,” and any “monopolization, attempted monopolization, or conspiracy or combination to monopolize.” The Supreme Court has held that the Sherman Act does not prohibit *every* restraint of trade, only those that are unreasonable. For example, a partnership agreement between two individuals may limit or restrict trade, but may not unreasonably do so and, therefore, would not be illegal under the Sherman Act. However, certain acts are considered so harmful to competition that they are almost always illegal. Examples include plain agreements or arrangements between individuals or businesses to fix prices, divide markets, or rig bids. These acts are “*per se*” violations of the Act, in other words no defense or justification is allowed.

- **The Clayton Act**

The Clayton Act was passed in 1914 and addresses specific acts not clearly prohibited under the Sherman Act. This Act prevents mergers or acquisitions that are likely to stifle competition or tend to create a monopoly.

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<sup>1</sup> These trusts developed under an arrangement through which stockholders in multiple companies would transfer their shares to a single set of trustees.

- **The Federal Trade Commission Act**

Also passed in 1914, the Federal Trade Commission Act created the Federal Trade Commission and prohibits “unfair methods of competition” and “unfair or deceptive acts or practices.” The Supreme Court has said that every act that violates the Sherman Act also violates the FTC Act. Thus, the FTC can bring cases under the FTC Act for the same types of conduct or activities that violates the Sherman Act. The FTC Act also reaches other conduct harmful to competition that may not fit neatly into one of the categories of conduct prohibited under the Sherman Act. The FTC also enforces antitrust laws against states, including state licensing boards and commissions.

### **1.6.2 State Immunity from Antitrust Liability**

#### *Parker Immunity / The Parker Doctrine*

Relevant to the activities of TREC and TALCB, the Supreme Court, in [Parker v. Brown](#), 317 U.S. 341 (1943), has held that states are generally immune from antitrust liability when exercising legislative authority to enact a regulation with anticompetitive effects. The Supreme Court thus established “Parker Immunity” or the “Parker Doctrine.” The rationale behind Parker Immunity is that Congress did not intend to restrain legitimate necessary state behavior when enacting the Sherman Act. The Parker Doctrine thus strikes a necessary balance between protecting competition and respecting state sovereignty.

“State action” as defined in cases granting Parker Immunity is different than “state action” in other contexts such as Due Process. The term “state action” in antitrust cases refers only to government policies that are articulated with sufficient clarity that it can be said they are in fact the state’s policies, and not simply happenstance, mistakes, or acts reflecting the discretion of individual officials. Thus, when determining whether Parker Immunity applies, the question becomes whether the anticompetitive action at issue is a clearly articulated exercise of the state’s sovereign power.

The Supreme Court developed a two-part test to determine if Parker Immunity applies in [California Retail Liquor Dealers Ass’n v. Midcal Aluminum](#), 445 U.S. 97 (1980). A California statute required wine producers and wholesalers to file fair trade contracts or price schedules with the state. If a producer has not set prices through a fair trade contract, wholesalers must post a resale price schedule and are prohibited from selling wine to a retailer at other than the price set in a price schedule or fair trade contract. A wholesaler selling below the established prices faces fines or license suspension or revocation. A wholesaler charged with selling wine at prices less than those in the price schedules filed suit and sought to enjoin the state’s wine pricing scheme. The Court found the price setting scheme constituted resale price maintenance in violation of the Sherman Act and held the state’s involvement was insufficient to establish Parker Immunity.

To be immune from antitrust liability under *Parker v. Brown*:

- 1) The challenged action must be “one clearly articulated and affirmatively expressed as state policy”; and
- 2) The action must be “actively supervised” by the state itself.

The Court reasoned that, although the state’s pricing scheme met the first part of the test because it was based on a clearly articulated state policy, the scheme failed the second part of the test because it was not “actively supervised” by the state. Under the California statute, the state simply authorized price setting and enforced the prices set by private parties. The state did not set the prices, review the price schedules for reasonableness, regulate terms of the fair trade contracts, monitor conditions in the market, or otherwise engage in any meaningful review of the state authorized scheme. The Court explained, “The national policy in favor of competition cannot be thwarted by casting such a gauzy cloak of state involvement over what is essentially a private price-fixing arrangement.” 445 U.S. at 105-106.

#### *NC State Board of Dental Exam’rs v. FTC*

More recently, the Supreme Court considered the question of state action immunity in [\*North Carolina State Board of Dental Examiners v. FTC\*](#), 135 S.Ct. 1101 (2015). At issue in this case was whether the actions of an occupational licensing board comprised of a majority individuals who were “active participants” in the licensed profession and were elected to serve on the licensing board by other active participants were entitled to antitrust immunity under the Parker Doctrine. The Supreme Court held that, in order to obtain antitrust immunity, a state agency must be actively supervised by the state if “a controlling number of [its] decision makers are active market participants in the occupation the board regulates.”

The North Carolina State Board of Dental Examiners (“the Board”) was a state-created agency tasked with licensing dentists and dental hygienists. Six of the eight members were required to be practicing dentists and were elected by other dentists. The Board could bring actions against people suspected of practicing dentistry without a license. In 2003, the Board became aware of a growing trend in the market for teeth-whitening services. Specifically, non-dentists were performing whitening procedures in salons and shopping mall kiosks at significantly lower prices than dentists. The Board sent cease-and-desist letters to 29 non-dentist providers. The Board’s campaign was effective. The non-dentists left the teeth-whitening market and sellers of the whitening products shut down their operations in North Carolina.

In 2010, the FTC brought an administrative action against the Board alleging the Board engaged in unfair methods of competition in violation of the FTC Act. The Board moved to dismiss claiming that, as a state agency, it was protected by state-action antitrust immunity under the Parker Doctrine. The FTC disagreed and entered a final order finding violations of the FTC Act. After several appeals, the case was heard by the Supreme Court. The Supreme Court affirmed the FTC’s order finding antitrust violations and

declining to invoke Parker Immunity, and directed the Board to stop sending cease-and-desist letters to non-dentists or otherwise discouraging the providing of teeth-whitening goods or services by non-dentists.

### **1.6.3 Other Administrative / Court Decisions**

#### **Teledoc, Inc. v. Texas Medical Board**

Teledoc, Inc., sued the Texas Medical Board to challenge regulations adopted by the board that required in-patient examinations by a physician before telephonic treatment was permitted. Teledoc argued that the board's actions violated antitrust laws and that the board was not immune from liability under the Parker Doctrine because the board was comprised of a majority of private market participants. Thus, the board was not entitled to immunity because the actions of the board were not an exercise of state sovereignty under clearly articulated state policy, nor were the board's actions subject to active supervision by the state.

Agreeing with Teledoc, the United States District Court for the Western District of Texas, denied the board's motion to dismiss on grounds of state action immunity. *Teledoc, Inc. v. Texas Med. Bd.*, 2015 WL 8773509 (Dec. 14, 2015) (order denying motion to dismiss). The board filed an interlocutory appeal with the United States Court of Appeals for the Fifth Circuit. The appeal was dismissed on October 17, 2016.

In 2017, the Governor signed legislation ending Texas' prohibition against telemedicine without a prior in-person consultation. [SB 1107](#), 85<sup>th</sup> R.S. (2017). Thereafter, the Texas Medical Board finalized regulations allowing doctors to treat patients virtually without a prior face-to-face interaction. The new regulations took effect November 26, 2017, and Teledoc dropped its antitrust lawsuit against the board.

#### **FTC v. Louisiana Real Estate Appraisers Board**

The FTC filed a complaint alleging Rule 31101 adopted by the Louisiana Real Estate Appraiser Board (LREAB) unreasonably restrained price competition for real estate appraisal services provided to AMCs by requiring AMCs to pay rates for appraisal services at least as high as the median appraisal fees identified in the Southeastern Louisiana University survey. See [Opinion and Order of the Commission](#), *In the matter of Louisiana Real Estate Appraisers Board*, Docket No. 9374, at 1-2 (May 6, 2019). Although this case does not involve state action immunity under the Parker Doctrine, the FTC is considering whether other theories of antitrust immunity including the good-faith regulatory compliance defense and implied immunity apply to LREAB's conduct. On August 5, 2019, the FTC entered an order staying all administrative proceedings before the FTC after the United States District Court for the Middle District of Louisiana entered an order staying the FTC's administrative proceeding until further order of the court.

At issue in this case is LREAB's efforts to enforce compliance with federal law, which requires AMCs to pay "customary and reasonable" fees to appraisers for providing appraisal services. The Federal Reserve System's Board of Governors issued an interim final rule concerning the "customary and reasonable fee" requirement. 75 Fed. Reg. 66,554 (Oct. 28, 2010) (codified at 12 C.F.R. pt. 226). Although the rule stated that "the marketplace should be the primary determiner of the value of appraisal services," *id.* at 66,569, the rule provided two safe harbors for compliance. First, the appraisal fee is presumed to be customary and reasonable if it is reasonably related to recent fees paid for comparable appraisal services in the relevant geographic market, the fee was set by the creditor or its agent after taking into account six enumerated factors, and the creditor or its agent has not engaged in anticompetitive conduct affecting the appraisal fee. *Id.* at 66,555-56, 66,582. Second, the appraisal fee is presumed to be customary and reasonable if it was determined by relying on rates established by objective third-party information, including fee schedules, studies, and surveys prepared by independent third parties, where such schedules, studies, and surveys exclude fees paid by AMCs. *Id.* at 66,555-56, 66,582.

LREAB contracted with Southeastern Louisiana University Business Research Center to survey typical appraisal fees paid by lenders to appraisers. After receiving the survey results, LREAB adopted and enforced Rule 31101 in 2013 requiring AMCs to set and pay rates for appraisal services at least as high as the median appraisal fees identified in the Southeastern Louisiana University survey. 46 La. Admin Code §31101. The FTC argues that by effectively setting the fees to be paid by AMCs for appraisal services and preventing AMCs and appraisers from arriving at appraisal fees through *bona fide* negotiation an operation of the free market, LREAB has violated section 5 of the FTC Act. The case remains pending before the FTC, but proceedings have been stayed until further order of the U.S. District Court for the Middle District of Louisiana.

#### **1.6.4 What does this mean for TREC / TALCB?**

The Parker Doctrine and state action immunity are based on the idea that Congress did not intend to prohibit the legitimate exercise of state police powers to enact economic regulation that affects competition. When enacting such regulation, states and state actors will be immune from antitrust liability only where the action taken falls under a clearly articulated and expressed state policy and, when market participants are involved, the state action is actively supervised by the state.

Although the Supreme Court in *NC State Board of Dental Examiners* said that the state's argument that the board's actions were actively supervised by the state would have been stronger if the board members has been appointed by government officials pursuant to a state statute, the board never argued the active supervision prong of the test and, therefore, conceded its actions were not supervised by the state.

Currently, TREC and TALCB both have a majority of active market participants as members. TREC's membership includes 6 real estate brokers, or current market participants; and 3 members who represent the public, Tex. Occ. Code §1101.051, while

TALCB's membership includes 4 certified or licensed appraisers who are actively engaged in the practice of appraising real property, or current market participants; 4 public members with recognized business ability; and the executive secretary of the Veteran's Land Board or the secretary's designee, who happens to be an appraiser, or market participant. Thus, TREC and TALCB would be subject to additional scrutiny when adopting rules that have an anticompetitive effect.

To be clear, such scrutiny would be minimized to the extent TREC or TALCB are acting pursuant to a clearly articulated or expressed state policy, i.e., a specific statute in the TREC or TALCB enabling legislation. Additionally, to the extent TALCB is acting pursuant to federal law and policy, scrutiny of such actions could be further minimized. However, to the extent a statute or policy gives discretion to TREC or TALCB, it may become necessary to show that discretionary actions taken by TREC or TALCB that have an anticompetitive effect are subject to active supervision by the state. In response to the NC State Board of Dental Examiners case, the Legislature authorized the Governor's Office to create the Regulatory Compliance Division. This division is tasked with conducting independent reviews of certain state licensing agencies' proposed rules that affect market competition, ensuring sufficient legal authority exists for the proposed rule, and that the rule is consistent with state policy.

## 1.7 Other Laws Affecting Public Officials

Commissioners are considered public officials, regardless of their outside employment. As such, certain Texas statutes guide Commissioners' affairs, including the following:

- Financial disclosure, and
- Conflict of interest.

The Texas Ethics Commission has developed a [comprehensive guide](#) to Texas ethics law. The most applicable details can be found below.

### 1.7.1 Financial Disclosure

Commission members and the TREC executive director must file personal financial statements. [Tex. Gov't Code §572.021](#). The reports are to be filed with the Texas Ethics Commission within 30 days of appointment or qualification, whichever is earlier, and by April 30 of each following year of the member's tenure. A \$500 penalty is automatically assessed for late filing of a financial statement; however, a 60-day extension may be requested for all but the initial report. The filing must include the following:

- Personal financial activity for the previous year;
- In some cases, the financial activity of your spouse and dependent children if you had authority to exercise control over that activity; and
- Certain received gifts worth more than \$250, excluding those from relatives or political contributions; gifts otherwise reported under the [Election Code](#); or a gift from a lobbyist reported on the lobbyist's activity report.

The Texas Ethics Commission sends the appropriate forms to officials subject to financial disclosure requirements. Commission members may also fill out this [form](#) online.

**All personal financial statements are open to the public under the [Public Information Act](#).**

### 1.7.2 Conflict of Interest

Texas state law, including [TREC enabling legislation](#), guides the activities of Commissioners. Among the activities restricted by TREC's enabling legislation are:

- Acting as an officer, employee, or paid consultant of a Texas trade association in the real estate industry.
- Having a spouse who is an officer, manager or paid consultant of a Texas trade association in the real estate industry.
- Registering as a lobbyist because of compensated activities on behalf of a profession related to the operation of the Commission.

A provision enacted in 2015 provides that:

- (a) Each state agency employee or official who is involved in procurement or in contract management for a state agency shall disclose to the agency any potential conflict of interest specified by state law or agency policy that is known by the employee or official with respect to any contract with a private vendor or bid for the purchase of goods or services from a private vendor by the agency.
- (b) A state agency may not enter into a contract for the purchase of goods or services with a private vendor with whom any of the following agency employees or officials have a financial interest:
- (1) a member of the agency's governing body;
  - (2) the governing official, executive director, general counsel, chief procurement officer, or procurement director of the agency; or
  - (3) a family member related to an employee or official described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.
- (c) A state agency employee or official has a financial interest in a person if the employee or official:
- (1) owns or controls, directly or indirectly, an ownership interest of at least one percent in the person, including the right to share in profits, proceeds, or capital gains; or
  - (2) could reasonably foresee that a contract with the person could result in a financial benefit to the employee or official.
- (d) A financial interest prohibited by this section does not include a retirement plan, a blind trust, insurance coverage, or an ownership of less than one percent in a corporation. [Tex. Gov't Code §2261.252](#).

Texas law also provides that a Commission member may not:

- Accept or solicit any gift, favor, or service that might reasonably tend to influence the Commission member's duties or that the member knows or should know is being offered with the intent to influence the member's official conduct.
- Accept other employment or engage in a business or professional activity that the Commission member might reasonably expect would require or induce the member to disclose confidential information acquired by reason of the member's official position.
- Accept other employment or compensation that could reasonably be expected to impair a Commission member's independence of judgment in the performance of a member's official duties.
- Make personal investments that could reasonably be expected to create a substantial conflict between a Commission member's private interest and the public interest.
- Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the Commission member's official powers or performed the member's official duties in favor of another. [Tex. Gov't Code §572.051](#)

In addition:

- A Commission member who has a personal or private interest in a measure, proposal, or decision pending before the Commission shall publicly disclose in an open meeting and shall recuse him/herself from deliberations or decisions on the matter. [Tex. Gov't Code §572.058](#).

### **Conflict of Interest Violations**

There are several defined instances in which a Commission member may violate state conflict of interest laws, including:

- [Texas Penal Code §36.02](#), which makes it illegal to accept anything in exchange for your vote, decision, or recommendation.
- [Texas Penal Code §36.07](#), which makes it illegal to accept an honorarium in exchange for services you are asked to provide because of your status as an appointed Commission member.
- [Texas Penal Code §36.09](#), which makes it illegal for someone to offer you a benefit they know is illegal for you to accept.

Certain exceptions for [Texas Penal Code §36.09](#) are set forth in the Penal Code at [Section 36.10](#). Common exceptions include certain transportation and lodging cost, gifts under \$50, and certain meals and entertainment if reported in a lobbyist report to the Texas Ethics Commission.

## **Section 2 – TREC: An Overview**

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This section provides the requisite information to train new TREC Commission members on the following topics:

- Agency Mission, Philosophy & Motto
- TREC History
- TREC Governing Commission & Committees
- Agency Staff, Programs & Functions, and
- Financial Management of TREC

## **2.1 TREC/TALCB Mission, Philosophy, and Motto**

### **Mission of the Agency:**

Our agency protects consumers of real estate services in Texas by ensuring qualified and ethical service providers through upholding high standards in education, licensing, and regulation. We oversee the providers of real estate brokerage, appraisal, inspection, home warranty, timeshares and right-of-way services, thereby safeguarding the public interest while facilitating economic growth and opportunity across Texas.

### **Philosophy of the Agency:**

To achieve this mission, our agency:

- provides exceptional customer service that is accessible, responsive and transparent;
- demands integrity, accountability and high standards, of both license holders and ourselves; and
- strives continuously for effectiveness, efficiency and excellence in our performance.

### **Agency Motto:**

Protecting Texans' Dreams

## **2.2 History of TREC & TALCB**

The Texas Legislature established the Texas Real Estate Commission in 1949 to safeguard consumers in matters of real property transactions and valuation services. The Legislature established TALCB as an independent subdivision of TREC in 1991, when federal law required increased regulation of appraisals. TREC shares staff members and resources with the TALCB. Together TREC and TALCB oversee real estate brokerage, real property appraisals, inspections, home warranties, right-of-way services, and timeshare. The agency provides licensing, education, and complaint investigation services, as well as regulation and enforcement of state and federal laws and requirements that govern each of these areas of service to consumers in Texas.

## 2.3 TREC Governing Commission & Committees

### 2.3.1 Commissioners

[The Commission](#) is composed of nine members appointed by the Governor with the advice and consent of the Senate as follows:

- Six members who have been engaged in the brokerage business as licensed brokers as their major occupation for the five years preceding appointment; and
- Three members who represent the public.

Members serve staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year.

#### Meetings

The Commission meets once each quarter of the state fiscal year and may meet at other times at the call of the presiding officer or as provided by agency rule. The governor shall designate a member of the Commission as [presiding officer](#), who serves in that capacity at the pleasure of the governor.

The Commission employs an [executive director](#) to manage the daily operations of TREC consistent with [Tex. Occ. Code §1101.101](#) and [Commission-established policy](#). In that regard, he or she is assigned responsibility and authority to:

- Organize the staff into such divisions, sections and other operating units as deemed appropriate;
- Approve all personnel actions;
- Approve expenditures;
- Oversee the licensing, education approval an administration, enforcement/investigative processes and the agency's day-to-day support functions, such as accounting, purchasing, human resources and technology;
- Execute agreements under \$1,000,000, including interagency agreements and audit engagements;
- Execute Agreed Orders and default Final orders; and
- Oversee the timely submittal of required reports.

Except as the Commission may otherwise specify, the day-to-day operation of the agency is the responsibility of the executive director and may, in accordance with law, be delegated to appropriate members of staff.

## 2.3.2 Commission Committees

### ***Executive Committee***

**Size/Composition/Appointment:** Three Commission members consisting of the Commission chair, vice-chair, and secretary. Chair appointed by Governor, vice-chair and secretary elected by full Commission at February meeting.

**Legal Basis:** [Tex. Occ. Code §1101.056](#)

### ***Budget Committee***

**Size/Composition/Appointment:** Three Commission members appointed by the Commission chair.

### ***Enforcement Committee***

**Size/Composition/Appointment:** Three Commission members appointed by the Commission chair.

## 2.3.3 Commission Advisory Committees

### ***Broker-Lawyer Committee***

**Size/Composition/Appointment:** Six broker members appointed by the Commission, six lawyer members appointed by the State Bar of Texas appointed by the president of the state bar; and one public member appointed by the governor.

**Purpose/Duties:** To draft and revise contract forms that are capable of being standardized to expedite real estate transactions and minimize controversy.

**Legal Basis:** [Tex. Occ. Code Chapter 1101, Subchapter F](#)

### ***Texas Real Estate Inspector Committee***

**Size/Composition/Appointment:** Six inspector members and three public members appointed by the Commission. One Commission member liaison appointed by the chair of the Commission.

**Purpose/Duties:** To recommend rules concerning the licensing, education, and standards of practice and to establish a code of professional ethics for real estate inspectors to the Commission.

**Legal Basis:** [Tex. Occ. Code Chapter 1102, Subchapter B](#) and [Tex. Admin. Code §535.206](#)

### ***Education Standards Advisory Committee***

**Size/Composition/Appointment:** Seven real estate license holder members, four education members, and one public member appointed by the Commission. One Commission member liaison appointed by the chair of the Commission.

**Purpose/Duties:** To recommend rules concerning licensing and regulation of real estate education providers, instructors and courses to the Commission.

**Legal Basis:** [Tex. Admin. Code §535.43](#)

## 2.4 Agency Staff, Programs & Functions

### 2.4.1 TREC Executive Leadership

The TREC Executive Leadership includes:

- *Chelsea Buchholtz, Executive Director*  
[chelsea.buchholtz@trec.texas.gov](mailto:chelsea.buchholtz@trec.texas.gov)  
512-936-3177
- *Tony Slagle, Deputy Executive Director*  
[tony.slagle@trec.texas.gov](mailto:tony.slagle@trec.texas.gov)  
512-936-3576
- *Vanessa Burgess, General Counsel*  
[vanessa.burgess@trec.texas.gov](mailto:vanessa.burgess@trec.texas.gov)  
512-936-3284
- *Abby Lee, Deputy General Counsel*  
[abby.lee@trec.texas.gov](mailto:abby.lee@trec.texas.gov)  
512-936-3057
- *Kathleen Santos, Deputy General Counsel*  
[kathleen.santos@trec.texas.gov](mailto:kathleen.santos@trec.texas.gov)  
512-936-3088

### 2.4.2 Agency Divisions and Senior Team

The Agency is organized into seven divisions, which oversee Agency programs and carry out Agency functions. The [TREC organizational chart](#) is included in the Appendix to this guide.

#### Executive Division

*Executive Director Chelsea T. Buchholtz*  
[chelsea.buchholtz@trec.texas.gov](mailto:chelsea.buchholtz@trec.texas.gov)  
512-936-3177

The executive division coordinates the regular meetings of policy makers appointed by the Governor, implements the decisions of the Commission and Board, coordinates with key stakeholders and other branches of government, directs day to day operations and manages major initiatives of the agency in education, licensing, and industry regulation programs. The division includes the TREC Executive Director/TALCB Commissioner, General Counsel to TREC, General Counsel to TALCB, as well as government and public affairs personnel.

**Customer Relations Division**

*Director Robert Hood*

[robert.hood@trec.texas.gov](mailto:robert.hood@trec.texas.gov)

512-936-3807

Customer relations is the agency's centralized customer service division. Division team members receive and respond to general communications from Texas consumers, license holders, and applicants, including all telephone, e-mail, and in-person inquiries.

**Financial Services Division**

*Director Ranada Williams*

[ranada.williams@trec.texas.gov](mailto:ranada.williams@trec.texas.gov)

512-936-0102

The finance division performs all of the revenue accounting, budgeting, financial payment functions, human resources administration, purchasing and contract administration, and asset and property management for the agency.

**Licensing Division**

*Director Denise Sample*

[denise.sample@trec.texas.gov](mailto:denise.sample@trec.texas.gov)

512-936-3095

The licensing division ensures education and experience requirements are satisfied for the various license types. Licensing team members verify qualifications have been met before the agency issues a new license or registration to real estate brokers or sales agents, appraisers, inspectors, and easement or right-of-way registrants and process license renewals, information changes and license histories.

**Education and Examinations Division**

*Director Jennifer Wheeler*

[jennifer.wheeler@trec.texas.gov](mailto:jennifer.wheeler@trec.texas.gov)

512-936-3096

The education and examinations division receives, reviews and processes applications for qualifying and continuing education providers, courses and instructors to ensure statutory and agency standards are met. Division team members support the agency's mission to protect consumers of real estate services in Texas by ensuring content for qualifying and continuing education courses is both accurate and relevant and that courses satisfy requirements for design and delivery methodologies.

**Enforcement Division**

*Michael Molloy*

[michael.molloy@trec.texas.gov](mailto:michael.molloy@trec.texas.gov)

512-936-3005

TALCB enforcement division administers TREC's complaint investigation and disciplinary enforcement programs. The division's team members carry out the Commission's mission to protect consumers by enforcing [The Real Estate License Act](#), [Rules of the Commission](#),

[Chapter 1102 of the Texas Occupations Code](#) regarding Real Estate Inspectors, the [Texas Timeshare Act](#), and the [Residential Service Company Act](#). TREC enforcement staff also implements standards and reviews applications for licensure and fitness determinations to assess the honesty, integrity, and trustworthiness of applicants. For more information, visit the [Laws and Rules section](#) of the [TREC website](#).

#### **Information and Technology Division**

*Director Stephen Rapp*

[stephen.rapp@trec.texas.gov](mailto:stephen.rapp@trec.texas.gov)

512-936-3288

The IT division develops and maintains the technical infrastructure needed to meet the agency's business requirements, including application development, network management, technical support, website services, and records management. The IT team members follow standards adopted by the Texas Department of Information Resources (DIR) and utilize industry best practices to ensure utility, reliability, and security.

## 2.5 Financial Management of TREC

The Commission is tasked with various responsibilities related to TREC's financial management as assigned by statute and TREC's own rules. The Legislature has granted TREC / TALCB self-directed, semi-independent, or SDSI status. Tex. Occ. Code §§1105.001, *et seq.* As an SDSI agency, TREC is unique in that it does not receive funding through general revenue of the state, as most other state agencies do. The Commission is instead responsible for all direct and indirect costs of the Commission's existence and operation through revenue collected through fees, charges, and other revenues required or permitted by law. The law outlining details of this SDSI status can be found in [Chapter 1105, Texas Occupations Code](#).

### 2.5.1 TREC-TALCB Memorandum of Understanding

TREC and TALCB have entered into a Memorandum of Understanding (MOU) regarding the cost allocation of services and employees shared between them. The MOU also sets out the performance review process for the TREC Executive Director / TALCB Commissioner.

### 2.5.2 TREC Annual Operating Budget, Investments & Fees

TREC staff prepares and presents an Annual Operating Budget to the Commission each August for the upcoming fiscal year (September 1 – August 31).

The TREC accounts are held within the State's Texas Treasury Safekeeping Trust Company (TTSTC) per the Self-Directed Semi-Independent statute. TTSTC acts as the agency's bank and by state law and agency policy makes all investments. Quarterly investment reports are provided at each regular commission meeting. A budget update on expenditures and revenues is provided to the Commission at each quarterly meeting as well. Agency balance sheets reflect available cash for operations as well as amounts obligated for investments, anticipated liabilities, and set-aside funds for reserves.

### 2.5.3 Review and Approval of Large-Value Contracts

Per [Tex. Gov't Code §2054.064](#), [§2054.522](#) and [Tex. Admin. Code §201.6](#), the Commission shall approve all contracts and contract amendments with a value exceeding \$1 million dollars or that pertain to a major outsourced contract. After a vendor is selected and before execution of a contract with the vendor, TREC's executive director or a designee shall seek approval by the Commission. The agency posts all required purchasing-related reports on the agency website.

#### 2.5.4 Audits

The agency is [statutorily required](#) to undergo internal audits. Such periodic audits include audits of major systems and controls including, but not limited to, accounting, administrative, and electronic data processing. These periodic internal audits are performed by TREC's internal auditor, who is selected by and reports to the Commission. Before commencement of an internal audit, the Commission must approve the proposed audit plan, which is prepared using risk assessment techniques, and identify individual audits to be conducted throughout the year. Upon completion, the internal auditor reports the results of internal audits to TREC and TALCB. Final copies must be filed with the following entities:

- Sunset Advisory Committee,
- Governor's Budget and Policy Offices,
- State Auditor's Office, and
- Legislative Budget Board.

In addition to internal audits completed by TREC's internal auditor, the [State Auditor's Office](#) (SAO) performs periodic audits of agency programs.

## **Section 3 – Policies, Procedures and Agreements**

This section provides the requisite information to train new Commission members on the following topics:

- TREC Policies, and
- Statement of Acknowledgment regarding receipt and review of Commission Training Guide

## 3.1 TREC Policies

### 3.1.1 Memoranda of Understanding

- [MOU between Texas Department of Savings and Mortgage Lending \(SML\), Texas Department of Insurance \(TDI\), TREC & TALCB \(8/08\)](#)
- [TREC-TALCB MOU FY19 \(6/19\)](#)
- [TREC-TAMUREC MOU 6/19 to 8/21 \(6/19\)](#)

### 3.1.2 TREC Operations

- [Broker-Lawyer Committee \(11/09\)](#)
- [Acceptability of Imaged Signatures \(3/10\)](#)
- [TREC Electronic Minutes Policy \(2/13\)](#)
- [Per Diem and Travel Expenses Memo \(4/14\)](#)
- [Duties and Ethics of Commission Members \(~2015\)](#)
- [TREC ED Delineation of Duties Policy \(8/15\)](#)
- [Handgun Policy \(2/16\)](#)
- [Officer Election Policy \(5/16\)](#)
- [TREC Budget Policy Timeline \(11/18\)](#)
- [Board Member and Commissioner Travel Guidelines \(1/20\)](#)
- [TREC Meetings Schedule \(2/19\)](#)
- [TREC Form Update Policy \(5/19\)](#)
- [TREC FY2021 Budget and Investment Policy \(8/20\)](#)

### 3.1.3 Miscellaneous

- [Confidentiality of Social Security Numbers \(11/09\)](#)
- [State Bar CE Courses re: MCE Credit \(3/10\)](#)
- [Per Diem and Travel Reimbursement Election Form \(8/14\)](#)
- [TREC Internal Audit Charter \(2/17\)](#)

## **3.2 Statement Acknowledging Receipt and Review of Annual Training Guide**

When you have completed your review of the TREC Commission Member Training Guide, please sign the statement acknowledging receipt and review at the end of this training guide and email a scanned copy to the [TREC Recording Secretary](#).



## **ACKNOWLEDGMENT**

(To be signed each year by every Commissioner and Board Member)

I acknowledge I have received and reviewed a copy of the TREC Commission/TALCB Board Member Training Guide.

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Commissioner/Board Member Name

---

Signature

---

Date

---

## Appendix - Additional Resources

### Additional Reports

- [Strategic Plan FY2021-2025](#) – Since 2008, the Texas Real Estate Commission (TREC) and the Texas Appraiser Licensing and Certification Board (TALCB) have prepared, approved, and submitted a unified strategic plan. The purpose of the plan is to provide the public and stakeholders with insight on the vision, goals, and direction for the Agency.
- [FY2019 SDSI Report](#) – The Legislature modified the requirements for the TREC / TALCB SDSI Report, which is filed on November 1st each year. In addition to the statutorily required information and content, this report now includes five-year trend data in various categories related to Agency operations and performance measures.
- [Sunset Advisory Commission 2019 Staff Report with Final Results](#) – TREC / TALCB underwent review by the Sunset Advisory Commission and the Texas Legislature in 2019. The 2019 Staff Report with Final Results is available online.

### Additional Resources

#### Office of the Governor

- [Gov. Abbott's Initiatives](#)
- [Budget and Policy Division](#)
- [Regulatory Compliance Division](#)
- [Appointments](#)
- [Press Announcements](#)

#### Office of the Attorney General

- [Open Government](#)
- [Open Meetings Handbook](#)
- [Public Information Handbook](#)
- [Administrative Law Handbook](#)

#### Texas Ethics Commission

- [Reference Guides](#)
- [Personal Financial Statement](#)
- [Online Ethics Training](#)
- [Guide to Ethics Laws](#)

#### Office of the Secretary of State

- [State Rules and Open Meetings](#)
- [Texas Administrative Code](#)
- [Open Meetings Postings](#)

[Texas Comptroller of Public Accounts](#)

[State Auditor's Office](#)

[Sunset Advisory Commission](#)

[Texas House of Representatives](#)


[Texas Legislature Online](#)

- [Texas Statutes](#)
- [Texas Constitution](#)

[Texas State Senate](#)

Complete [list](#) of Texas State Agencies and Websites available on [Texas.gov](#)

[State Capitol Maps and Floor Plans](#)

ORIGINAL <sup>OK</sup> 



Douglas B. Foster  
Commissioner

# TEXAS

DEPARTMENT OF SAVINGS &  
MORTGAGE LENDING

RECEIVED

AUG 15 2008

August 14, 2008

Texas Real Estate Commission

Devon V. Bijansky  
Assistant General Counsel  
Texas Real Estate Commission  
P.O. Box 12188  
Austin, Texas 78711-2188

Via interagency mail

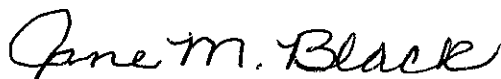
Re: Memorandum of Understanding between SML, TDI, TREC, and TALCB

Dear Devon:

Enclosed please find the two executed copies of the above referenced Memorandum. As instructed, I have retained one copy for my records.

I appreciate your efforts with regard to this Memorandum. Please let me know if we can assist you with anything further.

Sincerely,



Jane M. Black  
General Counsel

Enc.



## Texas Department of Insurance

Legal Services Division, Mail Code 110-1A  
333 Guadalupe • P. O. Box 149104, Austin, Texas 78714-9104  
512-475-1821 telephone • www.tdi.state.tx.us

RECEIVED  
TEXAS REAL ESTATE COMMISSION

JUL 29 2008

CASHIER'S SECTION  
OPERATOR 18

July 25, 2008

Devon V. Bijansky  
Assistant General Counsel  
Texas Real Estate Commission  
P. O. Box 12188  
Austin, TX 78711-2188

Re: Memorandum of Understanding (MOU)

Dear Ms. Bijansky:

Enclosed are three signed copies of the proposed Memorandum of Understanding between the Texas Department of Insurance (TDI), Texas Appraiser Licensing and Certification Board, Texas Department of Savings and Mortgage Lending, and the Texas Real Estate Commission. After the copies of MOU have been signed by the other parties, please return one original signed copy to TDI for its records.

If you have any questions or comments, please do not hesitate to contact me by telephone at (512) 463-6102 or by email at [cynthia.villarreal-reyna@tdi.state.tx.us](mailto:cynthia.villarreal-reyna@tdi.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Cynthia Villarreal-Reyna".

Cynthia Villarreal-Reyna  
Agency Counsel Section Chief

Enclosures

## MEMORANDUM OF UNDERSTANDING

The parties to this Memorandum of Understanding (MoU) are the following agencies: Texas Appraiser Licensing and Certification Board, Texas Department of Insurance, Texas Department of Savings and Mortgage Lending, and Texas Real Estate Commission.

In order to promote more efficient state government and more effective consumer protection, each agency that is a party to this MoU hereby agrees with each and all of the other parties as follows:

### **1. Forwarding of Complaints**

When an agency ("the forwarding agency") receives a consumer complaint that is not within its jurisdiction but alleges facts that may indicate a complaint within another party agency's jurisdiction, it will forward the complaint to that other agency ("the receiving agency") and advise the complainant that this has been done.

### **2. Contact information**

Each party agency will keep all other party agencies advised on a current basis of the name, telephone number, and email address of a person to whom enforcement and/or complaint-related questions may be directed.

### **3. Cooperation**

Each party agency will cooperate with each other party agency as requested, to the fullest extent permitted by law, regarding the coordination of investigative and enforcement actions of common licensees.

### **4. Open Records**

If a party agency receives a Public Information Act (PIA) request for information that the agency forwarded to or received from another party agency, the agency to which the PIA request was submitted will immediately notify the other agency of the request. The other agency will promptly review the request to determine whether grounds exist to withhold any of the requested documents.

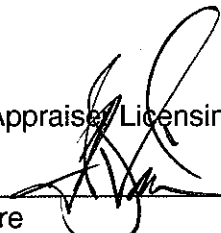
#### **Requests Submitted by Member of the Public to Forwarding Agency**

If the receiving agency determines that grounds exist to withhold documents, the receiving agency will, not later than the fifth business day following notice by the forwarding agency, notify the forwarding agency of the exceptions to the Public Information Act that apply and will, not later than the tenth business day following notice by the forwarding agency, provide to the forwarding agency written comments stating the reasons why the stated exceptions apply.

#### **Requests Submitted by Member of the Public to Receiving Agency**

If the forwarding agency determines that grounds exist to withhold documents, the forwarding agency will, not later than the fifth business day following notice by the receiving agency, notify the receiving agency of the exceptions to the Public Information Act that apply. If the forwarding agency wishes to withhold records that the receiving agency did not independently wish to withhold and is notified of such by the receiving agency, the forwarding agency will also provide to the receiving agency, not later than the tenth business day following notice by the receiving agency, written comments stating the reasons why the stated exceptions apply.

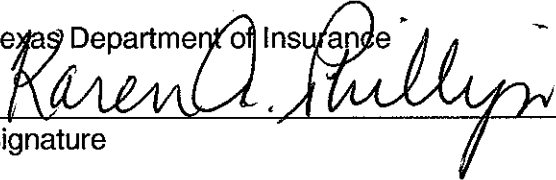
Texas Appraiser Licensing and Certification Board

  
Signature  
TIMOTHY K. IRVINE  
Name (Print)

8/5/2008  
Date  
COMMISSIONER  
Title

TALCB Enforcement contact: Name: DEBORIS KRAFT-LONGORIA  
Title: DIRECTOR OF ENFORCEMENT  
Phone number: 465-3956  
E-mail address: deboris.kraft-longoria@talcb.state.tx.us


Texas Department of Insurance

  
Signature  
Karen A. Phillips  
Name (Print)

7/22/08  
Date  
Chief of Staff  
Title

TDI Enforcement contact: Name: Catherine Reyer  
Title: Associate Commissioner  
Phone number: (512) 322-4346  
E-mail address: Catherine.Reyer@tdi.state.tx.us


Texas Department of Savings and Mortgage Lending

  
Signature  
DOUGLAS B FOSTER  
Name (Print)

13 Aug 08  
Date  
COMMISSIONER  
Title

TDSML Enforcement contact: Name: Chris Schneider  
Title: Chief Enforcement Attorney  
Phone number: (512) 475-0980  
E-mail address: CSchneider@tdsml.state.tx.us

Texas Real Estate Commission

  
Signature  
TIMOTHY K. IRVINE  
Name (Print)

8/5/2008  
Date  
ADMINISTRATOR  
Title

TREC Enforcement contact: Name: DELLA LINDQUIST  
Title: DIRECTOR OF ENFORCEMENT  
Phone number: 465-3963  
E-mail address: della.lindquist@trec.state.tx.us

## **Memorandum of Understanding Texas Real Estate Commission and Texas Appraiser Licensing & Certification Board**

**I. Introduction and Background.** The Texas Real Estate Commission (TREC) is an executive branch agency of the State of Texas, and the Texas Appraiser Licensing & Certification Board (TALCB) is an independent regulatory subdivision of TREC. As part of the continuation of TREC for an additional 12-year period, the 80<sup>th</sup> Texas Legislature in 2007 required that TALCB be integrated with TREC to the fullest extent possible while retaining TALCB's identity as an independent regulatory body. To implement that requirement, TREC and TALCB entered into a Memorandum of Understanding in 2007 that was amended in 2010 to more fully describe the roles and responsibilities of each party. As of September 1, 2011, the parties have achieved self-directed, semi-independent status, which removes the agency from the legislative appropriations process and modifies the manner in which the agency collects and spends funds. This Memorandum of Understanding (Agreement) replaces all prior Agreements.

**II. Parties.** The Texas Real Estate Commission (TREC) and the Texas Appraiser Licensing & Certification Board (TALCB) are the parties to this Agreement.

**III. Purpose.** The purpose of this Agreement is to delineate:

- a. The roles and responsibilities of each party;
- b. The administrative and support services that TREC will provide to TALCB at no cost;
- c. The allocation of resources between TREC and TALCB; and
- d. The costs and expenses for which TALCB is directly responsible for payment.

**IV. General Agreements.** Under Texas Occupations Code Section 1103.101, the TREC Executive Director serves as the TALCB Commissioner. The Commissioner is responsible for supervision of all TALCB staff and oversight of all TALCB expenditures within the parameters of a TALCB-approved budget and any legislative appropriations. The Commissioner reports to and performs these duties under the policy direction of the TALCB and is ultimately responsible to TALCB for the board's operations. A portion of the Executive Director/Commissioner's salary is allocated from TALCB resources.

TREC and TALCB recognize that under the current legislative structure, the ability to hire and fire the Executive Director/Commissioner is the responsibility of the Commission. However, for purposes of performance evaluation, the parties agree that the Commission will seek and consider input from Board Members on the Executive Director's/Commissioner's annual performance review at the same time and in the same manner that it solicits input from the members of the Commission. The Chairs of the Commission and Board may agree to discuss the annual performance review with the Executive Director/Commissioner jointly. If there is no agreement, each Chair may meet separately with the Executive Director/Commissioner to discuss the Executive Director's/Commissioner's performance.

TREC and TALCB further agree to the following:

A. TREC will provide, at no cost to TALCB, administrative services and support to TALCB, including but not limited to the following:

1. Staff Services in accordance with TREC operating procedures as follows:

- a) Human Resources;
- b) Budgeting, accounting and reporting;
- c) Purchasing and contracting;
- d) Cashier and mail room;
- e) Payroll; and
- f) Facilities management

- 2. Technology support services, except as described in section C below;
- 3. Agency-wide personnel training programs;
- 4. Use of meeting rooms on a space available basis;
- 5. Texas Register Liaison services; and
- 6. Governmental and public relations services.

B. TALCB FTEs working in Education and Licensing are subject to the day-to-day supervision of the TREC Director(s) and Managers, who oversee those areas of activity. TALCB Enforcement staff report to the TALCB Enforcement Director, who is supervised by the Commissioner or his designee.

C. TALCB bears the lawfully payable or reimbursable amounts of all costs incurred by the Board other than those TREC-provided support services enumerated in Part IV.A of this Agreement, including, but not limited to:

- 1. All direct and indirect costs salary and benefits for TALCB allocated FTEs;
- 2. Rent and overhead expenses for space occupied by TALCB and a pro-rata percentage of common area expenses
- 3. Services provided by the State Office of Administrative Hearings;
- 4. Services provided by the Office of the Attorney General;
- 5. Services provided by the State Auditor's Office;
- 6. Equipment, supplies, services, or other goods;
- 7. Telephone system equipment and services;
- 8. Travel, meals, and lodging;
- 9. Dues and subscriptions;
- 10. Personnel training and continuing professional education;
- 11. Database service modifications and computer software primarily benefiting TALCB; and
- 12. Per capita cost for acquisition, lease or maintenance of computer hardware.

D. Portions of staff salaries are allocable and payable as further described in Exhibit A to this Agreement and may be temporarily reallocated as necessary by the Executive Director/Commissioner to ensure the efficient provision of administrative and support services to TALCB, with notice to the Chairs of both governing bodies as soon as reasonably practicable.

E. TALCB is allocated its *pro rata* portion of the contribution to General Revenue required by Texas Occupations Code Chapter 1105.

F. The Executive Director/Commissioner, with prior written notice to the respective Chairs of any planned adjustments, may determine that TREC will provide additional administrative support services as necessary to ensure the smooth operation of the agency.

G. The Executive Director/Commissioner may direct the transfer of funds between the parties as necessary to maintain the financial soundness of each, informing the Chairs of both governing bodies

in writing as soon as reasonably practicable and proposing a plan for repayment.

**V. Term of Agreement.** This Agreement becomes effective June 1, 2019, and remains in effect through the end of fiscal year 2021 unless amended by mutual written agreement of the parties. This Agreement terminates and supersedes any other memorandum of understanding or agreement entered into between the parties before the effective date of this Agreement. Either party may withdraw from this Agreement by written notice to the Chair of the other governing body of the other party with 365 days prior notice.

The execution and performance of this Agreement has been authorized by each respective governing body.


This Agreement shall not be construed to create any additional liability or obligation for either party.

This Agreement as amended takes effect on June 1, 2019.



Scott Kesner, Chair  
Texas Real Estate Commission

5-25-19  
Date



Jamie Wickliffe, Chair  
Texas Appraiser Licensing & Certification Board

5.17.19  
Date

Exhibit A

1. Portions of the following TREC salaries are allocable to and payable by TALCB:

- A. TREC Executive Director/TALCB Commissioner – 10%
- B. TREC Deputy Executive Director/TALCB Deputy Commissioner – 10%
- C. TREC Executive Assistant/TALCB Recording Secretary – 40%
- D. TREC Reception & Communication Specialist – 70% of an FTE (average RCS salary & benefits)

2. Portions of the following TALCB salaries are allocable to and payable by TREC:

- A. TALCB General Counsel/TREC Deputy General Counsel – 40%
- B. TALCB/TREC Education & Licensing Specialist – 50%

## **Memorandum of Understanding**

**I. Parties.** The Texas Real Estate Commission (TREC) and the Real Estate Center at Texas A&M University (the Center).

**II. Purpose.** This Memorandum of Understanding sets forth the mutual understanding and agreement between TREC and the Center to enter into a partnership to develop, deliver and maintain courses to meet certain mandatory continuing education (CE) requirements under Texas Occupations Code Chapter 1101 and applicable agency rules; to manage registration for and co-market an annual real estate related summit conference developed by TREC for license holders and/or the public which will be eligible for CE credit; and for the Center to provide specific research and forecasting support to TREC.

**III. CE Courses.** The CE courses subject to this agreement are:

A. Legal Update. An 8-hour Real Estate Legal Update course devoted, among others, to the topics outlined in Occupations Code Chapter 1101.455 (e). The course may be produced in one or more parts.

B. Broker Responsibility. A 6-hour real estate Broker Responsibility course devoted to the responsibilities of a broker set out in TREC Rule 535.2, including requirements for written policies and procedures manuals, compliance fundamentals, obligations for training agents, duty to oversee licensing, education and financial transactions of agents, and advertising and trust account requirements. The course will also cover payment of commissions, agency and intermediary requirements, personnel practices and management, risk management and reduction, best practices discussions, and other topics applicable to the proper delivery of brokerage services to clients through the broker's sponsored agents.

**IV. CE Course Development.** At its sole expense, the Center will convene each course writing group as necessary to complete its work in a timely manner, and will create a course textbook and an instructor's manual for classroom presentation for each course. The Center will designate a coordinator who will be responsible for coordination of logistics for the development of the courses and training classes. TREC's General Counsel/Deputy General Counsel and Curriculum Development Specialist will act as content editors for the courses and will deliver the final content to the Center by a date set by the Center.

A. Each course writing group will consist of:

1. Three subject matter experts appointed by TREC's Chair;

2. Two subject matter experts appointed by the Center's Director;
3. TREC's General Counsel/Deputy General Counsel and Curriculum Development Specialist; and
4. For Legal Update only, written input will be requested from the Chair of the Real Estate Law Division of the Texas State Bar's Real Estate, Probate and Trust Law Section, or the Chair's designee.

B. Each writing group will be convened, the course materials completed, and presentation for CE credit will begin in accordance with the following schedule:

1. Legal Update – Group convened on or before March 15 of odd-numbered years, with course completion on or before August 1 of odd-numbered years, and presentation to begin on January 1 of even numbered years;

2. Broker Responsibility – Group convened on or before March 15 of even-numbered years, with course completion on or before August 1 of even-numbered years, and presentation to begin on January 1 of odd- numbered years;

C. TREC/TALCB will review and approve all course materials before the classes are offered to instructors or students.

D. As needed, TREC will update each course with an errata sheet to address major developments that occur after the initial courses are approved but before they are updated and rewritten every two years. TREC will e-mail notice of "errata sheet" updates to trained instructors and CE providers approved by TREC to offer the courses. The Center will update and revise each digital student course book to include information contained in the errata sheets within two weeks of request by TREC.

E. TREC will provide access to current student course books and "errata sheet" updates on its website.

#### **V. Instructor Training for Legal Update and Broker Responsibility Courses.**

A. The Center, at its expense, will conduct a series of in person instructor training classes as the sole method by which instructors may achieve qualification to teach the Legal Update and Broker Responsibility courses to real estate license holders for CE credit.

B. The Center will engage a qualified instructor(s) to teach these training classes, and set the price for attendance at such classes in an amount sufficient to cover its costs related to offering these classes. TREC Commissioners and agency staff may attend the training classes at no charge.

C. The student course book for each course will be provided electronically to the instructors who register for each training class at least one week prior so that the instructors may study and be prepared for the class. A printed copy of the instructor course book will be handed out to the instructors at each training class. The Center and TREC will co-develop and provide a course PowerPoint presentation for use in the instructor training courses. This PowerPoint will also be given to the providers who are approved by TREC to offer the course for use by their qualified instructors.

D. Any end-of-course examination required by TREC will be developed by TREC and the respective writing group. The Center will administer and proctor the examination for the instructor applicants as the final step required to successfully complete the course and achieve instructor qualification. TREC will explore the potential for providing the exam via a web-accessible service.

E. Within 10 business days after the completion of each class, the Center will provide TREC with a list of instructors who have completed the instructor training class and the final examination for each course, and deliver the original examinations to TREC. TREC will be responsible for grading the examinations and notifying the instructors if they qualify to teach the CE course.

F. The Center will offer the qualifying classes to instructors at least four times between October 1 and December 31 of each year immediately following the respective course completion deadline and at least once every six months in the following 12 months. The first four classes will be held in various locations across the state.

G. Any end-of-course evaluation materials to be distributed to instructor registrants will be provided by TREC to the Center prior to October 1.

#### **VI. Annual Summit and Research Support.**

A. . The Center will work with TREC to co-market and provide logistical support for registration for a one-day annual real estate summit conference developed by TREC for license holders and/or the public, which will be eligible for CE credit.

B. The Center will annually solicit input from TREC regarding its master list of desirable research topics as it sets its annual research plan. Once every four years, beginning in 2020, the Center will complete a survey or other research to develop a profile of Texas real estate license holders and businesses.

C. Once every two years, the Center will assist the Commission to identify a qualified research entity to complete a survey paid for by the Texas Appraiser Licensing and Certification Board

regarding "customary and reasonable" fees paid for appraisal reports in Texas, and will review and comment on the draft report of the survey results before its publication.

D. In conjunction with TREC's quarterly meeting each May, the Director of the Center or the Director's designee will make a presentation regarding current and anticipated real estate market trends to the Commissioners.

E. In conjunction with TREC's annual Commissioner workshop to be held in November, the Director of the Center or the Director's designee will provide an annual report regarding the work of the Center.

**VII. Period of Agreement and Modification/Termination.** This memorandum of understanding is effective upon its signing by the TREC Executive Director and the Director of the Center. It may be modified from time to time with the agreement of TREC and the Center. Either agency may withdraw from this memorandum of understanding by providing written notice to the TREC Executive Director or the Executive Director of the Center at a date not less than twelve months from the date written notice is given. Except as contained herein, this memorandum of understanding may not be construed to create any additional liability or obligation for either party.

**For the Parties:**

Texas Real Estate Commission



By its Executive Director

Douglas E. Oldmixon



Date

Real Estate Center at Texas A&M University



By its Director

Gary Maler



Date



TEXAS

## REAL ESTATE COMMISSION

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### APPRAISER LICENSING & CERTIFICATION BOARD

## MEMORANDUM

**TO:** TREC/TALCB Staff

**FROM:** Douglas E. Oldmixon

**RE:** Broker-Lawyer Committee

**DATE:** November 1, 2009

The respective rights of The Texas Real Estate Commission (the Commission) and the Broker-Lawyer Committee are as follows:

- (1) The Broker-Lawyer Committee shall have the obligation and responsibility to draft all of the forms and each and every portion thereof.
- (2) The Commission shall have the obligation and responsibility to promulgate, or refuse to promulgate, the forms as drafted by the Broker-Lawyer Committee.

The following procedures shall be followed by the Commission and the Broker-Lawyer Committee in drafting and promulgating the forms:

- (1) Drafts of forms shall be distributed to all members of the Commission for their review and suggestions. All suggestions shall be in writing.
- (2) The Broker-Lawyer Committee shall consider all comments and suggestions and make such revisions to the forms as the Broker-Lawyer Committee deems appropriate. A revised draft of the forms shall be distributed to all members of the Commission. If the Broker-Lawyer Committee determines that revisions are not appropriate, it shall notify the Commission and state reasons to the Commission in writing.
- (3) The Commission shall make changes, alterations, or amendments to any form drafted by the Broker-Lawyer Committee and submitted for promulgation. If the Commission fails to approve any form as drafted by the Broker-Lawyer Committee and submitted for promulgation, the Commission shall return the form to the Broker-Lawyer Committee for further action accompanied by the written objections of the Commission and the reason for its objections.
- (4) The Broker-Lawyer Committee shall diligently and in good faith attempt to satisfy the objections of the Commission to any form returned. However, if the Broker-Lawyer Committee determines that the objections cannot be satisfied or not, the form shall be resubmitted to the Commission with a written explanation state the reasons for the decision and action by the Broker-Lawyer Committee.
- (5) If the Commission, after receiving the written explanation of the Broker-Lawyer Committee, continues its objection and the Commission and the Broker-Lawyer Committee cannot agree on a mutually satisfactory resolution to the objection, the matter shall be submitted to an ad hoc committee for resolution. The ad

hoc committee shall consist of four members of the Commission, appointed by the Chair, and four members of the Broker-Lawyer Committee, appointed by the Co-chairs of the Broker-Lawyer Committee. The ad hoc committee shall diligently and in good faith work until it resolves the matter. A majority vote of the ad hoc committee shall be sufficient to approve a resolution of the matter. The ad hoc committee shall promptly communicate its decision as a recommendation to the Commission and the Broker-Lawyer Committee. The Broker-Lawyer Committee shall make such drafting changes as necessary to carry out the ad hoc committee recommendation.

- (6) The members of the Commission and the Broker-Lawyer Committee shall meet at mutually satisfactory times and places to discuss the work of the Broker-Lawyer Committee.



TEXAS

## REAL ESTATE COMMISSION

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APPRAISER LICENSING & CERTIFICATION BOARD

### MEMORANDUM

**TO:** TREC/TALCB Staff

**FROM:** Douglas E. Oldmixon

**RE:** Policy Regarding Acceptability of Imaged Signatures

**DATE:** March 1, 2010

#### PURPOSE

The purpose of this policy is to clarify the acceptable use of handwritten or imaged signatures communicated electronically to the agency. Since the agency will soon be imaging all of its paper records, documents with an original signature become extraneous since we will no longer maintain paper records with original signatures on any applicant or complaint once all files are imaged and maintained electronically.

#### POLICY

Handwritten signatures on applications and complaints that are communicated to the agency by fax or email (imaged signatures) are the equivalent of "original" ink signatures. On this basis, while a document must still be signed to be acceptable, it is not necessary that a person submit an "original" ink signature before the agency processes the document. An imaged signature may be considered an "original" signature for all agency purposes.

TEXAS



## REAL ESTATE COMMISSION

DOUGLAS E. OLDMIXON, ADMINISTRATOR

### POLICY MEMORANDUM

TREC Commissioners

Avis G. Wukasch  
Chair

Bill L. Jones  
Vice Chair

Joanne Justice  
Secretary

Troy C. Alley, Jr.

Adrian A. Arriaga

Robert C. (Chris) Day

Jaime Blevins Hensley

Weston Martinez

T.J. Turner

Douglas E. Oldmixon  
Administrator

**Date:** February 13, 2013

**RE:** Official Record of Commission Meetings

This memorandum is to confirm that the Texas Real Estate Commission (Commission) approved the use of electronic minutes with a booked marked video recording of Commission meetings as the official record of the meetings and delegated authority to the Commission Secretary to approve this official record prior to posting it on the agency website.

This policy is effective as of February 11, 2013 and remains in effect until and unless changed or revoked by the Commission.

Approved by the Commission and signed this 14 day of February 2013.

A handwritten signature in blue ink, reading "Avis Wukasch", is written over a horizontal line.

Avis Wukasch, Chair  
Texas Real Estate Commission



# REAL ESTATE COMMISSION

## APPRAISER LICENSING & CERTIFICATION BOARD

### MEMORANDUM

**FROM:** TREC Commissioners & TALCB Members

**TO:** Administrator/Commissioner & Agency Staff

**RE:** Commissioner/Board Member Per Diem & Travel Expenses; Key Staff Travel

**DATE:** November 1, 2009, updated 5/17/10, 12/1/11, & 4/29/14

#### (A) Statutory Per Diem Payment

Under state law, Commissioners/Board Members may request compensatory per diem for any day during which they represent the Commission/Board in an official capacity. Participation in any regularly scheduled or specially-called Commission/Board meeting, standing committee or subcommittee meeting qualifies as official duties. Any other event requires the preapproval of the Chair.

#### (B) Commissioner/Board Member Travel

In addition to statutory per diem, travel expenses will be paid according to the Texas Comptroller guidelines for Commissioners/Board Members when performing official duties. Official duties means representing the Commission/Board at a meeting where participation has been approved by the Chair and travel scheduled through the agency staff.

#### (C) Expense Reimbursement for Official Duties

As provided for in the State and Agency Travel Guidelines, Commissioners/Board members also will be reimbursed for certain expenses incurred in connection with travel for official duties on behalf of the Commission or Board. To minimize such expenses, committee meetings should be held via teleconference, or on the same day as a scheduled Commission/Board meeting. Other in-person meetings must be approved by the Chair. Lodging and meal expenses are not reimbursable for travel of less than 75 miles one way.

(D) When a Commissioner or Board member attends initial orientation, the individual will indicate in writing the person's preference for receipt of statutory per diem and/or travel expense reimbursements on an agency form. This indicated choice will remain in effect until changed by the person signing a later form and providing it to the Administrator/Commissioner. This change of choices may be done at any time.

#### (E) Representation at ARELLO/AARO Meetings

The Chair will officially represent the Commission/Board at Annual and/or Mid-Year ARELLO/AARO meetings as necessary and shall vote for the Commission/Board. If the Chair is not able to attend, the Chair may designate an alternate to attend. If the Administrator/Commissioner certifies that sufficient travel funds are available, the Commission/Board Chair may designate an additional Commissioner/Board Member to attend and represent the agency at these organization meetings.

(E) Administrator/Commissioner Attendance

The Administrator/Commissioner or a designee may attend all ARELLO/AARO meetings as necessary to represent the agency. In the absence of the Chair or the Chair's designated alternate, the Administrator/Commissioner shall vote on behalf of the agency.

(F) General Counsel Attendance

If the Administrator/Commissioner certifies that sufficient travel funds are available, the General Counsel may attend ARELLO/AARO meetings as appropriate to represent the agency.

(G) Division Director Attendance

If the Administrator/Commissioner certifies that sufficient travel funds are available, one or more division directors may be permitted to attend ARELLO/AARO meetings to participate in educational sessions.

(H) Out of State Travel

Under Ethics Commission rules, all travel reimbursement reports for Commissioners/Board Members which involve out of state travel must be filed with the Ethics Commission prior to reimbursement. Commissioners/Board Members representing TREC/TALCB at meetings and other functions held outside Texas should obtain advance approval of the Commission/Board Chair prior to attending such meetings when they will be submitting a request for reimbursement of travel and related expenses.

TREC Commissioners

Avis G. Wukasch  
Chair

Bill L. Jones  
Vice Chair

Joanne Justice  
Secretary

Troy C. Alley, Jr.

Adrian A. Arriaga

Jaime Blevins Hensley

Weston Martinez

T.J. Turner

Chart H. Westcott

Douglas E. Oldmixon  
Administrator

## ***Duties and Ethics of Commission Members under Texas Law***

### **Conduct at Commission Meetings**

*Texas Open Meetings Act – Chapter 551, Tex. Gov't Code ("Act") and Robert's Rules of Order*

1. ***Right to Speak*** – A Commission member has the right to state his or her views, opinions, positions, and recommendations but should do so professionally and respectfully in the procedural manner established or directed by the Chair.
2. ***Duty to Listen*** – A Commission member should listen respectfully to the views, opinions, positions, and recommendations of others, even those with whom he or she disagrees.
3. ***Duty to Respect Commission Decisions*** – A Commission member should abide by and not subvert lawfully-taken Commission decisions. If, as a matter of principle, a Commission member must articulate a minority opinion, he or she may do so; however, such opinion should be announced to the Commission through the Chair, who may call upon the dissenting Commission member to articulate his or her opinion. In any case, the Commission member must refrain from subverting or otherwise denigrating lawfully taken Commission decisions to outside parties.
4. ***Duty of Confidentiality*** – A Commission member may not report the Commission's executive session discussions, deliberations, or statements of Commission members (including his or her own statements) to any third party without the Commission's permission. The Texas Open Meetings Act provides for civil and criminal penalties against Commission members who disclose certain confidential information in violation of the Act. *See, e.g., Tex. Gov't Code §551.146.* (NOTE: The duty of confidentiality also applies to privileged communications between the Commission and its attorney.)

### **Conflicts of Interest**

*Tex. Gov't Code §572.051*

5. ***Gifts and Bribes*** – A Commission member may not accept or solicit any gift, favor or service that might reasonably tend to influence him or her in the discharge of official duties or that he or she knows or should know is being offered with the intent to influence his or her official conduct. Nor should he or she knowingly solicit, accept or

agree to accept any benefit for exercising or having exercised his or her official powers or duties in favor of another. (NOTE: This prohibition applies to *individual* Commission members and does not affect the Commission's ability to solicit gifts, grants or donations as authorized in Texas Occupations Code §1103.157.)

6. ***Business or Professional Activities*** – A Commission member may not engage in employment or in business or professional activities that might reasonably require or induce him or her to disclose confidential information acquired by virtue of his or her official position.
7. ***Employment*** – A Commission member may not accept employment or compensation that could reasonably be expected to impair his or her independence of judgment in the performance of his or her official duties.
8. ***Investments*** – A Commission member may not make personal investments that could reasonably be expected to create a substantial conflict between the member's private interest and the Commission's interest; nor, may a Commission member usurp an opportunity of the Commission to profit or benefit from any person or entity.

#### **Restrictions on Former Commission Members**

*Tex. Gov't Code §572.054*

9. ***Communication or Appearance by former Commission member*** – A former Commission member may not appear before or communicate with an officer or employee of the Commission with the intent to influence and on behalf of any person in connection with any matter on which the person seeks official action within two years after the former Commission member ceased to serve on the Commission.
10. ***Representation by former Commission member*** – A Commission member may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter in which the former Commission member participated during the member's service on the Commission, either through direct involvement or because the matter was within the Commission member's official responsibility. (NOTE: This restriction does not apply to a rulemaking proceeding that concluded before the Commission member's service ended.)

**DELINEATING POLICY-MAKING FUNCTIONS OF  
THE TEXAS REAL ESTATE COMMISSION (THE "COMMISSION")  
THE MANAGEMENT FUNCTIONS OF THE COMMISSION'S  
EXECUTIVE DIRECTOR AND STAFF**

Tex. Occ. Code, §1101.102 requires the Commission to "develop and implement policies that clearly separate the policy making responsibilities of the Commission and the management responsibilities of the Executive Director and staff of the Commission." Other provisions of Tex. Occ. Code, Chapter 1101 address specific powers of the Commission and the Executive Director.

It is the intent of the Commission, in adopting this document, to clarify respective areas of authority and management, consistent with the requirements of Tex. Occ. Code, §1101.102, but this is done with an overarching concern that the Commission and management work in a closely coordinated manner. In order to facilitate an effective working relationship between the Commission and management, it is essential that communications be handled in a manner that will not violate open meetings laws or deprive the Commission of the right to assert its lawful prerogatives as it deems fit. To that end, the Executive Director should maintain a good, candid, open relationship with the Chair, keeping him or her apprised on a current basis of significant issues encountered in the operation of the agency. If, after conferring on an issue, the Chair believes that the matter needs to be brought to the Commission's attention, he or she will request that the Executive Director prepare and disseminate an appropriate briefing.

The Executive Director shall be responsible for obtaining from staff and providing to the Commission such reports as law or the Commission may from time to time require.

The Executive Director's regular communications with the Chair should include, but are not limited to:

- Discussing items to be included on the Commission agenda and on the agendas for meetings of committees of the Commission;
- Updates on pending legislation affecting the agency and the industries it oversees;
- Updates on pending or threatened litigation;
- Matters relating to the Commissioners such as pending hearings at which they need to be present;
- Discussing significant personnel and/or organizational changes;
- Proposing rule changes;
- Discussing issues of broad significance raised by license holders or other affected parties;
- Discussing the status of audits; and
- Providing updates and status reports on operational crises and other important "out of the ordinary" matters.

**Commission Policy-Making Functions**

The Commission makes policy chiefly through:

- The adoption of rules;
- The adoption of the required ethics policy;
- The approval of, annual operating budgets, and strategic plans; contracts over \$1,000,000; and
- Specific decisions regarding actions placed before the Commission for action.

From time to time one or more Commissioners may identify an area with respect to which the Commission ought to establish policy. If that is the case, the interested Commissioners should tell the Chair and ask that the matter be considered for inclusion on a Commission agenda.

## **Management Functions**

The Executive Director is charged with overseeing all matters necessary to the daily operation of the agency, consistent with law and Commission-established policy. In that regard he or she is assigned responsibility and the attendant authority, subject to other laws, and Commission budget and policy, acting directly or through delegated staff, to:

- Organize the staff into such divisions, sections and other operating units as deemed appropriate;
- Approve all personnel actions;
- Approve expenditures;
- Oversee the licensing, education approval and administration, enforcement/investigative processes and the agency's day-to-day support functions, such as accounting, purchasing, human resources and technology;
- Execute agreements under \$1,000,000, including interagency agreements and audit engagements;
- Execute Agreed Orders and default Final Orders; and
- Oversee the timely submittal of required reports.

Except as the Commission may otherwise specify, the day-to-day operation of the agency is the responsibility of the Executive Director and may, in accordance with law, be delegated to appropriate members of staff.

Adopted by the Commission on August 17, 2015.

  
Avis Wukasch, Chair

## **Texas Real Estate Commission (Agency)**

### **Handgun Policy**

Any person, including Agency employees or members of the public, licensed to carry a handgun under Chapter 411, Texas Government Code may carry their concealed or openly holstered handgun on any premises owned, leased, or operated by the Agency, or in agency leased vehicles, so long as they comply with the legal requirements associated with carrying a handgun.

Section 46.035(c) of the Texas Penal Code states:

*“A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter.”*

Therefore, the Agency will prohibit open and concealed carry handguns at its open meetings and notify attendees of this prohibition by posting a sign at the entrance to all open meetings and on all posted open meeting agendas.

### **Disclaimer**

Employees who obtain licenses to carry handguns do so in their own individual capacities. Any possession or use of such handguns by employees, whether on or off Agency premises, is outside the scope of employment, is excluded from the purposes of employment by the Agency, and is done solely in the employee's individual capacity, and not as an employee of the Agency.



## **POLICY MEMORANDUM**

**Date:** May 2, 2016

**RE:** Officer Nominations

This memorandum is to confirm that the Texas Real Estate Commission (Commission) approved the following practice regarding nomination for officers of the Commission:

At the last quarterly Commission meeting of each calendar year, the Commission will include an item on the agenda for nominations for the positions of Vice-Chair and Secretary. Additional nominations and a vote to elect a Vice-Chair and Secretary from those nominated will occur at the Commission's February meeting.

Approved by the Commission and signed May 2, 2016.

A handwritten signature in blue ink, reading "Avis Wukasch", is written over a horizontal line.

Avis Wukasch, Chair  
Texas Real Estate Commission

## Timeline for TREC Budget Committee

TREC's budget is on a fiscal year from September 1 – August 31. The budgeting process begins in the early spring for late summer adoption. Below are the milestones identified in policy with specific dates for each fiscal year. Current Fiscal Year 2019 = September 1, 2018 – August 31, 2019

Action	By When (no later than)	Next Date
Budget Committee Appointed	February	_____
Staff prepares 1st draft budget for Committee	March 31st	_____
Budget Committee meets	April 10th	_____
Committee members provide comments	April 20th	_____
Staff updates budget; draft sent to Commission	10 days prior to May meeting	_____
Committee Chair reports to full Commission	May meeting	_____
Commission reviews draft budget	May meeting	_____
Staff prepares 2nd draft budget for Committee	June 10th	_____
Budget committee meets	June 20th	_____
Staff prepares final budget draft	July 20th	_____
Full Commission receives budget draft	10 days prior to Aug meeting	_____
Committee Chair reports to full Commission	August meeting	_____
Commission reviews and adopts final budget	August meeting	_____

Special Budget Committee meetings may be called at any time to address any fiscal issues.

### Reporting

Budget drafts will include a five-year data set for revenues and expenditures

Monthly – Budget Status Report

Quarterly – Budget Status Report and Reserve Fund Balance Report

Annually – Annual Financial Report, reconciled Budget Report for prior fiscal year;

Self-Directed, Semi-Independent Report

**Travel Guidelines (effective 1/1/2020)**  
**TREC Commissioners & TALCB Board Members**

**Air Fare, Car Rental, & Taxi**

1. Call your Travel Coordinator for all airfare and car rental reservations. Reservations are made in accordance with state travel guidelines. Travel Coordinators are:

**Primary**

TREC Commissioners     Amber Hinton (512-936-3092)

**Backup**

Dione Frederick (512-936-3652)

TALCB Board Members     Dione Frederick (512-936-3652)     Amber Hinton (512-936-3092)

2. State travel guidelines will not allow reimbursement for travel at rates higher than contract rates (TAC, Title 34, Part 1, Ch 20, Subchapter E, Division 2, Rule 20.411). When possible, please make reservations at least 21 days in advance of travel.
3. Airfare will be charged to the agency central billing account (CBA), but rental car charges are paid by an individual's charge card to be reimbursed at a later date.
4. State contracted vendors must be used for car rental unless an exception exists and noted on the travel report. The approved exceptions are listed on page 4.
5. Vendors currently under contract for car rental are [Avis](#), [Budget](#), [Hertz](#), and [Enterprise](#). Loss damage waiver (LDW) coverage is included in the contract rate. Additional insurance obtained is not reimbursable. TREC rate identifier codes for car rentals:
  - a. Avis - F329
  - b. Budget – T184329
  - c. Hertz - 2120329
  - d. Enterprise – TX329X
6. Original receipts are required for airfare and car rentals. Submit the electronic ticket received from the airline with your travel report, even if it was charged to the central billing account.
7. Gas for rental cars is reimbursable. Please remember to fill the rental car before returning it to the rental agency. Receipts are required for reimbursement of gas costs for rental cars.
8. Taxi receipts should be provided if more than \$25 per trip. Point-to-point itemization of each trip should also be provided.
9. Actual cost of transportation provided by a network transportation driver (Uber, Lyft, etc.) if incurred to conduct state business and if it was the **most cost-effective mode** of transportation available considering all relevant circumstances, will be reimbursed if personal or rental car are not available.
10. Tips or gratuities are not reimbursable.
11. To ensure the conservation of state funds, the most cost effective form of travel shall be used. For example, renting a car versus driving a personal vehicle. Please document extenuating circumstances, which may require a more expensive form of travel, in advance where feasible. See page 4 for statutory reference.
12. A Mileage vs. Rental Car calculation tool, located at the website below, will help you estimate which mode of transportation is the most cost effective.

<https://fmx.cpa.texas.gov/fmx/travel/mileage/index.php>

**Personal Car Mileage**

1. Effective January 1, 2020, the mileage reimbursement rate for travel is \$0.575 cents per mile. Updated rates can be found on the Comptroller's [Texttravel](#) site. Use Google maps for determining mileage between cities.
2. You may itemize mileage on a point-to-point basis, which includes physical address or destinations (i.e. Headquarters (your home/office) to TREC headquarters 200 miles; TREC headquarters to restaurant 3 miles; restaurant to hotel 1 mile).

**Meals and/or Lodging**

1. Call your Travel Coordinator (see above) for hotel reservations. Reservations are made in accordance with state travel guidelines. The Travel Coordinator will reserve rooms with guaranteed late arrival using your individual charge card account; it is your responsibility to

cancel reservations if you are unable to make the trip. We also ask that you inform your Travel Coordinator if cancellations are necessary.

2. State contracted hotels must be used unless an exception exists which must be noted on the travel report. Hotels under state contract and corresponding rates can be found by login in on the Comptroller's [website](#). Website information is also listed at the end of this document.
3. The daily in-state and out-of-state per diem rates are based on the U.S. General Service Administration (GSA) [Per Diem Rates](#) for lodging and meals/incidentals by location. Federal rates are based on city and month, updated annually. Reimbursement is provided for actual meal and lodging expenses, up to the maximum rates for the location.
4. Receipts are not required for meals. Non-overnight meal reimbursements are permitted but considered income and must be reported on a W-2 tax form. [Non-overnight meal reimbursements](#) may not exceed \$36.
5. Lodging receipts are required for reimbursement and must show a "zero" balance.
6. Tips, gratuities and alcoholic beverages are not reimbursable.
7. If you spend the night with relatives or friends, please put it in the description (i.e. commercial lodging not obtained).
9. If you combine personal travel with business, please indicate personal days on the travel report. For example: Travel period 2/26 – 3/01/20; 03/01/20 - Personal business.

### **Other Expenses**

1. Parking receipts are required unless paid at a meter. The parking tax charged at some hotels is reimbursable.
2. Toll road fees are reimbursable if the mileage incurred while engaged in that travel is reimbursable.
3. Hotel occupancy taxes are reimbursable.
4. Phone calls charged to a hotel room are reimbursable only if made for state agency business and should be itemized.
5. Baggage fees that are related to state business are reimbursable. It is assumed that the first checked bag is necessary to complete business travel. Charges for excessive baggage may be reimbursed as long as the travel is related to state business (e.g. state-owned equipment).

### **Compensatory Per Diem**

1. Commission members in attendance at a Commission meeting are entitled to receive \$75 compensatory per diem for each day the member performs the member's official duties.
2. Compensatory per diem is paid through the payroll system and taxes are withheld. Such payments will be reported on a W-2 at the end of each year. Each Commissioner/Board Member will be asked to provide a W-4 when first assigned.

### **Summary of Processing Procedures**

1. If flying, call your Travel Coordinator for airline and/or rental car reservations. The Travel Coordinator can also make lodging reservations, if needed.
2. When traveling, retain receipts and/or mileage records.
3. Complete a Travel Report as soon as possible (within 30 days of travel) and mail with original receipts to:

Staff & Support Services  
Texas Real Estate Commission  
PO Box 12188  
Austin, TX 78711-2188

Or, submit travel report and receipts to Rosie Payne on last day of Commission/Board meeting.

4. Based on the travel report that you submit, a voucher will be processed and e-mailed to you. Upon receiving the voucher, please review for accuracy, correct the form if necessary, initial any changes, sign, and return to Rosie so you may receive reimbursement. **You may submit the signed copy one of three ways:**

**Fax to 512/936-3551, Attn: SSS Travel Accountant**  
**Scan and e-mail to [rosie.payne@trec.texas.gov](mailto:rosie.payne@trec.texas.gov)**

**Mail hard copies via U.S. Mail.**

6. Compensatory per diem will be processed on the next supplemental payroll (usually the first day of the month following the meeting).
7. You may receive both your travel and compensatory per diem payments by direct deposit if you wish. To do this please complete a Direct Deposit Authorization form and return it to Melissa Huerta. It generally takes 2-3 weeks for the set up process to be completed. The form is included at the end of this document, or a fillable form can be requested from Melissa.
8. If you do not intend to request reimbursement for travel expenditures, please inform Melissa Huerta or Priscilla Pipho.  
[priscilla.pipho@trec.texas.gov](mailto:priscilla.pipho@trec.texas.gov)  
[melissa.huerta@trec.texas.gov](mailto:melissa.huerta@trec.texas.gov)

**Contact Information**

Contact		Phone Number	Email Address/Website
Commissioner travel arrangements	Primary: Amber Hinton  Secondary: Dione Frederick	(512) 936-3092  (512) 936-3652	<a href="mailto:amber.hinton@trec.texas.gov">amber.hinton@trec.texas.gov</a>  <a href="mailto:dione.frederick@trec.texas.gov">dione.frederick@trec.texas.gov</a>
TALC Board travel arrangements	Primary: Dione Frederick  Secondary: Amber Hinton	(512) 936-3652  (512) 936-3092	<a href="mailto:dione.frederick@trec.texas.gov">dione.frederick@trec.texas.gov</a>  <a href="mailto:amber.hinton@trec.texas.gov">amber.hinton@trec.texas.gov</a>
Travel reimbursements	Rosie Payne	(512) 936-3608	<a href="mailto:rosie.payne@trec.texas.gov">rosie.payne@trec.texas.gov</a>
	Melissa Huerta Accounting Manager	(512) 936-3616	<a href="mailto:melissa.huerta@trec.texas.gov">melissa.huerta@trec.texas.gov</a>
	Ranada Williams Director of Finance	(512) 936-0102	<a href="mailto:ranada.williams@trec.texas.gov">ranada.williams@trec.texas.gov</a>
State of Texas Travel Information Resources			<a href="https://fm.xcpa.texas.gov/fmx/travel/texttravel/index.php">https://fm.xcpa.texas.gov/fmx/travel/texttravel/index.php</a>
Contract Airfares, Car Rentals & Hotels			<a href="https://comptroller.texas.gov/purchasing/programs/travel-management/">https://comptroller.texas.gov/purchasing/programs/travel-management/</a>
Federal Rates			Current Rates: <u>Domestic Maximum Per Diem Rates</u> . (Only the per diem rates listed at the federal "Domestic Maximum Per Diem Rates" Web site apply to state employees. Other information included in the Web site is not applicable.)

# Texas Administrative Code

## TITLE 34

### PART 1

#### CHAPTER 20

#### SUBCHAPTER E

#### DIVISION 2

#### RULE §20.408

## PUBLIC FINANCE

### COMPTROLLER OF PUBLIC ACCOUNTS

#### STATEWIDE PROCUREMENT AND SUPPORT SERVICES

#### SPECIAL CATEGORIES OF CONTRACTING

#### STATE SUPPORT SERVICES - TRAVEL AND VEHICLES

#### Exceptions to the Use of Contract Travel Services

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(a) This section provides exceptions to use of contract travel services. These exceptions apply to the use of any contract travel services. When travel services are obtained at a lower total cost than the cost of contract travel services, no reporting of exceptions is required. Exceptions must be documented only when the total cost is greater than contract travel services rates. Nothing in this section affects or alters the authority of the comptroller regarding travel reimbursement or audit agreements.

(b) Lower cost to the state. State agencies may use any travel services obtained at a price lower than the contract travel services price. State agencies are encouraged to obtain lower priced travel services through the use of fourteen day or other advanced reservations programs, promotional price reductions, or any method that provides a lower overall cost of travel.

(c) Unavailability of contract travel services. The contract travel services are not available during the time or at the location necessary for the business purpose; or the contract travel service does not provide for the service required; or because the contractor is unable to provide the contract services due to a force majeure event.

(d) Special needs. The traveler's health, safety, physical condition, or disability requires accommodations, including medical emergency or other necessary services, not available from contract travel service contractors.

(e) Custodians of persons. The traveler has custody of a person pursuant to statute or court order and the traveler is required to provide a degree of security and safety that is not available from contract travel service contractors.

(f) In travel status. The traveler is in the course of travel and changes in scheduling render the use of contract travel services impractical or the appropriate travel services are not available. The traveler shall make reasonable efforts to secure rates equal to or lower than the contract travel service rates.

(g) Group program. The traveler is using a group program wherein reservations were made through a required source to obtain a particular rate or service.

(h) Emergency response. The traveler is responding to a public health or safety emergency situation.

(i) Legally required attendance. The traveler is required by a court, administrative tribunal, or other entity to appear at a particular time and place without sufficient notice to obtain contract travel services.

# Direct Deposit Authorization

*This form may be used by vendors, individual recipients or state employees to receive payments from the state of Texas by direct deposit or to change/cancel existing direct deposit information.*

## Transaction Type

SECTION 1	<input type="checkbox"/> New setup (Sections 2, 3, 5 and 6)	<input type="checkbox"/> Change account type (Sections 2, 3, 4, 5 and 6)
	<input type="checkbox"/> Change financial institution (Sections 2, 3, 4, 5 and 6)	<input type="checkbox"/> Cancellation (Sections 2 and 6 - Sections 7 and 8 for state agency use)
	<input type="checkbox"/> Change account number (Sections 2, 3, 4, 5 and 6)	

## Payee Identification

SECTION 2	Payee type	<input type="checkbox"/> Texas Identification Number (TIN) <input type="checkbox"/> Individual Taxpayer Identification Number (ITIN) <input checked="" type="checkbox"/> State employee <input type="checkbox"/> Vendor or other recipient	<input type="checkbox"/> Employer Identification Number (EIN) <input type="checkbox"/> Social Security Number (SSN) *	Mail code (If not known, leave blank.)
	Payee name	Phone number		ext.
	Mailing address	City	State	ZIP code

## New Account Information (Setups and Changes) (Completion by financial institution is recommended.)

SECTION 3	Financial institution name	City	State
	Routing transit number (9 digits)	Customer account number (maximum 17 characters)	Type of account <input type="checkbox"/> Checking <input type="checkbox"/> Savings
	Financial representative name (optional)	Title (optional)	
	Financial representative signature (optional)	Phone number (optional)	Date (optional)


## Existing Account Information (Changes Only)

SEC 4	Routing transit number (9 digits)	Customer account number (maximum 17 characters)	Type of account <input type="checkbox"/> Checking <input type="checkbox"/> Savings
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## International Payments Verification (required)

SEC 5	Will these payments be forwarded to a financial institution outside the United States?..... <input type="checkbox"/> YES <input type="checkbox"/> NO If "YES," also complete the ACH (Direct Deposit) Payment Destination Confirmation (Form 74-227).
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## Authorization for Setup, Changes or Cancellation (required)

SECTION 6	I authorize the Texas Comptroller of Public Accounts to deposit my payments from the state of Texas to my financial institution electronically. I understand that the Texas Comptroller of Public Accounts will reverse any payments made to my account in error. I further understand that the Texas Comptroller of Public Accounts will comply at all times with the National Automated Clearing House Association's rules. (For further information on these rules, please contact your financial institution.)		
	 Authorized signature	Printed name	Date

## Cancellation by Agency (for state agency use)

SEC 7	Reason	Date
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## Authorized Signature (for state agency use)

SECTION 8	 Signature	Date
	Phone number	Agency number
	ext. <b>329</b>	
	Agency name <b>Texas Real Estate Commission</b>	

## Please return your completed form to:

Texas Real Estate Commission  
 Employee Direct Deposit  
 (State employees should return this document to their employing agency.)

## Instructions for Direct Deposit Authorization

**You have certain rights** under Chapters 552 and 559, Government Code, to review, request and correct information we have on file about you. To request information for review or to request error correction, use the contact information on this form.

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### Section 1: Transaction Type

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Select the appropriate transaction type(s).

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### Section 2: Payee Identification

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Select payee type, provide the Texas Identification Number (TIN), Employer Identification Number (EIN) Social Security Number (SSN)\* or Individual Taxpayer Identification Number (ITIN) and enter payee contact information.

**\*Federal Privacy Act Statement**

*Disclosure of your Social Security number is required and authorized under law, for the purpose of tax administration and identification of any individual affected by applicable law, 42 U.S.C. sec. 405(c)(2)(C)(i); Texas Govt. Code Sections 403.011, 403.056, and 403.078. Release of information on this form in response to a public information request will be governed by the Public Information Act, Chapter 552, Government Code, and applicable federal law.*

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### Section 3: New Account Information (Needed for setups and changes)

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Completion by financial institution is recommended.

**Important:** Your direct deposit account information may be different from the account information printed on your checks. It is recommended that you contact your financial institution to confirm your direct deposit account information.

**Prenote Test:**

A prenote test will be sent to your financial institution for the account information provided. The prenote test is for a period of six banking days, and it is sent to your financial institution to verify your account information. If no further action is required by your financial institution, your direct deposit instructions will become effective when the six banking day prenote time frame has expired.

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### Section 4: Existing Account Information (Needed for changes to existing account information)

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When requesting a change to your existing direct deposit account information, you must complete Section 4 with the existing account information for verification purposes. This measure will help the paying state agency verify accuracy of the requested change.

Any change to banking information begins a prenote test period. See explanation in Section 3, above.

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### Section 5: International Payments Verification

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Check "YES" or "NO" to indicate if direct deposit payments to the account information designated in Section 3 of this form will be forwarded to a financial institution outside the United States. If "YES," also complete the ACH (Direct Deposit) Payment Destination Confirmation (Form 74-227).

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### Section 6: Authorization for Setup, Changes or Cancellation

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Must be completed in its entirety, and no alterations to the authorization language will be accepted.

**For State Agency Use**

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### Section 7: Cancellation by Agency

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Provide reason for cancellation request.

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### Section 8: Authorized Signature

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For state agency use only.

## Approved TREC Commission and Committee Meetings Timelines

Meeting	Date	Time calculation
Commission meetings	Second Monday of Nov, Feb, Aug First Monday of May	Traditional set schedule
Enforcement Committee	Between 45 -55 days after Commission meeting if motion for rehearing received	- per APA, have to allow time for filing and response, then action by committee has a deadline
Education Standards Advisory Committee	Second Monday of Oct., Jan., Apr., July	- 18 days for proposed rules to post in Texas register + 30 day comment period + 2 days to process materials +8 days post agenda and materials = 58 days min. after Commission meeting and 24 days min. prior to next Commission meeting for Governor's office review/posting etc. –see below- (90-82 leaves 8 day window for committee meetings)
Broker Lawyer Committee	Second Friday of Oct, Jan (not during session), Apr (not during session), July (and June after session)	- Same as above committee
Broker Responsibility Working Group	Second Wednesday Oct., Jan., April, July	-Same as above committee
Inspector Advisory Committee	Third Monday of Oct, Jan, Apr, July	-Same as above committee
Budget Committee	Between March 31st – April 10 <sup>th</sup> and June 10 <sup>th</sup> - 20 <sup>th</sup> and prior to May and Aug Commission meeting)	-Budget policy requirements
Executive Committee	As called	

Staff prepares agenda/rules/PRM for meeting	5 working days	- 24 days before Commission meeting – prepare rules and agenda following committee recommendations
Staff Agenda and Materials meeting/GC sends Chair agenda for approval	3 Wednesdays before Commission meeting	-19 days before meeting -2 days prior to sending to Governor's office
GC sends agenda and PRM to Governor's office for approval	3 Fridays before Commission meeting	-17 days before meeting -one week review requested by Governor's office
Post Agenda and Materials to Members	2 Fridays before Commission meeting	10 days prior to Commission meeting



## TREC FORM UPDATE POLICY

### TREC Commissioners

R. Scott Kesner  
Chair

Bob Leonard  
Vice Chair

T.J. Turner  
Secretary

Jason Hartgraves

Jan Fite Miller

Barbara Russell

Rayito Stephens

DeLora Wilkinson

Micheal Williams

Douglas E. Oldmixon  
Executive Director

The Texas Real Estate Commission (Commission) approved the following policies regarding new forms or changes to existing TREC forms:

- New or Changes to Existing Forms Required by a Change in State or Federal Law or a Change to TREC Rules:

The Commission recognizes that the preparation of new forms or changes to existing forms required by a change in state or federal law is an administrative function and, to implement such changes in the law, the Commission delegates authority to prepare new forms or make changes to existing forms to TREC staff.

The Commission further recognizes that the preparation of new forms or changes to existing forms required by a change to TREC Rules is likewise an administrative function. The Commission therefore adopts the following RECOMMENDED MOTION template to be used when new forms or changes to existing forms are required by a change to TREC Rules:

### RECOMMENDED MOTION TEMPLATE:

MOVED that staff is authorized, on behalf of the Commission, to submit for adoption amendments to 22 TAC §\_\_\_\_\_, along with any technical or non-substantive changes as required for adoption AND staff is directed to prepare any new forms or make changes to existing forms as needed to implement [this / these new rule(s) / amendments].

- Technical or Non-substantive Form Changes:

The Commission likewise delegates authority to make any technical or non-substantive changes to existing forms, including but not limited to formatting or style changes or error corrections, to TREC staff.

The creation of new forms or substantive changes to existing forms that do not fall under the delegations made in this policy must be approved by the Commission before implementation.

This policy regarding new forms or changes to existing TREC forms is effective as of May 6, 2019, and remains in effect unless and until changed or revoked by the Commission.

Approved by the Commission and signed this 6<sup>th</sup> day of May, 2019.

  
\_\_\_\_\_  
R. Scott Kesner, Chair  
Texas Real Estate Commission



# 2021 Budget & Investment Policy

Approved by Motion on 08/10/2020



### **Texas Real Estate Commission Budget and Financial Administration Policy**

*The financial integrity of the Commission is of vital importance. Written financial policies assist the Commission and staff in the financial management of the agency, save time and energy when discussing financial matters, engender public confidence, and provide continuity over time as Commission and staff changes occur.*

#### **Section 1.01 Fiscal Year.**

The fiscal year of the Texas Real Estate Commission (TREC) shall begin on the first day of September and end on the last day of August.

#### **Section 1.02 Public Record.**

The budget shall be a public record and copies shall be made available to the public upon request

#### **Section 1.03 Budget Committee.**

The Chair appoints the Budget Committee and its Chair in February of each year. The Budget Committee is composed of a chair and two other Commissioners. By interpreting and detailing the Commission's policies, the Budget Committee provides direction to agency staff.

#### **Section 1.04 Annual Budget.**

(a) **Content:** The budget shall provide a complete financial plan of the TREC Operating Fund-3055, and activities and, except as required by law, shall be in a form that the Director of Finance deems desirable or that the Commission may require. An Executive Summary explaining the budget both in fiscal terms and in terms of agency programming shall be submitted with the budget. The summary shall (1) outline the proposed financial policies of the agency for the coming fiscal year, (2) describe the important features of the budget, (3) indicate any major changes from the current year in financial policies, expenditures, and revenues, with reasons for such changes, (4) include other material as the director deems necessary or desirable.

The budget shall begin with a clear general summary of its contents and shall show in detail all estimated income, based on the proposed fees and all proposed expenditures for the coming fiscal year. The proposed budget expenditures shall not exceed the total of estimated income and any fund balances available from prior years. The adopted budget must include an unencumbered general fund balance in reserves that is at least sufficient to cover six months of the agency's budgeted general fund operation and maintenance expenses. The budget shall be arranged to show five year comparative figures for the current fiscal year's actual and estimated income and expenditures, the two immediate preceding fiscal year's actual income and expenditures, the estimate of income and expenditures for the budgeted year, and the fiscal year to follow. It shall include in separate sections:

1. An itemized, estimate of the expenses.
2. Reasons for proposed increases or decreases in specific expenditures, compared with the current fiscal year.
3. A statement of the total probable income of the agency from fees for the period covered by the estimate.
4. Fee collections for the preceding five years.

5. All anticipated revenue from other sources Anticipated net surplus or deficit for the coming fiscal year.
6. Other information required by the Commission.

**(b) Submission:** Not later than March 31, staff provides the Budget Committee with a first draft budget. The Budget Committee then provides recommendations to staff. At the May Commission meeting, the Budget Committee Chair presents the Committee's report on its activities. Staff prepares a second budget draft with updated revenue and expenditure for presentation at the August meeting, incorporating recommendations and guidance from the Budget Committee. The Budget Committee will meet as needed and will approve the final budget draft to be presented at the August meeting. The Budget Chair presents the Committee's report and proposed budget to the Commission at the August Commission meeting before review and possible approval of the budget by the full Commission.

**(c) Adoption:** Adoption of the budget shall require an affirmative vote of at least a majority of all members of the Commission. Adoption of the budget shall constitute appropriations of the amounts specified as expenditures from the funds indicated. The budget shall be adopted not later than August 31 of each year; but in the event the budget is not adopted, the budget for personnel and essential operating supplies and services made in the previous fiscal year shall be extended until the new budget is adopted. The Executive Director, along with agency staff, implements the directives and policies of the Commission outlined in the approved budget. The Commission may direct specific actions, amendments, or variances to the budget at any time by majority vote.

### **Section 1.05 Amendments After Adoption.**

**(a) Supplemental appropriations:** If, during the fiscal year, the director certifies that there are revenues available for appropriation in excess of those estimated in the budget, the Commission may make supplemental appropriations for the year up to the amount of the excess.

**(b) Reduction of appropriations:** If at any time during the fiscal year it appears probable to the director that the revenues available will be insufficient to meet the amount appropriated, she shall report to the commission without delay, indicating the estimated amount of the deficit, any remedial action taken, and recommendations for any other steps to be taken. The commission shall take further action as it deems necessary to prevent or minimize any deficit and, for that purpose, it may reduce one or more appropriations.

**(c) Transfer of appropriations:** At any time during the fiscal year the director may recommend to the commission to transfer part or all of any unencumbered appropriation balance among current expense categories as long as there is a bona-fide need and the overall appropriated budget is not exceeded. The commission shall review the recommendation and approve/reject the recommendation by majority vote.

**(d) Effective date:** Supplemental appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption of the commission by vote.

**(e) Budget Revision:** A revised budget shall be presented to the commission for approval after the adoption of any amendments.

### **Section 1.06. Administration of Budget.**

**(a) Payments and obligations prohibited:** No payment shall be made or obligation incurred against any allotment or appropriation unless the director or her designee certifies there is a sufficient unencumbered balance in the allotment or appropriation and that sufficient funds are or will be available to cover the claim or meet the obligation when it becomes due and payable. Making unauthorized payments or obligations may be cause for removal of any employee who knowingly authorized or made such a payment or incurred such an obligation. Furthermore, the person making the payment shall also be liable to the agency for any amount illegally paid.

**(b) Financial reports:** The director of finance shall submit a status report each month that describes the financial condition of the agency by budget item, and shows budgeted and actual income and expenditures for the preceding month and the fiscal year to date. The staff also provides a status report to the Commission at its regular quarterly meetings. The status reports include aggregate expenses and revenue within budget categories with

explanations noted for variances between actual and budgeted greater than 10 percent over targeted expenditure in any category. The financial records of the agency will be maintained on a basis consistent with generally accepted accounting procedures.

(c) **Budget Variances.** As noted above, budget variances up to 10 percent in any category are noted in status reports. Any expenditure that would create a variance greater than 10 percent in a budget category must be approved by the Commission before the variance amount is expended. Such approval, however, is not required in instances in which the 10 percent variance is less than \$20,000. Additionally, where a variance greater than 10 percent is necessary to address an emergent agency need in which approval by the full Commission is not practical, approval may be sought in writing by the Budget Committee chair.

(d) **Budget Control.** The Commission shall develop appropriate controls and procedures and insure that established control limits are not exceeded.

(e) **Revenue.** Generally, projected revenues available to balance a fiscal year budget will be determined solely from the operating fees generated as stated in the agency fee schedule as outlined by Texas Occupation Code Sections 1101 and 1102.

(f) **Revenue Estimates.** The Agency will submit revenue estimates annually to the Commission. Revenues should be estimated using a conservative approach to avoid any budget shortfalls during the fiscal year.

(g) **Fees.** The Agency is self-supporting; therefore, fees must be established at a level ensuring, at a minimum, the recovery of the full cost of operating the agency. The agency will review all fees and recommend changes based on factors such as the impact of inflation, indirect cost adjustments, and any other related expenses that impact the cost of providing services.

(h) **Collections.** The agency will monitor revenue collection throughout the fiscal year. When revenue is less than estimated, the Director of Finance shall initiate action consistent with prudent financial management and notify the Executive Director and Commission of such action.

(i) **Unexpended Funds/Excess Revenue.** Unobligated and unexpended funds in the budget and any revenue collected in excess of budgeted expenditures will be retained in the interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company (TTSTC) for future use as determined by the Commission.

(j) **Limitation on Use of Funds.** The agency may only expend funds for items set out in the expenditure classifications of the Comptroller's Manual of Accounts.

(k) **Reimbursements.** Any reimbursement or refund of expenditures received by the agency for an authorized program or service will be credited back to the budget items or accounts from which the expenditures were originally made.

(l) **Position Classification Plan.** Expenditures for the salaries of staff will be governed by Chapter 654, Government Code, Chapter 659, Government Code and Article IX, Section 2.01 of the Appropriations Act for the current biennium.

(m) **Salary Limits.** Staff will be paid salaries at rates within the applicable salary schedules provided in Article IX of the Appropriations Act for the current biennium.

(n) **Travel Expenses.** All requests for payment or reimbursement of travel related expenses will comply with Chapter 660, Government Code, Article IX of the Appropriations Act for the current biennium, and the Comptroller's Rules.

(o) **Reimbursement Rate.** Commission Members and staff traveling on official state business will be reimbursed at rates that will not exceed the rates announced by the Comptroller for other State employees.

(p) **Retired Employees.** The Commission's annual budget shall provide sufficient funding to pay the Commission's share of retired employee health care cost.

(q) **Gifts or Grants.** Any gifts or grants approved by the Commission will be separate authority to expend funds for the purpose indicated, and will be accounted for separately from the budget.

#### **Section 1.07 Reserves.**

(a) **Objective.** The Commission recognizes that maintaining sufficient reserves will ensure adequate funding for the needs and obligations of the agency including:

- Sustaining the agency through an unexpected financial crisis.
- Financing contingencies or emergencies as defined by the Commission.
- Purchasing equipment and repairing and maintaining facilities to assist staff in meeting the mission of the agency.
- Funding required lump sum payments of accrued vacation and sick leave

(b) **Operations and Contingencies Reserve.** The Commission will accumulate and maintain an Operations and Contingencies Reserve totaling not less than six months of current budget's estimated operating expenses, excluding all "pass through" expense items. Once the target Operations & Contingencies Reserve is achieved, any other specifically approved reserves are funded at specific levels approved by the Commission, as needed to provide for planned projects. Staff must provide a three-year expenditure plan for large projects to better estimate total project expense.

(c) **Adjustment to Reserve Level.** The Operations and Contingency reserve account level will be set each year in conjunction with the preparation of the Commission's annual budget. The Commission must minimize excess fund balances. When year-end fund balances exceed the total of Operations & Contingencies Reserve by more than 20 percent, staff must offer recommendations for sustainable fee reductions.

In the event that the reserve account fall below the prescribed level, the Commission will propose strategies to replenish the account balance over a period not to exceed two years. The strategies for replenishing the account may include reducing expenses, increasing fees, or any combination of those strategies.

## **Texas Real Estate Commission Investment Policy**

### **Section 2.00 Policy Statement.**

It is the policy of the Texas Real Estate Commission that the administration of its funds and the investment of those funds shall be handled in a manner which will provide the maximum security of principal invested through limitations and diversification while meeting the daily cash flow needs of the Commission and conforming to all applicable state statutes governing the investment of public funds. The receipt of a market rate of return will be secondary to the requirements for safety and liquidity. It is the intent of the Commission to be in complete compliance with the Texas Public Funds Investment Act, Chapter 2256 of the Texas Government Code, as amended.

### **Section 2.01 Scope.**

The Commission will endeavor to earn a return on funds invested at the optimum investment return after taking into account the primary goals of preservation of principal and liquidity of funds invested. A separate portfolio of investments may be created for each investment strategy and each portfolio will be managed in a manner consistent with the policy and applicable strategy objectives described below. This investment policy applies to all financial assets and funds held by the Commission and include:

- Real Estate Recovery Trust Account;
- Real Estate Inspection Recovery Fund; and
- Current Operations and Contingencies Reserve.

### **Section 2.02 Prudence.**

Investments shall be made with judgment and care under circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. The standard of prudence to be used by Investment Officers shall be the “prudent person” standard and shall be applied in the context of managing an overall portfolio. Investment Officers acting in accordance with written procedures, this Investment Policy, any applicable investment strategies, and exercising due diligence, shall be relieved of personal responsibility for an individual instrument’s credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments. In determining whether an Investment Officer has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration the investment of all funds over which the Officer had responsibility rather than consideration as to the prudence of a single investment and whether the investment decision was consistent with this Investment Policy, the applicable Investment Strategy and written investment procedures.

## **Section 2.03 Objectives.**

The Real Estate Recovery Trust Account, Real Estate Inspection Recovery Fund, and Reserve funds shall be managed and invested with three primary objectives, listed in order of their priority: safety, liquidity, and yield. These objectives encompass:

### Preservation and Safety of Principal

Safety of principal is the foremost objective of the Commission. Investments of the Commission shall be undertaken in a manner that seeks to insure the preservation of capital in the overall portfolio. To obtain this goal, diversification is required in the portfolio's composition in order to minimize potential losses on the portfolio.

### Liquidity

The Commission's investment portfolio will remain sufficiently liquid to enable it to meet all operating requirements which might be reasonably anticipated.

### Yield

The Commission's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, commensurate with the Commission's investment risk constraints and the cash flow characteristics of the portfolio. It is recognized that in diversifying the portfolio, occasional measured losses due to market volatility are inevitable, and must be considered within the context of the overall portfolio's investment return, provided that adequate diversification has been implemented.

## **Section 2.04 Delegation of Authority.**

Authority to manage the investment program is derived from the Act, specifically, Section 2256.005(f)-(h). Management responsibility for the investment program is hereby delegated to the Director of Finance, Accounting Manager, and Senior Budget Analyst of the Texas Real Estate Commission, who for purposes of this Investment Policy, shall be referred to herein as the Investment Officers. The Investment Officers will be responsible for all transactions undertaken under this Investment Policy.

## **Section 2.05 Public Funds Investment Act Training.**

In order to ensure qualified and capable investment management, each member of the Commission and the Investment Officers shall attend at least one training session relating to the person's responsibilities under the Act within six months after taking office or assuming duties. The Investment Officers shall attend an investment training session not less than once each state fiscal biennium and may receive training from any independent source approved by the Commission. Training to be received by the Investment Officers must include education in investment controls, security risks, strategy risks, market risks, diversification of investment portfolio assets, and compliance with the Act.

## **Section 2.06 Public Funds Investment Act Reporting.**

The Investment Officers shall prepare and submit to each member of the Commission and the Executive Director an investment report no less frequently than quarterly. In addition to the information required by the Act, the report shall contain sufficient information to provide for a comprehensive review of investment activity, current investment instruments and performance for that period, and shall include, at a minimum:

*(for each individual investment)*

- the book value at the end of the reporting period;
- the market value at the end of the reporting period;
- the maturity date of each investment,
- a statement of intent if some or all securities are intended to be held to maturity;
- any variations from the Texas PFIA, this investment policy or the investment strategy of the Commission; and
- any recommended amendments to current specific investment strategies.

The investment report shall be prepared jointly and signed by all Investment Officers.

At least once every two years, the Commission shall perform a compliance audit of management controls on investments and adherence to the established investment policies as set forth in this document.

### **Section 2.07 Safekeeping.**

All securities purchased by the Commission under this Investment Policy shall be designated as assets of the Commission, shall be conducted on a delivery-versus-payment (DVP) basis, and shall be protected through the use of a third-party custodian/safekeeping agent. As required by law, cash is held in the Texas Treasury Safekeeping Trust Company (Trust Company).

### **Section 2.08 Investment Strategy.**

The investment strategy for the funds is to maintain a laddered approach to portfolio management. Having a relatively even distribution of securities maturing each year helps eliminate extreme interest rate exposure. Investments will be set to mature on a quarterly basis when possible. The maximum allowable stated maturity of investments is 10 years

As required by law, cash is held in the Texas Treasury Safekeeping Trust Company (Trust Company). Cash is fully invested at all times and reinvested by the Trust Company in those investments authorized for state funds. Interest is compounded daily with earnings credited daily.

### **Section 2.09 Authorized Investments.**

Authorized investments include primarily, Direct Obligations of the United States Treasury (i.e., Treasury Bills, Notes, and bonds). Occasionally, Indirect Obligations of the Treasury or Agency Securities may be considered to be an appropriate investment (example, Federal National Mortgage Association - FNMA). This is considered on a case-by-case basis. All investment transactions must be settled on a delivery versus payment basis. The securities are held by the Trust Company as trustee. The Trust Company monitors the market price of investments and updates them daily. The Trust Company invests cash as described by Sections 404.024 and 404.106, Texas Government Code using prudent investment standards.

### **Section 2.10 Account Balances and Expenses.**

#### (1) Recovery Fund Account Balances

The minimum and maximum balances required for each Recovery Fund Account, as well as the sources and methods for adding funds to, and the procedures for any remittance of funds from, each Account are established by law in Chapters 1101 and 1102 of the Occupations Code.

#### (2) Current Operations and Contingency Reserves Account Balances

The Commission will accumulate and maintain an Operations and Contingencies Reserve totaling not less than six months of current budget's estimated operating expenses, excluding all "pass through" expense items. These Reserves will be held in highly liquid overnight repurchase agreement (Repo). This type of repurchase agreement mature nightly and the instrument turns back into cash the very next day. Once the target Operations & Contingencies Reserve is achieved, any other specifically approved reserves are funded at specific levels approved by the Commission, as needed to provide for planned projects.



## REAL ESTATE COMMISSION

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### APPRAISER LICENSING & CERTIFICATION BOARD

## MEMORANDUM

**TO:** TREC/TALCB Staff

**FROM:** Douglas E. Oldmixon

**RE:** Confidentiality of Social Security Number (SSN)

**DATE:** July 7, 1999 – reviewed and endorsed 11/2/09

The 76<sup>th</sup> Legislature passed HB 692, effective May 29, 1999. This bill makes SSN for license applicants or holders confidential. Thus, all SSN for current and past license holders, registrants and pending applicants may not be released to the public except as provided below:

If the agency is sending out a copy of a public record which has the SSN on it, the number must be marked through on the copy so that it is not legible.

If a member of the public calls to confirm a particular license holder's SSN, it is acceptable to confirm the number as recited by the caller, but staff may not provide the number itself or correct a mistake made by the caller.

If a license holder or applicant desires the agency to send a document containing that person's SSN to someone else, staff may do so only if written, signed consent from the license holder or applicant is received. For this purposed, a faxed consent is acceptable.



## REAL ESTATE COMMISSION

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### APPRAISER LICENSING & CERTIFICATION BOARD

## MEMORANDUM

**TO:** TREC/TALCB Staff

**FROM:** Douglas E. Oldmixon

**RE:** State Bar CE Courses for which Real Estate MCE Elective Credit is Given

**DATE:** March 1, 2010

Section 7A(a) of the Texas Real Estate License Act states that “Real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit ... shall automatically be approved as mandatory continuing education courses under this Act.”

The Ethics Commission decision prohibiting Commissioners from teaching core and continuing education courses focused on the Commission’s approval process- namely that providers and courses must be approved by the Commission. No such approval is needed or given for State Bar courses- they are “automatically” approved for licensee MCE. Therefore, neither Commissioners nor TREC staff shall be prohibited from teaching or otherwise taking part in State Bar-approved real estate related courses for which continuing education credit is available to real estate licenses.



## PER DIEM & TRAVEL REIMBURSEMENT ELECTION

For Commissioners and Board Members



Commission/Board Member Printed Name:		
<b>Regular Commission/Board Meetings</b>		
<b>Per Diem Election (Commission/Board Meetings)</b>	<input type="checkbox"/> <b>YES</b> , I would like to receive \$75 per diem for attendance at full Commission/Board meetings. <i>(automatically paid by agency)</i>	<input type="checkbox"/> <b>NO</b> , I would <u>not</u> like to receive \$75 per diem for attendance at full Commission/Board meetings.
<b>Travel Expense Election (Commission/Board Meetings)</b>	<input type="checkbox"/> <b>YES</b> , I would like to be reimbursed for travel expenses incurred at full Commission/Board meetings. <i>(Commission/Board Member must submit documentation each time.)<sup>1</sup></i>	<input type="checkbox"/> <b>NO</b> , I would not like to be reimbursed for travel expenses incurred at full Commission/Board meetings.
<b>Qualifying Committee Meetings</b>		
<b>Per Diem Election (Qualifying Committee Meetings)</b>	<input type="checkbox"/> <b>YES</b> , I would like to receive \$75 per diem for attendance at qualifying Committee meetings. <i>(automatically paid by agency)</i>	<input type="checkbox"/> <b>NO</b> , I would <u>not</u> like to receive \$75 per diem for attendance at qualifying Committee meetings.
<b>Travel Expense Election (Qualifying Committee Meetings)</b>	<input type="checkbox"/> <b>YES</b> , I would like to be reimbursed for travel expenses incurred at qualifying Committee meetings. <i>(Commission/Board Member must submit documentation each time.)<sup>1</sup></i>	<input type="checkbox"/> <b>NO</b> , I would <u>not</u> like to receive \$75 per diem for attendance at qualifying Committee meetings.
<i>Elections may be updated at any time by simply executing a new form to replace the one on file.</i>		
Signature:		Date:
Commissioner / Board Member		

<sup>1</sup> All travel expenses are reimbursed only as allowed under state and Comptroller rules. Travel reimbursement forms and supporting documentation (receipts) must be submitted before reimbursement can be made.



## TEXAS REAL ESTATE COMMISSION INTERNAL AUDIT CHARTER

This charter identifies the purpose, authority, responsibilities, professional requirements, and quality assurance of the Texas Real Estate Commission Internal Audit function in accordance with the Texas Internal Auditing Act and the Institute of Internal Auditors (IIA).

### ***PURPOSE***

The Internal Audit function (Internal Audit) is outsourced to an independent contractor and serves as an independent and objective assurance and consulting activity by providing a philosophy of adding value to improve the operations of the Texas Real Estate Commission (agency). The purpose of Internal Audit is to provide independent, objective assurance and consulting/advisory services designed to add value and improve the agency's operations. Internal audit is also tasked with providing assistance to agency administrators and governing boards by furnishing independent analyses, appraisals, and recommendations about the adequacy and effectiveness of a state agency's systems of internal control policies and procedures and the quality of performance in carrying out assigned responsibilities. Internal Audit helps the agency accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, internal control, and governance processes.

Assurance services are defined as examinations of evidence for the purpose of providing an independent assessment of risk management, control, or governance processes for an organization. Examples may include financial audit, compliance audit, economy and efficiency audit, effectiveness audit, and investigation engagements. Consulting services are advisory and related client service activities, the nature and scope of which are agreed upon with the client and which are intended to add value and improve an organization's operations. Examples include counsel, advice, facilitation, and training.

The scope of work of Internal Audit is to determine whether the agency's network of risk management, control, and governance processes, as designed and represented by management, is adequate and functioning in a manner to ensure:

- Risks are appropriately identified and managed.
- Significant financial, managerial, and operating information is accurate, reliable, and timely.
- Employee actions are in compliance with policies, standards, procedures, and applicable laws and regulations.
- Resources are acquired economically, used efficiently, and adequately protected.
- Programs, plans, and objectives are monitored and achieved in line with the agency mission.
- Quality and continuous improvement are fostered in the agency's control process.
- Significant legislative or regulatory issues impacting the agency are recognized and addressed appropriately.
- Other goals and objectives of economy, efficiency, effectiveness, compliance, and safekeeping are achieved.

Internal Audit assists the Commissioners and agency management by furnishing independent analyses, appraisals, and recommendations about the adequacy and effectiveness of the agency's systems of internal control policies and procedures and the quality of performance in carrying out assigned responsibilities.

## ***ROLE***

The Texas Real Estate Commission's internal audit activity is established by the Commissioners. The internal audit activity's responsibilities are defined by the Commissioners as part of their oversight role.

## ***AUTHORITY***

### **Access**

Internal Audit, in the performance of its work and with stringent accountabilities of safekeeping and confidentiality, will be granted full and free access to all activities, records, property, and personnel of the agency, and of its contractors and subcontractors. In addition, Internal Audit is authorized to:

- Have full and free access to the Commissioners.
- Allocate resources, set frequencies, select subjects, determine scope of work, and apply the techniques required to accomplish audit objectives in accordance with the approved audit plan.
- Obtain the necessary assistance of personnel in the agency, as well as other specialized services from within or outside the agency.
- Obtain timely reports from management on actions proposed and taken pertaining to any audit findings and recommendations.

### **Independence, Objectivity and Reporting Relationship**

Objectivity and independence are essential to Internal Audit in the proper fulfillment of its duties and is mandated by the Texas Internal Auditing Act and professional standards as defined later in this document.

To ensure independence, comprehensive audit coverage, adequate consideration of audit findings, and appropriate management action on audit recommendations, Internal Audit reports directly to the Commissioners. The Commissioners shall ensure the independence of the Internal Audit function. To facilitate daily operations, Internal Audit will report administratively to the Executive Director (or his designee).

Performance of management responsibilities by Internal Audit may compromise its objectivity. This, however, does not preclude Internal Audit from serving in an advisory capacity in the implementation of corrective action or the establishment of new activities, policies, or procedures. Internal Audit is a function that has no authority over activities which it reviews, and the performance of these reviews does not relieve management of any assigned responsibilities.

Internal Audit is not authorized to:

- Perform any operational duties for the agency or its contractors.
- Initiate or approve accounting transactions external to Internal Audit.
- Direct the activities of any agency employee not employed by Internal Audit, except to the extent such employees have been appropriately assigned to assist in the performance of internal audit activities.

## ***RESPONSIBILITIES***

The following outlines the respective responsibilities of the Commissioners, the Internal Audit contractor, and agency management as it relates to implementing an effective internal audit function for the agency.

### **Responsibilities of the Commissioners**

The Commissioners ensure the independence of the internal audit function. The Commissioners may designate a Commissioner and/or other appropriate individuals to serve as an Audit Liaison. The Commissioners may delegate to the Audit Liaison certain responsibilities of the Commissioners. The Commissioners shall:

- Approve the internal audit charter.
- Appoint, remove, oversee, evaluate and take any appropriate contractual action towards the internal audit contractor.
- Approve the internal audit budget and resource plan.
- Periodically review the resources dedicated to the internal audit function and determine whether adequate resources exist to ensure that risks identified in the annual risk assessment are adequately covered within a reasonable time frame.
- Approve the risk-based annual internal audit plan, including any changes or deviations.
- Receive communications from the internal audit contractor on the activity's performance relative to the annual plan and other matters.
- Receive and review all internal audit reports.
- Make appropriate inquiries of management and Internal Audit to determine whether there is inappropriate scope or resource limitations.

### **Responsibilities of Internal Audit Contractor**

Internal Audit is outsourced to an independent contractor. The contractor is responsible for assessing the adequacy and effectiveness of the various functions and control systems within the agency, advising the Commissioners and agency management concerning the condition of those functions and systems, and developing recommendations to enhance economy, efficiency, effectiveness, and excellence. In fulfilling these responsibilities, Internal Audit shall:

- Communicate and interact directly with the Commissioners, including in executive sessions and between Commissioner meetings as appropriate.
- Develop a flexible annual internal audit plan using an appropriate risk-based methodology and submit that plan to the Commissioners for review and approval.
- Implement the approved annual internal audit plan including, as appropriate, special assignments, projects, or reviews requested by agency management or the Commissioners.
- Submit any changes or deviations to the annual internal audit plan to the Commissioners for review and approval.
- Provide periodic updates to the Commissioners regarding the activities and responsibilities of Internal Audit.
- Conduct all audit functions as required by Texas Government Code 2102.
- Appraise the effectiveness, reliability, and integrity of the agency's accounting, administrative, electronic data processing, and other major systems and controls, and ensure that all major systems and controls are reviewed on a periodic basis.
- Evaluate risk exposures relating to the agency's governance, operations, and information systems regarding the reliability and integrity of financial and operational information, effectiveness and efficiency of operations, safeguarding of assets, and compliance with laws, regulations, and other

requirements.

- 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.
- Seek and utilize the available resources of the agency, as appropriate, including legal counsel.
- Conduct or assist in, as appropriate, the investigation of suspected illegal or fraudulent activities within the agency and report results as appropriate.
- Perform special assignments, projects, or reviews as requested by the Commissioners and, as appropriate, other such special assignments, projects, or reviews requested by agency management. Such assignments and reviews must not impair Internal Audit's independence.
- Determine that corrective action was taken on reported audit findings and is achieving the desired results, or that senior management has assumed the risk of not taking corrective action. Internal Audit shall assess the adequacy, effectiveness, and timeliness of actions taken by management to resolve reported audit findings.
- Perform consulting/advisory services to the extent they do not, nor will not, represent a conflict of interest, compromise or impair independence or objectivity, or detract from Internal Audit's obligations to the Commissioners and the agency. Examples include, but are not limited to:
  - evaluating and assessing significant new or changing functions, services, processes, operations, and control processes concurrent with their development, implementation, and/or expansion,
  - participating in manual and automated system design as an advisor on risk and management controls, and
  - appraising existing allocation of resources by the agency.
- Keep the Commissioners informed of emerging trends and successful practices in internal auditing.
- Consider both internal and external audit and review efforts to ensure optimal audit coverage at a reasonable overall cost.
- Assist the agency with external auditors or review groups for any audit or review conducted of the agency as requested. Participate in status meetings and receive copies of all communications and reports.

#### **Responsibilities of Agency Management**

Management of the agency shall:

- Cooperate with and provide Internal Audit full and free access to all activities, records, property, and personnel of the agency and of its contractors and subcontractors.
- Timely inform Internal Audit of any reviews, evaluations, assessments, audits, or inspections conducted by local, state, or federal entities, or any external consultants, contractors, or auditors.
- Respond to draft internal audit reports within the time specified, indicating management's agreement or disagreement with the issues and recommendations; management's corrective actions proposed or taken, and dates for accomplishing those corrective actions. If there is any disagreement with the issues or recommendations, management will provide reasons. Alternative actions which correct issues are acceptable. Management accepts the risk of not taking appropriate corrective action on reported issues.
- Establish, administer, and assess the system of risk management and control processes designed to ensure the achievement of agency objectives and the following conditions exist:
  - Financial and operational information is reliable and possesses integrity.
  - Operations are performed efficiently and achieve effective results.
  - Assets are safeguarded.
  - Actions and decisions of the agency are in compliance with laws, regulations, and other

requirements.

- Report to Internal Audit instances in which management has reasonable cause to believe that money received from the state by the agency or by a client or contractor of the agency may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the agency.

## ***INTERNAL AUDIT PLAN***

Internal Audit will prepare an annual risk-based audit plan. The annual audit plan will contain proposed audits for the upcoming three year period and be submitted to the Commissioners for review and approval. The internal audit plan will consist of a detailed work schedule as well as budget and resource requirements for the next fiscal/calendar year. Additionally, Internal Audit will communicate the impact of resource limitations and significant interim changes to senior management and the Commissioners.

The internal audit plan will be developed based on a prioritization of the audit universe using a risk-based methodology, including input of senior management and the Commissioners. Internal Audit will review and adjust the plan, as necessary, in response to changes in the agency's business, risks, operations, programs, systems, and controls. Any significant deviation from the approved internal audit plan will be communicated to senior management and the Commissioners through periodic activity reports.

The approved annual audit plan will be provided to required regulatory agencies and posted on the Texas Real Estate Commission's web site.

## ***REPORTING***

A written report will be prepared and issued by Internal Audit following the conclusion of each internal audit engagement and will be distributed as appropriate. Internal audit results will also be communicated to the Commissioners and regulatory agencies as required.

Internal Audit will issue an annual audit report that provides a summary of Internal Audit activities, summary of findings, status of management's implementation of corrective action plans, any changes or deviations from that annual audit plan and the proposed activities for the following year. The annual report will be drafted in accordance with the State Auditor's Office (SAO) and the Texas Internal Auditing Act requirements. Accordingly, the annual audit report will be approved by the Commissioners and provided to the required regulatory agencies and posted on the Texas Real Estate Commission's web site.

Reporting will also include significant risk exposures and control issues, including fraud risks, governance issues, and other matters needed or requested by senior management and the Commissioners.

## ***PROFESSIONALISM***

Internal Audit will govern itself by adherence to The Institute of Internal Auditor's Definition of Internal Auditing and shall conform to *The Professional Practices Framework* as promulgated by the IIA which includes *The International Standards for the Professional Practice of Internal Auditing* and the *Code of Ethics*, and to generally accepted government auditing standards. In addition, Internal Audit shall conform to requirements found under the Texas Internal Auditing Act (Chapter 2102, Government Code). Internal Audit shall also comply with all policies and procedures of the Texas Real Estate Commission.

The Institute of Internal Auditors' Practice Advisories, Practice Guides, and Position Papers will also be adhered to as applicable to guide operations.

All professional staff assigned to perform Internal Audit activities shall maintain technical competence by attending continuing professional education as required by the governing boards which regulate the professional designations of Certified Internal Auditor and Certified Public Accountant, as appropriate.

### ***QUALITY ASSURANCE***

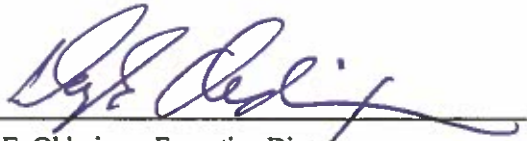
Internal Audit shall maintain an effective quality assurance program that includes all aspects of the internal audit function, including supervision, training, internal reviews, and periodic comprehensive external peer reviews to ensure compliance with the Texas Internal Auditing Act and professional standards. The program will include an evaluation of the internal audit activity's conformance with the Definition of Internal Auditing and the *Standards* and an evaluation of whether Internal Audit staff apply the Code of Ethics. The program also assesses the efficiency and effectiveness of the internal audit function and identifies opportunities for improvement.

The Internal Audit contractor will communicate to senior management and the Commissioners on the internal audit activity's quality assurance and improvement program, including results of ongoing internal assessments and external assessments.

The Internal Audit contractor shall maintain a professional audit staff with sufficient knowledge, skills, experience, and professional certifications, or supplement with external resources, to meet the requirements of this charter.



Odysseus Lanier, McConnell & Jones LLP



Douglas E. Oldmixon, Executive Director

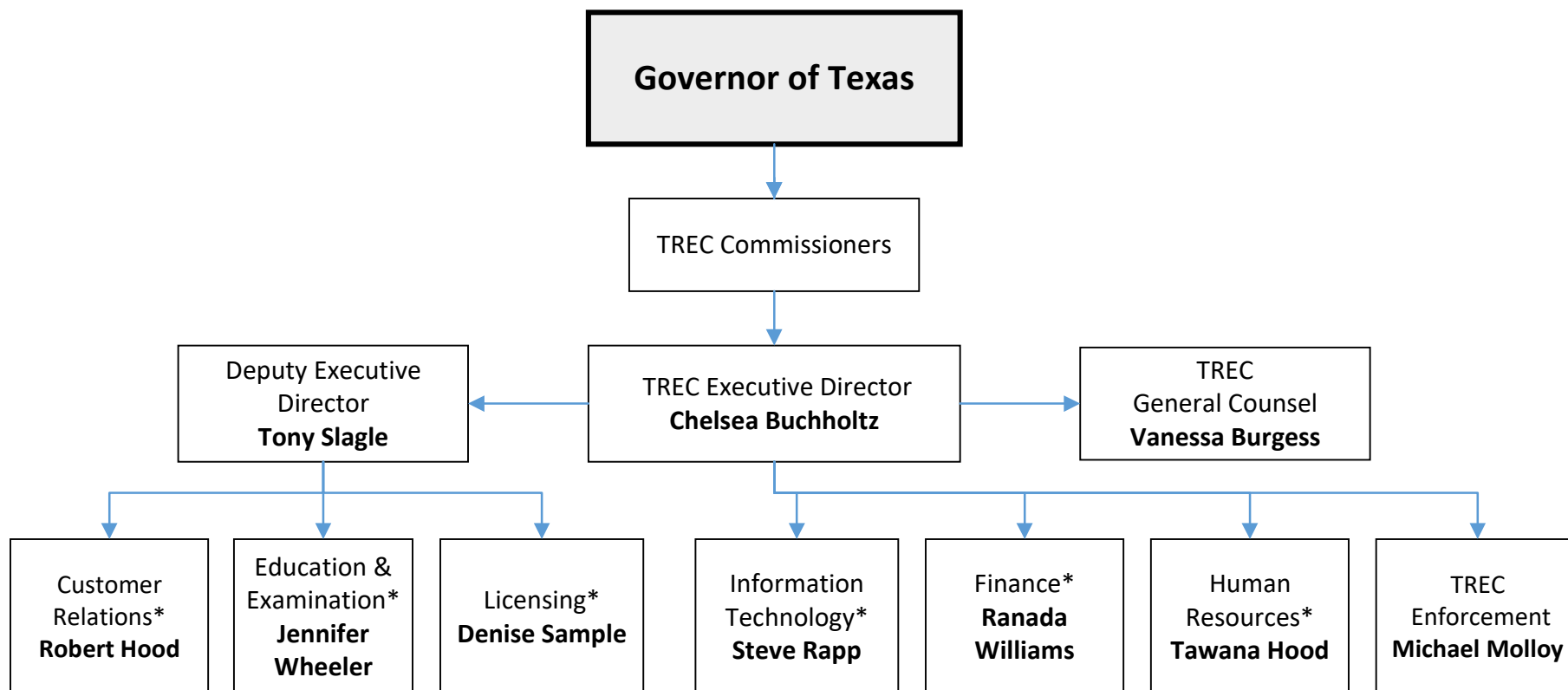
This Charter was approved by the Texas Real Estate Commissioners on February 13, 2017.



Avis Wukasch, Chair

# TREC Organizational Chart

October 2020



Divisions noted with an \* denote a shared resource with TALCB