



**RULES OF
THE
TEXAS REAL ESTATE COMMISSION**

**As Revised and in Effect on
January 1, 2013**

Texas Real Estate Commission
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NOTES

2013

This publication contains the Commission's Rules in effect on January 1, 2012.

The rules adopted by the Texas Real Estate Commission are located in Title 22 of the Texas Administrative Code. Each rule is identified by a section number in the Code (TAC Section). The rules are also divided into chapters relating to different subjects. For example, Chapter 535 relates to the Provisions of the Real Estate License Act. Lengthy rules may be divided below the subsection level using the following structure:

§ (section)

(a) subsection

(1) paragraph

(A) subparagraph

(i) clause

(I) subclause

For convenience, rules are generally cited to the section level. For example, Subclause II, Clause iii, Subparagraph C, Paragraph 6, Subsection (bb) of §535.71, which relates to regulations for examinations by computer of approved MCE courses, may be cited as 22 TAC §535.71(bb)(6)(C)(iii)(II).

Unless noted otherwise, the rules were first effective January 1, 1976. References are provided to the statutory provision the rule interprets or implements. Unless a different source is indicated, references are to Chapters 1101 and 1102, Texas Occupations Code.

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RULES OF THE TEXAS REAL ESTATE COMMISSION

CHAPTER 531 CANONS OF PROFESSIONAL ETHICS AND CONDUCT

§531.1. Fidelity. *[Adopted January 1, 1976; amended February 23, 1998]* A real estate broker or salesperson, while acting as an agent for another, is a fiduciary. Special obligations are imposed when such fiduciary relationships are created. They demand:

(1) that the primary duty of the real estate agent is to represent the interests of the agent's client, and the agent's position, in this respect, should be clear to all parties concerned in a real estate transaction; that, however, the agent, in performing duties to the client, shall treat other parties to a transaction fairly;

(2) that the real estate agent be faithful and observant to trust placed in the agent, and be scrupulous and meticulous in performing the agent's functions;

(3) that the real estate agent place no personal interest above that of the agent's client.

§531.2. Integrity. *[Adopted January 1, 1976; amended February 23, 1998]* A real estate broker or salesperson has a special obligation to exercise integrity in the discharge of the licensee's responsibilities, including employment of prudence and caution so as to avoid misrepresentation, in any wise, by acts of commission or omission.

§531.3. Competency. *[Adopted January 1, 1976; amended February 23, 1998]* It is the obligation of a real estate agent to be knowledgeable as a real estate brokerage practitioner. The agent should:

(1) be informed on market conditions affecting the real estate business and pledged to continuing education in the intricacies involved in marketing real estate for others;

(2) be informed on national, state and local issues and developments in the real estate industry; and

(3) exercise judgment and skill in the performance of the work.

§531.18. Consumer Information Form 1-1. *[Adopted February 1, 1990; amended November 1, 1991; Ref: §1101.202(a)(2)]*

(a) The Texas Real Estate Commission adopts by reference Consumer Information Form 1-1 approved by the Texas Real Estate Commission in 1991. This document is published by and available

from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(b) Each real estate inspector or active real estate broker licensed by the Texas Real Estate Commission shall display Consumer Information Form 1-1 in a prominent location in each place of business the broker or inspector maintains.

§531.19. Discriminatory Practices. *[Adopted February 19, 1990; Ref: AG OP.JM-1093]* No real estate licensee shall inquire about, respond to or facilitate inquiries about, or make a disclosure which indicates or is intended to indicate any preference, limitation or discrimination based on the following: race, color, religion, sex, national origin, ancestry, familial status, or handicap of an owner, previous or current occupant, potential purchaser, lessor, or potential lessee of real property. For the purpose of this section, handicap includes a person who had, may have had, has, or may have AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the United States Public Health Service.

RULES OF THE TEXAS
REAL ESTATE COMMISSION
CHAPTER 533 PRACTICE AND PROCEDURE

§§533.1-.1(22)

§533.1. Definitions. *[Adopted December 30, 2007; amended September 1, 2010 and May 31, 2011]* The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

- (1) ADR--Alternative dispute resolution.
- (2) ADR Administrator--The trained coordinator in the commission office designated by the commission to coordinate and oversee the ADR procedures which may include conducting mediations. The ADR Administrator shall serve as a resource for ADR training and shall collect data concerning the effectiveness of the ADR procedures.
- (3) Administrator--The Administrator of the Texas Real Estate Commission.
- (4) ALJ--Administrative law judge employed by the State Office of Administrative Hearings.
- (5) Alternative Dispute Resolution (ADR) Procedures--Alternatives to judicial forums or administrative agency contested case proceedings for the voluntary settlement of contested matters through the facilitation of an impartial third-party.
- (6) APA--The Administrative Procedure Act (Texas Government Code, Chapter 2001).
- (7) Applicant--Any person seeking a license, certificate, registration, approval or permit from the commission.
- (8) Commission--The Texas Real Estate Commission.
- (9) Complainant--Any person who has filed a complaint with the commission against any person whose activities are subject to the jurisdiction of the commission.
- (10) Contested case or proceeding--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the commission and/or administrator after an opportunity for adjudicative hearing.
- (11) Final decision maker--The commission and/or the administrator, both of whom are authorized to render the final decision in a contested case.
- (12) Judge--Administrative law judge employed by the State Office of Administrative Hearings.
- (13) Mailing Address--The mailing address as provided to the commission by a Licensee and maintained as required by 22 TAC §535.96 and §535.217 of this title (relating to Mailing Address or Other Contact Information) or as provided to the commission by an Applicant or as shown in the commission's records for a Respondent who is not a license holder. The mailing address for a Respondent that holds an active salesperson license shall be the mailing address of the salesperson's sponsoring broker as shown in the commission's records.
- (14) License--The whole or part of any commission registration, license, certificate, approval, permit, or similar form of permission required or permitted by law.
- (15) Mediator--The commission employee or other state employee who presides over ADR proceedings regardless of which ADR method is utilized.
- (16) Party--A person admitted to participate in a case before the final decision maker.
- (17) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.
- (18) Pleading--A written document submitted by a party, or a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.
- (19) Private Mediator--A person in the mediation profession who is not a Texas State employee and who has met all the qualifications prescribed by Texas law for mediators.
- (20) Respondent--Any person, licensed or unlicensed, who has been charged with violating a law establishing a regulatory program administered by the commission or a rule or order issued by the commission.
- (21) Rule--Any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission and is filed with the Texas Register.
- (22) SOAH--State Office of Administrative Hearings.

§§533.2-3(d)

§533.2. Purpose and Scope. *[Adopted December 30, 2007]*

(a) Purpose. Unless otherwise provided by statute or by the provisions of this subchapter, this subchapter will govern the institution and final conclusion of proceedings followed in handling all adjudicative matters under the APA. Once the commission files the Request to Docket Case form with SOAH, SOAH acquires jurisdiction over a contested case, and a hearing conducted by SOAH on a contested case proceeding pending before the commission is governed by SOAH's rules of procedure. In the case of a conflict with rules in this chapter, SOAH's rules, 1 TAC Chapter 155, control after the filing of the Request to Docket Case form and until after final amendments or corrections to the proposal for decision.

(b) Scope. These rules govern the institution, conduct, and determination of adjudicative proceedings required or permitted by law, whether instituted by the commission or by the filing of an application, claim, complaint, or any other pleading. These rules shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the administrator, or the substantive rights of any person or agency.

§533.3. Filing and Notice. *[Adopted December 30, 2007; amended September 1, 2010 and May 31, 2011]*

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

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

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

(3) The Notice of Alleged Violation shall include:

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

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

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

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

(b) Not later than the 20th day after the date on which the notice is received, the Respondent may accept the determination of the commission, including the recommended penalty and/or sanction, or make a written request for a hearing on that determination.

(c) Upon receipt of a written request for hearing, the commission shall submit a Request for Docket Case form to SOAH accompanied by legible copies of all pertinent documents, including but not limited to the Notice of Hearing or other document describing the agency action giving rise to a contested case. In accordance with 1 TAC §155.53 (relating to Request to Docket Case), the commission shall request one or more of the following actions on the Request to Docket Case form:

(1) Setting of hearing;

(2) Assignment of an administrative law judge; and/or

(3) Setting of alternative dispute resolution proceeding, including but not limited to mediated settlement conference, mediation, or arbitration.

(d) The original of all pleadings and other documents requesting action or relief in a contested case, shall be filed with SOAH once it acquires jurisdiction. Pleadings, other documents, and service to SOAH shall be directed to: Docketing Division, State Office of Administrative Hearings, 300 West 15th Street, Room 504, P.O. Box 13025, Austin, Texas 78711-3025. The time and date of filing shall be determined by the file stamp affixed by SOAH. Unless otherwise ordered by the judge, only the original and no additional copies of any pleading or document shall be filed. Unless otherwise provided by law, after a proposal for decision has been issued, originals of documents requesting relief, such as exceptions to the proposal for decision or requests to reopen the hearing, shall be filed with the commission's administrator and/or commission as well as the commission's Standards and Enforcement Services Division, P.O. Box 12188, Austin, Texas 78711; 1101 Camino La Costa, Austin, Texas; or by facsimile at (512) 465-3962 if the documents contain 20 or fewer pages including exhibits. Filings may be made until 5:00 p.m. on business days. Copies shall be filed with SOAH.

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

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

§533.4. Failure to Answer, Failure to Attend Hearing and Default. *[Adopted December 30, 2007; amended September 1, 2010 and November 29, 2012]*

(a) If, within twenty days after receiving a Notice of Alleged Violation, the Respondent fails to accept the commission's determination and recommended administrative penalty and/or sanction, or fails to make a written request for a hearing on the determination, the commission shall enter a default order against the Respondent, incorporating the findings of fact and conclusions of law in the Notice of Alleged Violation, which shall be deemed admitted.

(b) After receiving a notice proposing disapproval of an application an Applicant may request a hearing in writing within twenty days of receipt of the notice or forfeit the right to a hearing unless otherwise provided by applicable law.

(c) The commission may delegate to the administrator the commission's authority to act under Texas Occupations Code §1101.704(b) and subsection (a) of this section.

(d) 1 TAC §155.501 and §155.503 (relating to Default Proceedings and Dismissal Proceedings) (SOAH rules) apply where a Respondent fails to appear on the day and time set for administrative hearing. In that case, the commission's staff may move either for dismissal of the case from SOAH's docket or for the issuance of a default proposal for decision by the judge. If the judge issues an order dismissing the case from the SOAH docket or issues a default proposal for decision, the factual allegations against the Respondent filed at SOAH shall be deemed admitted and the commission shall enter a default order against the Respondent as set out in the Notice of Hearing sent to the Respondent. No additional proof is required to be

submitted to the commission before the commission enters the final order.

§533.5. The Adjudicative Hearing Record. *[Adopted December 30, 2007]*

(a) On the written request by a party to a case or on request of the judge, a written transcript of all or part of the proceedings shall be prepared. The cost of the transcript is borne by the requesting party. This section does not preclude the parties from agreeing to share the costs associated with the preparation of a transcript. If only the judge requests a transcript, costs will be assessed to the Respondent(s) or Applicant(s), as appropriate.

(b) Any party who needs a certified language interpreter for presentation of its case shall be responsible for requesting the services of an interpreter. The requesting party shall be responsible for making arrangements with a certified language interpreter once a request is made. The cost of the certified language interpreter shall be borne by the party requiring the interpreter's services.

§533.6. Filing of Exceptions and Replies. *[Adopted December 30, 2007]*

(a) Any party of record who is adversely affected by the proposal for decision of the judge shall have the opportunity to file exceptions and a brief to the proposal for decision within 15 days after the date of service of the proposal for decision.

(b) A reply to the exceptions may be filed by the other party within 15 days of the filing of the exceptions.

(c) Exceptions and replies shall be filed with the judge with copies served on the opposing party. The proposal for decision may be amended by the judge pursuant to the exceptions, replies, or briefs submitted by the parties without again being served on the parties.

§533.7. Proposals for Decision. *[Adopted December 30, 2007; amended November 29, 2012]*

(a) Proposals for decision shall be brought before the commission for final decision. The commission shall render the final decision in a contested case and is responsible for imposing disciplinary action and/or assessing administrative penalties against Respondents who are found to have violated any of the commission's laws or rules. The commission welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the

§533.7(a)-.8(i)

commission is not required to give presumptively binding effect to the judges' recommendations and is not bound by such recommendations.

(b) The proposal for decision may be acted on by the commission after the expiration of 10 days after the filing of replies to exceptions to the proposal for decision or upon the day following the day exceptions or replies to exceptions are due if no such exceptions or replies are filed.

(c) It is the policy of the commission to change a finding of fact or conclusion of law in a proposal for decision of a judge when, the commission determines:

(1) that the judge did not properly apply or interpret applicable law, agency rules, written policies provided by staff or prior administrative decisions;

(2) that a prior administrative decision on which the judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

§533.8. Final Orders, Motions for Rehearing, and Emergency Orders. *[Adopted December 30, 2007; amended September 1, 2010 and November 29, 2012.]*

(a) Unless otherwise authorized under subsection (f) of this section, a final order in a contested case shall be in writing and shall be signed by the presiding officer of the commission. Final orders shall include findings of fact and conclusions of law separately stated from disciplinary actions imposed and administrative penalties assessed.

(b) If the commission modifies, amends, or changes a finding of fact or conclusion of law in a proposal for decision, the order shall reflect the commission's changes as stated in the record of the meeting and state the specific reason and legal basis for the changes made according to §533.7(c) of this chapter (relating to Proposals for Decision). If the commission does not follow the recommended disciplinary action and/or administrative penalty in a proposal for decision, the order shall explain why the commission chose not to follow the recommendation as stated in the record of the meeting.

(c) A party notified by mail of a final decision or order shall be presumed to have been notified on the third day after the date on which the notice is mailed.

(d) The timely filing of a motion for rehearing is a prerequisite to appeal.

(e) Motions for rehearing are controlled by Texas Government Code §2001.145 and §2001.146 and this section.

(f) A motion for rehearing shall set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts caused substantial injustice to the party and was in error such as violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion, other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the commission shall presume that the motion should be overruled.

(g) The chairperson or the member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties. The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence such as excerpts of the record before the presiding officer may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion is filed. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the original hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(h) In presenting oral arguments, the party filing the motion will have the burden of proof and persuasion and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(i) After being recognized by the presiding member, the members of the commission may ask questions of the parties. If a party is

represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(j) Upon the conclusion of oral arguments, questions by the members of the commission, and any discussion by the member of the commission, the presiding member shall call for a vote on the motion. A member of the commission need not make a separate motion or second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(k) If the commission and/or the administrator find that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order, that finding shall be recited in the decision or order as well as the fact that the decision or order is final and effective on the date signed, in which event the decision or order is final and appealable on the date signed and no motion for rehearing is required as a prerequisite for appeal.

(l) A petition for judicial review must be filed in a District Court of Travis County Texas within 30 days after the order is final and appealable, as provided by Texas Government Code, Title 10, Subtitle A, Chapter 2001. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.

(m) A party who appeals a final decision in a contested case must pay all costs for the preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court.

(n) If, after judicial review, the penalty is reduced or not assessed, the administrator shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the administrator under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty

is paid to the commission and ending on the date the penalty is remitted.

§533.20. Informal Proceedings. *[Adopted December 30, 2007; amended September 1, 2010.]*

(a) Informal disposition of any contested case involving a respondent may be made through an informal conference pursuant to Texas Occupations Code §1101.660.

(b) The commission and the respondent may enter into an agreed order without first engaging in an informal conference under this chapter.

(c) A respondent may request an informal conference; however, the decision to hold a conference shall be made by the Director of Standards and Enforcement Services.

(d) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(e) An informal conference may be conducted in person, or by electronic, telephonic, or written communication.

(f) The Director of Standards and Enforcement Services or the director's designee shall decide upon the time, date and place of the informal conference, and provide written notice to the respondent. Notice shall be provided by certified mail no less than ten days prior to the date of the conference to the last known mailing address of the respondent. The ten days shall begin on the date of mailing. The respondent may waive the ten-day notice requirement.

(g) A copy of the commission's rules concerning informal conferences shall be enclosed with the notice of the informal conference. The notice shall inform the respondent of the following:

(1) that the respondent may be represented by legal counsel;

(2) that the respondent may offer documentary evidence as may be appropriate;

(3) that at least one public member of the commission shall be present;

(4) that two staff members, including the staff attorney assigned to the case, with experience in the regulatory area that is the subject of the proceedings shall be present;

(5) that the respondent's attendance and participation is voluntary; and

§533.20(g)(6)-.31

(6)that the complainant involved in the alleged violations may be present.

(h) The notice of the informal conference shall be sent to the complainant at his or her last known mailing address. The complainant shall be informed that he or she may appear in person or may submit a written statement for consideration at the informal conference.

(i) The conference shall be informal and need not follow the procedures established in this chapter for contested cases and formal hearings.

(j) The respondent, the respondent's attorney, the commission member, and the staff members may question the respondent or complainant, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(k)The staff attorney assigned to the case shall attend each informal conference. The commission member or other staff member may call upon the attorney at any time for assistance in the informal conference.

(l) No formal record of the proceedings of the informal conference shall be made or maintained.

(m)The complainant may be excluded from the informal conference except during the complainant's oral presentation. The respondent, the respondent's attorney, and commission staff may remain for all portions of the informal conference, except for consultation between the commission member and commission staff.

(n) The complainant shall not be considered a party in the informal conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(o) At the conclusion of the informal conference, the commission member or staff members may propose an informal settlement of the contested case. The proposed settlement may include administrative penalties or any disciplinary action authorized by the Act. The commission member or staff members may also recommend that no further action be taken.

(p) The respondent may either accept or reject the proposed settlement recommendations at the conference. If the proposed settlement recommendations are accepted, a proposed agreed order shall be prepared by the staff attorney and forwarded to the respondent. The order shall contain agreed findings of fact and conclusions of law. The respondent shall execute the proposed

agreed order and return the executed order to the commission within ten days of his or her receipt of the proposed agreed order. If respondent fails to sign and return the executed proposed agreed order within the stated time period, the inaction shall constitute rejection of the proposed settlement recommendation.

(q) If the respondent rejects the proposed settlement recommendation, the matter shall be referred to the Director of Standards and Enforcement Services for appropriate action.

(r) If the respondent signs and accepts the proposed agreed order, it shall be signed by the staff attorney and submitted to the administrator for approval.

(s) If the administrator does not approve a proposed agreed order, the respondent shall be so informed and the matter shall be referred to the Director of Standards and Enforcement Services for other appropriate action.

(t) A licensee's opportunity for an informal conference under this subchapter shall satisfy the requirement of the APA, §2001.054(c).

(u) The commission may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal conference instead of or in addition to imposing an administrative penalty pursuant to Texas Occupations Code §1101.659. The amount of a refund ordered as provided in an agreement resulting from an informal conference may not exceed the amount the consumer paid to the license holder for a service regulated by the Act and this title. The commission may not require payment of other damages or estimate harm in a refund order.

§533.30. Alternative Dispute Resolution Policy. *[Adopted December 30, 2007]* It is the commission's policy to encourage the fair and expeditious resolution of all contested matters through voluntary settlement procedures. The commission is committed to working with all parties to achieve early settlement of contested matters.

§533.31. Referral of Contested Matter for Alternative Dispute Resolution Procedures. *[Adopted December 30, 2007; amended September 1, 2010.]* The commission's Director of Standards and Enforcement Services or the director's designee, on behalf of the commission, may seek to resolve a contested matter through mediation involving all parties and if so, shall refer the matter for mediation in accordance with §533.34 of this chapter (relating to Commencement of ADR).

§533.32. Appointment of Mediator. *[Adopted December 30, 2007]*

(a) For each matter referred for ADR procedures, the ADR Administrator shall mediate or assign another commission mediator unless the parties agree upon the use of another agency's mediator or private mediator. The ADR Administrator may assign a substitute or additional mediator to a proceeding as the ADR Administrator deems necessary.

(b) A private mediator may be hired for commission ADR procedures provided that:

(1) the parties unanimously agree to use a private mediator;

(2) the parties unanimously agree to the selection of the person to serve as the mediator; and

(3) the mediator agrees to be subject to the direction of the commission's ADR Administrator and to all time limits imposed by the Administrator, statute or regulation.

(c) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the parties, unless otherwise agreed upon by the parties, and shall be paid directly to the mediator.

(d) All mediators in commission mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

§533.33. Qualifications of Mediators. *[Adopted December 30, 2007]*

(a) A commission mediator will receive at a minimum 40 hours of formal training in ADR procedures through a program approved by the commission's administrator.

(b) SOAH mediators, employees of other agencies who are mediators, and private pro bono mediators, may be assigned to contested matters as needed.

(1) Each mediator shall first have received 40 hours of Texas mediation training as prescribed by Texas law.

(2) Each mediator shall have some expertise in the area of the contested matter.

(3) If the mediator is a SOAH judge, that person will not also sit as the judge for the case if the contested matter goes to public hearing. If the mediator is an employee of the commission and dispute does not settle, that mediator will not have any further contact or involvement concerning the disputed matter.

§533.34. Commencement of ADR. *[Adopted December 30, 2007; amended September 1, 2010.]*

(a) The commission encourages resolution of disputes at any time; however, ADR procedures may begin, at the discretion of the Director of Standards and Enforcement Services, anytime after the commission anticipates initiation of an adverse action against an applicant or respondent. The commission may issue a Notice of Mediation along with a Notice of Alleged Violation or along with a notice of a proposed denial of licensure or opportunity to take an examination. Prior to the submission of a Request for Docket Case form to SOAH, and with agreement of all parties, the ADR Administrator may schedule mediation upon any party's request.

(b) Upon unanimous motion of the parties and at the discretion of the administrative law judge, the provisions of this section may apply to contested case hearings. In such cases, it is within the discretion of the judge to continue the hearing to allow the use of ADR procedures.

§533.35 Stipulations. *[Adopted December 30, 2007]*

When the ADR procedures do not result in the full settlement of a matter, the parties in conjunction with the mediator, may limit the contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the administrative law judge assigned to conduct the contested case hearing on the merits and shall be made part of the hearing record.

§533.36. Agreements. *[Adopted December 30, 2007]*

All agreements between or among parties that are reached as a result of ADR must be committed to writing and will have the same force and effect as a written contract.

§533.37. Confidentiality. *[Adopted December 30, 2007]*

(a) Except as provided in subsections (c) and (d) of this section, a communication relating to the subject matter made by a participant in an ADR procedure, whether before or after the institution of formal ADR proceedings, is confidential, is not subject to disclosure, and may not be used as evidence in any further proceeding.

(b) Any notes or record made of an ADR procedure are confidential, and participants, including the mediator, may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

§§533.37(c)-.40(c)

(c) An oral communication or written material used in or made a part of an ADR procedure is admissible or discoverable only if it is admissible or discoverable independent of the procedure.

(d) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the judge to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

(e) All communications in the mediation between parties and between each party and the mediator are confidential. No shared information will be given to the other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator will not be provided to other parties and will not be filed or become part of the contested case record. All notes taken during the mediation conference will be destroyed at the end of the process.

§533.40. Negotiated Rulemaking. *[Adopted December 30, 2007]*

(a) It is the commission's policy to employ negotiated rulemaking procedures when appropriate. When the commission is of the opinion that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking will be considered.

(b) When negotiated rulemaking is to be considered, the commission will appoint a convener to assist it in determining whether it is advisable to proceed. The convener shall have the duties described in Texas Government Code, Chapter 2008, and shall make a recommendation to the administrator to proceed or to defer negotiated rulemaking. The recommendation shall be made after the convener, at a minimum, has considered all of the items enumerated in Texas Government Code, §2008.052(c).

(c) Upon the convener's recommendation to proceed, the commission shall initiate negotiated rulemaking according to the provisions of Texas Government Code, Chapter 2008.

RULES OF THE TEXAS

REAL ESTATE COMMISSION

CHAPTER 534 GENERAL ADMINISTRATION

§534.1. Charges for Copies of Public Records.
[Adopted December 1, 1994; amended January 7, 1997 and June 13, 2010; Ref: §1101.151]

(a) Charge for copies of public information provided by the commission shall be based upon the current charges established by the Office of the Attorney General; provided, however, that the commission shall charge its actual costs if the actual costs of providing copies exceed the established charges, and an exemption has been granted by the Office of the Attorney General.

(b) The commission may furnish copies of public information without charge or at a reduced charge if the commission determines that waiver or reduction of the fee is in the public interest. The commission also may waive the charge if the cost of processing the collection of a charge will exceed the amount of the charge.

§534.2. Processing Fees for Dishonored Payments.
[Adopted December 1, 1994; amended January 7, 2009 and January 1, 2013; Ref: §1101.151]

(a) If a payment to the commission is dishonored by a payor, the commission shall charge the fee to the drawer or endorser for processing the dishonored payment required by §535.101(b)(23) of this title (relating to Fees). The commission shall notify the drawer or endorser of the fee by sending a request for payment of the dishonored payment and the processing fee by certified mail to the last known mailing address of the person as shown in the records of the commission. If the commission has sent a request for payment in accordance with the provisions of this section, the failure of the drawer or endorser to pay the processing fee within 15 days after the commission has mailed the request is a violation of this section.

(b) Collection of the fee imposed under this section does not preclude the commission from proceeding under Texas Occupations Code, §1101.652(a)(4), against a licensee who has within a reasonable time failed to make good a payment issued to the commission.

§534.3. Employee Training and Education.
[Adopted May 17, 2005; Ref: §1101.151]

(a) The commission may use state funds to pro-

vide training and education for its employees in accordance with the State Employees Training Act (Texas Government Code, §§656.044-656.049).

(b) The training or education shall be related to the duties or prospective duties of the employee.

(c) The commission's training and education program benefits both the commission and the employees participating by:

(1) preparing for technological and legal developments;

(2) increasing work capabilities;

(3) increasing the number of qualified employees in areas for which the commission has difficulty in recruiting and retaining employees; and

(4) increasing the competence of commission employees.

(d) A commission employee may be required to attend, as part of the employee's duties, a training or education program related to the employee's duties or prospective duties.

(e) Approval to participate in a training or education program is not automatic and is subject to the availability of funds within the commission's budget.

(f) The employee training and education program for the commission shall include:

(1) agency-sponsored training provided in-house or by contract;

(2) seminars and conferences;

(3) technical or professional certifications and licenses; and

(4) tuition reimbursement for degree and non-degree program courses.

(g) The administrator or administrator's designee shall develop policies for administering each of the components of the employee training and education program. These policies shall include:

(1) eligibility requirements for participation;

(2) designation of appropriate level of approval for participation; and

(3) obligations of program participants.

§534.3(h)-.7

(h) Approval to participate in any portion of the commission's training and education program shall not in any way affect an employee's at-will status.

(i) Participation in the training and education program shall not in any way constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

§534.4. Historically Underutilized Businesses Program. *[Adopted May 17, 2005; amended June 13, 2010; Ref: §1101.151]* In accordance with Texas Government Code §2161.003, the commission adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, Chapter 20, Subchapter B, relating to the Historically Underutilized Business Program. The Comptroller of Public Accounts rules are located at the Office of the Secretary of State's internet website: www.sos.state.tx.us/tac/index.html.

§534.5. Bid Opening and Tabulation. *[Adopted May 17, 2005; amended June 13, 2010. Ref: §1101.151]*

(a) The commission adopts by reference the rules of the Texas Comptroller of Public Accounts in 34 TAC §20.35 relating to bid submission, bid opening, and tabulation.

(b) The adoption of this rule is required by Texas Government Code, §2156.005(d).

§534.6. Negotiation and Mediation of Certain Contract Disputes. *[Adopted May 17, 2005; Ref: §1101.151]* The commission adopts by reference the rules of the Office of the Attorney General in Title 1, Part 3, Texas Administrative Code, Chapter 68 relating to Negotiation and Mediation of Certain Contract Disputes to comply with the requirements of Texas Government Code, Chapter 2260, §2260.052(c). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract's complexity, subject matter, dollar amount, or method and time of performance.

§534.7. Vendor Protest Procedures. *[Adopted May 17, 2005; Ref: §1101.151]*

(a) The commission adopts by reference the rules promulgated by the Texas Building and Procurement Commission regarding purchasing protest procedures as set forth in Subchapter A of 1 TAC §111.3.

(b) The commission shall maintain documentation about the purchasing process to be used in the event of a protest by maintaining current infor-

mation regarding applicable statutory law, administrative rules, and guidelines affecting the purchasing process.

RULES OF THE
TEXAS REAL ESTATE COMMISSION
CHAPTER 535 GENERAL PROVISIONS

§§535.1-.2(b)

A. Definitions

§535.1. Definitions. *[Adopted January 1, 2011.]* The following terms and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

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

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

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

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

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

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

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

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

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

(10) Promptly--Three (3) calendar days unless

otherwise defined in a specific chapter or section.

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

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

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

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

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

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

**B. General Provisions Relating to the
Requirements of Licensure**

§535.2. Broker Responsibility. *[Adopted January 1, 1976. Amended April 14, 1998; July 1, 1999; November 26, 2002; May 18, 2003; January 1, 2011 and November 29, 2012; Ref: §1101.803]*

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

(b) A real estate broker acting as an agent owes the very highest fiduciary obligation to the agent's principal and is obliged to convey to the principal all information of which the agent has knowledge and which may affect the principal's decision.

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

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

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

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

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

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

(1) Disclosures;

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

(3) Work files;

(4) Contracts and related addenda;

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

(6) Property management contracts;

(7) Documents required by USPAP for appraisals; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§535.3. Compensation to or paid by a Salesperson. *[Adopted January 1, 1976. Amended October 20, 1983; April 14, 1998; July 1, 1999 and January 1, 2011; Ref: §1101.651(b) & (c)]* A salesperson may not receive a commission or other fee except with the written consent of the salesperson's sponsoring broker or the broker who sponsored the salesperson when the salesperson became entitled to the commission or fee. A salesperson may not pay a commission or other fee to another person except with the written consent of the salesperson's sponsoring broker.

§535.4. License Required. *[Adopted January 1, 2011; Amended January 2, 2012.]*

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

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

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

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

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

(f) A business entity owned by a broker or salesperson which receives compensation on behalf of the licensee must be licensed as a broker under the Act.

(g) For purposes of §1101.002(1)(A)(x) of the Act:

(1) A person controls the acceptance or deposit of rent from a resident of a single-family residential real property unit and must be licensed under the Act if:

(A) the person has the authority to use the rent to pay for services related to management of the property; or

(B) the person has the authority to deposit the rent into a trust or bank account and sign checks or withdraw money from the account.

(2) A single-family residential unit includes a single family home or a unit in a condominium, cooperative, row-home or townhome. The term does not include a duplex, triplex or four-plex unless the

units are owned as a condominium, cooperative, row-home or townhome.

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

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

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

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

(2) receives a valuable consideration; and

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

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

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

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

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

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

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

§535.5. License Not Required. *[Adopted January 1, 2011]*

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

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

§535.5(c)-.20(a)

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

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

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

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

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

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

§535.16. Listings; Net Listings. *[Adopted January 1, 1976. Amended April 14, 1998; July 1, 1999; January 1, 2004; January 1, 2011 and March 21, 2012; Ref: §1101.002(1)(A)(iv)]*

(a) A broker is obligated under a listing contract to negotiate the best possible transaction for the principal, the broker has agreed to represent.

(b) A "net listing" is a listing agreement in which the broker's commission is the difference ("net") between the sales proceeds and an amount desired by the owner of the real property. A broker may not take net listings unless the principal requires a net listing and the principal appears to be familiar with current market values of real property. The use of a net listing places an upper limit on the principal's expectancy and places the broker's interest above the principal's interest with reference to obtaining the best

possible price. If a net listing is used, the listing agreement must assure the principal of not less than the principal's desired price and limit the broker to a specified maximum commission.

(c) A real estate licensee is obligated to provide a broker price opinion or comparative market analysis on a property when negotiating a listing or offering to purchase the property for the licensee's own account as a result of contact made while acting as a real estate agent.

§535.17. Broker Price Opinion or Comparative Market Analysis. *[Adopted January 1, 1976. Amended March 1, 1991; August 19, 1991; April 14, 1998; July 1, 1999; January 1, 2004; January 1, 2011 and November 1, 2011; Ref: §1101.002(1)(A)(v)]*

(a) A real estate licensee may not perform an appraisal of real property unless the licensee is licensed or certified under Texas Occupations Code, Chapter 1103.

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

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

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

§535.20. Referrals from Unlicensed Persons. *[Adopted January 1, 1976. Amended October 21, 1997; April 14, 1998; August 25, 1999 and January 1, 2011; Ref: §1101.002(1)(A)(ix)]*

(a) Referring a prospective buyer, seller, landlord, or tenant to another person in connection with a proposed real estate transaction

is an act requiring the person making the referral to be licensed if the referral is made with the expectation of receiving valuable consideration. For the purposes of this section, the term "valuable consideration" includes but is not limited to money, gifts of merchandise having a retail value greater than \$50, rent bonuses and discounts.

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

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

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

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

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

C. Exemptions to Requirements of Licensure

§535.31. Attorneys at Law. *[Adopted January 1, 1976. Amended March 19, 1990; April 14, 1998; July 1, 1999; January 1, 2004; January 1, 2011 and November 1, 2011; Ref: §1101.005(1)]* An attorney licensed in this state is exempt from the requirements of the Act but cannot sponsor real estate salespersons or serve as the designated officer or manager of a licensed corporation or limited liability company, or designated partner of a partnership unless the attorney is also licensed as a real estate broker. This provision is not a waiver of the standards of eligibility and qualification elsewhere established in the Act.

§535.32. Attorneys in Fact. *[Adopted January 1, 1976. Amended July 1, 1999; January 1, 2011; and November 29, 2012; Ref: §1101.005(2)]* A person holding a valid power of attorney recorded in the county in which the particular real property is located and which specifically describes the real property as a real estate agent for the owner of such property without being licensed as a real estate broker or salesperson, provided the person does not use powers of attorney to engage in the real estate brokerage business.

§535.33. Public officials. *[Adopted January 1, 1976. Amended April 14, 1998 and July 1, 1999; Ref: §1101.005(3)]* Public officials and employees of governmental or quasi-governmental units are exempted from the requirement of being licensed as a real estate broker or salesperson while performing their official duties.

§535.34. Salespersons Employed by an Owner of Land and Structures Erected by the Owner. *[Adopted January 1, 1976. Amended July 1, 1999 and January 1, 2011; Ref: §1101.005(6)]*

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

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

D. The Commission

§535.41. Procedures. *[Adopted January 1, 1976. Amended November 14, 1979; May 7, 1992; April 14, 1998; July 1, 1999 and January 1, 2004; Ref: §1101.051]*

(a) Meetings.

(1) The commission shall meet in February of each year and at such other times as it deems proper.

(2) Meetings will be held at such places as the commission deems proper.

(3) Meetings must be called by the chairperson on the chairperson's own motion or upon the written request of 5 members.

(b) Quorum. Five members constitutes a quorum.

(c) Officers.

(1) Officers of the commission consist of a chairperson, vice-chairperson and secretary.

(2) The commission shall elect a vice-chairperson and secretary at a regular meeting in February of each year. The governor shall designate one member to serve as chairperson at the pleasure of the governor. Elected officers shall serve until their successors are elected.

(d) Order of business.

§§535.41(d)(1)-.50(19)

(1) With the exception of proceedings in contested cases, meetings must be conducted in accordance with Roberts Rule of Order.

(2) Proceedings in contested cases will be conducted in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure).

§535.42. Jurisdiction and Authority. *[Adopted January 1, 1976. Amended March 19, 1990; July 1, 1999; January 1, 2004; December 30, 2007 and January 1, 2011; Ref: §1101.053]* The commission does not:

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

(2) recommend individual licensees to the public.

E. Requirements for Licensure

§535.50. Definitions. *[Adopted January 1, 2011; amended November 1, 2011.]* The following words and terms, when used in Subchapter E, F or G of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

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

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

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

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

(6) **Distance learning course**--A correspond-

ence course, alternative delivery method course or course offered through video presentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

§535.51. General Requirements for a License.

[Adopted January 1, 1976. Amended October 4, 1976; November 7, 1977; November 14, 1979; June 18, 1991, January 1, 1992; September 24, 1993; July 18, 1994; December 1, 1994; January 3, 1996; May 2, 1996; March 14, 1997; April 14, 1998; July 1, 1999; September 1, 2000; September 1, 2001; October 15, 2001; March 4, 2002; April 1, 2003; January 1, 2004; May 10, 2004; September 1, 2004; July 4, 2005; December 30, 2007; January 7, 2009; November 1, 2009 and September 1, 2010; and November 1, 2011 Ref: §1101.352(a)]

(a) A person who wishes to be licensed by the commission must file an application for the license on the form prescribed by the commission for that purpose.

(b) A person also may apply for a license by accessing the commission's web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission.

(c) The commission shall return the application of an applicant who:

- (1) is not 18 years of age;
- (2) does not meet any applicable residency requirement;
- (3) is not a citizen of the United States or a lawfully admitted alien;
- (4) submits the application in pencil; or
- (5) submits an incorrect filing fee or no filing fee.

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

- (1) the applicant fails to satisfy a current education, experience or examination requirement within one year from the date the application is filed;
- (2) the applicant fails to submit a required fee within twenty (20) days after the commission makes written request for payment;
- (3) the applicant, having satisfied any education or examination requirement, fails to provide information or documentation within sixty (60) days after the commission makes written request for correct or additional information or documentation;
- (4) the applicant fails to provide fingerprints to the Department of Public Safety within six months from the date the application is filed.

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

§535.52. Individuals. *[Adopted January 1, 1976. Amended October 4, 1976; February 10, 1977; April 14, 1998; July 1, 1999 and January 7, 2009; Ref: §1101.354]*

(a) The commission may deny a license to an applicant who fails to satisfy the commission as to the honesty, trustworthiness, or integrity of the applicant under Texas Occupations Code, §§1101.354, 1102.107, 1102.108, and 1102.109; and §535.400 of this title.

(b) Conduct that tends to demonstrate that an applicant does not possess the requisite honesty, trustworthiness or integrity includes, but is not limited to:

- (1) a plea of guilty or nolo contendere to or a conviction of any offense listed in §541.1 of this title (relating to Criminal Offense Guidelines);
- (2) failing to successfully or satisfactorily complete any term or condition of parole, supervised release, probation, or community supervision;
- (3) providing false or misleading information to the commission;
- (4) disciplinary action taken against, or the surrender of, any other professional or occupational license or registration, in this or any other state;
- (5) engaging in activities for which a license or registration is required without having the legal authorization to do so, in this or any other state;
- (6) violating any provision of Texas Occupations Code, Chapter 1101 or 1102;
- (7) violating any provision of Chapters 531, 533, 535 or 537 of this title;
- (8) failing to pay a judgment (including any court-ordered costs, fees, penalties, or damages), that is not otherwise discharged in bankruptcy.

(c) Texas residents who enter military service and resume their Texas residence immediately upon separation from the military are not considered to have lost their Texas residence unless they have affirmatively established legal residence elsewhere.

(d) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

§535.53. Business Entities. *[Adopted January 1, 1976. Amended August 29, 1979; September 24, 1993; April 14, 1998; July 1, 1999; January 1, 2004; January 1, 2011; November 1, 2011 and June 3, 2012; Ref: §1101.355]*

(a) For the purposes of qualifying for, maintaining, or renewing a license, a business entity must designate a broker to act for it. The business entity may not act as a broker during any period in which it does not have a designated broker to act for it who meets the requirements of the Act. To obtain or renew a license, or upon any change in the business entity's designated broker, the entity must provide proof to the commission of the designated broker's current status as an officer, manager or general partner for that entity and proof that the business entity maintains appropriate errors and omissions insurance if the designated broker does not own directly at least 10 percent of the entity. A broker may not act as a designated broker at any time while the broker's license is inactive, expired, suspended or revoked.

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

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

§535.54. General Provisions Regarding Education and Experience Requirements for a License. *[Adopted January 1, 2011]*

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

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

(c) The commission will not grant credit to a student who was previously awarded credit for

completing a course with substantially the same course content within the previous two-year period.

§535.55. Education Requirements for a Salesperson License. *[Adopted January 1, 2011; amended November 1, 2011]* Notwithstanding §1101.451(f) of the Act, the commission may waive the education required for a real estate salesperson license if the applicant:

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

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

§535.56. Education and Experience Requirements for a Broker License. *[Adopted January 1, 2011; amended November 1, 2011 and March 21, 2012.]*

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

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

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

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

(c) An applicant for a broker license must demonstrate not less than 3600 points of qualifying practical experience obtained during the period required by subsection (b) of this section, using TREC No. BL-A, Supplement A-Qualifying Experience Report for a Broker License. An applicant must use TREC No. BL-B, Supplement B-Qualifying Experience

Report for a Broker License After an Application Has Been Filed, to report qualifying experience after an application for a broker license is filed. An applicant must demonstrate experience for four out of five years.

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

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

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

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

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

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

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

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

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

(A) Closed purchase or sale--450 points.

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

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

(3) Farm and Ranch transactions:

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

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

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

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

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

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

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

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

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

(2) The applicant has completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license.

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

§535.56(i)-.62(a)(1)

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

§535.57. Examination Requirements for a License. *[Adopted January 1, 2011]*

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

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

F. Pre-License Education and Examination

§535.61. Examinations. *[Adopted January 31, 2000; amended January 1, 2004; July 10, 2006; October 22, 2006; December 30, 2007; September 1, 2010 and January 1, 2011; Ref: §1101.401]*

(a) The following conduct with respect to licensing examinations is prohibited and is grounds to impose disciplinary action against any licensee of the commission or any education provider accredited by the commission or instructor approved by the commission, and shall further be grounds for disapproval of an application for any license, accreditation, or approval issued by the commission:

(1) obtaining or attempting to obtain specific questions or answers from an applicant, a commission employee or any person hired by or associated with the testing service;

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

(3) providing or attempting to provide examination questions or answers to another person.

(b) Examinations required for any license issued

by the commission will be conducted by the testing service with which the commission has contracted for the administration of examinations. The testing service shall schedule and conduct the examinations in the manner required by the contract between the commission and the testing service. To pass the broker licensing examination, an applicant must attain a passing score of at least 75% in each section of the examination. To pass the salesperson licensing examination, an applicant must attain a passing score of at least 70% in each section of the examination.

(c) An applicant will not be admitted to the testing service's examination site unless the applicant provides a government issued photo bearing identification card. The testing service may refuse to admit an applicant who arrives after the time the examination is scheduled to begin or whose conduct or demeanor would be disruptive to other persons taking examinations at the site. The testing service may confiscate examination materials, dismiss the applicant, and fail the applicant for violating or attempting to violate the confidentiality of the contents of an examination.

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

(e) The testing service administering the examinations is required to provide reasonable accommodations for any applicant with a verifiable disability. Applicants must contact the testing service to arrange for a special examination. The testing service shall determine the method of examination, whether oral or written, based on the particular circumstances of each case.

§535.62. Acceptable Courses of Study. *[Adopted January 31, 2000; amended October 15, 2001, January 1, 2004; November 9, 2004; December 30, 2007; September 1, 2010 and January 1, 2011; Ref: §1101.003]*

(a) Acceptable core real estate courses are those courses prescribed by §1101.003 of the Act and the following courses.

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

(2) Residential Inspection for Real Estate Agents (or equivalent), which shall include but is not limited to repair-related contract forms and addenda, inspector and client agreements, inspection standards of practice and standard inspection report form, tools and procedures, electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations) and structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).

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

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

(2) a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, or by a recognized national or international accrediting body;

(3) a post-secondary educational institution established by any state;

(4) the United States Armed Forces Institute or other service-related school; or

(5) Texas professional trade association in the real estate industry.

(c) The commission shall grant classroom credit for qualifying courses as follows:

(1) 15 hours of classroom credit will be granted for one semester hour.

(2) 10 hours of classroom credit will be granted for one quarter hour.

(3) 10 hours of classroom credit will be granted for one qualifying continuing education unit.

(d) A core real estate course must meet each of the following requirements to be accepted for core

credit.

(1) The course contained the content required by §1101.003 of the Act or this section.

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

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

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

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

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

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

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

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

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

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

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

(2) If a correspondence course was offered by a school in association with an accredited college or university, the school has certified to the commission that the course was offered in accordance with the college or university's curriculum accredi-

§§535.62(f)(2)-.63(a)(4)

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

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

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

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

(3) The provider:

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

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

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

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

(iii) passed either:

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

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

§535.63. Accreditation of Core Education Schools. *[Adopted January 1, 2011; amended November 1, 2011]*

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

(1) Standards for approval of application for accreditation. To be accredited by the commission to offer core courses in real estate, the applicant

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

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

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

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

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

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

(4) Disapproval of application for accreditation. If it determines that an applicant does not meet the standards for accreditation, the commission

shall disapprove the application in writing. An applicant may request a hearing before the commission on the disapproval by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Following the hearing, the commission shall issue an order which, in the opinion of the commission, is appropriate in the matter concerned. Venue for any hearing conducted under this section shall be in Travis County. The disapproval and hearing are subject to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and to Chapter 533 of this title (relating to Practice and Procedure).

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

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

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

(3) A school's passage rate for each license category will be calculated and published quarterly by dividing the number of students affiliated with that school, as defined in paragraph (2) of this subsection, who passed the examination on their first attempt in the four-year period ending on the last day of the previous quarter by the total number of the school's graduates who took the exam for the first time in the same period. If a school offers courses toward multiple license types, the exam results for that school will be calculated and posted by license category. The passage rate for each license category that will be used to determine whether the accreditation standard has been met for the license category is the most

current rate published by the commission as of the date the commission receives the timely application for reaccreditation or, if the accreditation expired before being renewed, the most recent rate published by the commission as of the expiration date of the school's accreditation.

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

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

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

§535.64. Obtaining Approval to Offer a Course. *[Adopted January 1, 2011]*

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

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

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

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(d) For the purpose of approval of courses, a correspondence course offered by a school in association with an accredited college or university in accordance with §535.62(f) of this title (relating to Acceptable Courses of Study), is equivalent to a correspondence course offered by an accredited college or university.

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

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

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

§535.65. Operation of Core Education Schools. *[Adopted January 1, 2011]* The following provisions apply to schools accredited by the commission to offer core education programs.

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

(2) School facilities.

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

(B) Except as provided by this section, every school shall be open to the public, and shall advertise all courses publicly so as to encourage

reasonably an open enrollment. A school may obtain approval from the commission, however, to hold classes in facilities to which access has been limited by a governmental unit.

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

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

(3) Instructors.

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

(B) An instructor shall teach a course in substantially the same manner represented to the commission in the instructor's manual or other documents filed with the application for course approval.

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

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

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

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

(4) Advertising. The following practices are prohibited:

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

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

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

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

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

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

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

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

(i) the tuition for the course;

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

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

(iv) attendance requirements;

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

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

(B) If the school cancels a course, the school shall fully refund all fees collected from students

or, at the student's option, the school may credit the student for another course. The school shall inform the commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

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

(6) Course materials.

(A) A school shall update course materials to ensure that current and accurate information is provided to students. The school shall file updated course materials and revisions of the course outline with the commission prior to implementation, and the commission may direct a school to revise the materials further or cease use of materials. The commission may direct that the school withdraw texts.

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

(7) Presentation of courses.

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

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

(8) Course examinations.

(A) A school shall administer an examination approved by the commission in each course as a component of determining successful completion of a course of study. A school may not permit a student to take a final examination prior to the completion of any makeup required by this sec-

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tion. In the event of failure of a course final examination, a school may permit a student to retake a final examination once after at least a seven day waiting period and completion of additional course work prescribed by the school. A school shall require a student who fails the examination a second time to retake the course. A school shall require makeup final examinations to be completed within 90 days of the termination of the original class or report the students who do not timely complete the examination requirement as dropped from the class with no credit.

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

(9) Course credit and records.

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

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

(ii) "Failed" must be limited to those students who had acceptable classroom attendance but failed the final course examination. If, however, the school permits the student to retake

the examination in accordance with paragraph (8) of this section, the first failure must be reported as an incomplete grade.

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

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

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

(C) A school shall issue to the students successfully completing a course of instruction an official certificate which reflects the school's name, branch, course title, course numbers, and the number of classroom hours (or other recognized educational unit) involved in the course. All core course certificates must show the statutory core

course title or other identification as prescribed by the commission. Certificates also must show the date of issuance and be signed by an official of the school, or if the certificate is computer printed, the school logo may be substituted for the signature. Letters or other official communications also may be provided to students for submission to the commission as evidence of satisfactory completion of the course. Such letters must fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school, or if the letter is computer printed, the school logo may be substituted for the signature. A school shall maintain adequate security for completion certificates and letters. Compliance with this requirement will be determined by the commission during all school audits. A school may withhold a student's certificate of completion of a course until the student has fulfilled the student's financial obligation to the school.

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

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

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

(11) Changes in Ownership or Operation. A school shall obtain the approval of the commission in advance of any material change in the operation of the school, including but not limited to, ownership, location of main office and any other locations where courses are offered, management, and course formats. A request for approval of a change of ownership will be considered as if each

proposed new owner had applied for accreditation of the school, and each new owner must meet the standards imposed by §535.63 of this title (relating to Accreditation of Core Education Schools). A school requesting approval of a change in ownership shall provide all of the following information or documents to the commission:

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

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

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

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

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

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

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

§535.66. Core Education Providers: Audits, Investigations, and Enforcement Actions *[Adopted January 1, 2011]*

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

(b) Complaints, investigations and hearings. The commission shall investigate complaints against schools or instructors which allege acts constituting violations of these sections. Complaints

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must be in writing, and the commission may not initiate an investigation or take action against a school or instructor based on an anonymous complaint. Complaints against a school or instructor received by any division of the commission will be referred to the enforcement division for appropriate resolution. Commission employees may file written complaints against a school or instructor if course completion rosters or other documents filed with the commission provide reasonable cause to believe a violation of these sections has occurred. The school or instructor named in the complaint will be provided with a copy of the complaint. Proceedings against schools and instructors will be conducted in the manner required by §1101.657 of the Act, the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section will be in Travis County.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Grounds for disciplinary action against instructor. The commission may issue a reprimand, place on probation, suspend or revoke approval of

an instructor, or impose an administrative penalty when it has been determined that the instructor has been guilty of engaging in any of the following acts:

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

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

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

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

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

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

§535.67. Approval of Instructors. *[Adopted January 1, 2011.]*

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

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

(2) the equivalent of paragraph (1) of this subsection as determined by the commission after due consideration of the applicant's professional

experience, research, authorship or other significant endeavors in the subject area.

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

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

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

§535.68. Additional Information Related to an Application. *[Adopted January 1, 2011]*

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

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

G. Mandatory Continuing Education

§535.71. Approval of Providers, Courses and Instructors. *[Adopted September 1, 2004; amended July 4, 2005; November 8, 2005; December 30, 2007; September 13, 2009; January 1, 2011; and March 21, 2012 Ref: §1101.455]*

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

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

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

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

(e) Appeal. An applicant may appeal disapproval by filing with the commission a written request for a hearing within 10 days after the receipt of the notice of disapproval. Following the hearing, the commission may sustain or withdraw the disapproval or establish conditions for the approval of a

provider, course or instructor. Proceedings involving applications shall be conducted in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. Venue for any hearing conducted under this section shall be in Travis County.

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

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

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

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

(j) Subsequent application for instructor

approval. No more than six months prior to the expiration of the current approval, an instructor may apply for approval for another two year period.

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

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

(m) Instructor certification. Only instructors certified by the commission may teach the non-elective courses or develop distance learning courses for the presentation of non-elective courses. An instructor must obtain prior commission approval under subsection (n) of this section prior to attending an instructor training program. The commission shall issue a written certification to an instructor to teach the applicable non-elective course(s) upon the instructor's satisfactory completion of a training program to teach the non-elective course(s) that is acceptable to the commission. Satisfactory completion of the training program for each of the non-elective courses may include passing a final course examination approved by the commission.

An instructor may obtain certification to teach either one or all non-elective courses. A certified course instructor may teach the non-elective courses for any approved provider after the instructor has attended an instructor training program. A certified course instructor may not independently conduct a non-elective course unless the instructor has also obtained approval as a provider. An instructor must obtain written certification from the commission prior to teaching the non-elective courses and prior to representing to any provider or other party that he or she is certified or may be a certified course instructor. An instructor's certification to teach a required legal course expires on December 31 of every odd-numbered year. An instructor's certification to teach the broker responsibility course expires on December 31 of every even-numbered year. An instructor may obtain recertification by attending a new instructor training program.

(n) Standards for approval of instructors of non-elective courses. Prior to attending an instructor training course, a person must obtain commission approval to be an instructor using Instructor Application - Core, Legal Update, Ethics and Broker Responsibility Course, approved by the commission.

(1) To be approved as an instructor of a required legal update or ethics course, a person must possess the following qualifications:

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

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

(C) the equivalent of subparagraphs (A) and (B) of this paragraph as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(2) To be approved as an instructor of a broker responsibility course, a person must possess the following qualifications:

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

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

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(C) the equivalent of subparagraphs (A) and (B) of this paragraph as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

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

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

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

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

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

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

(u) Non-elective courses for real estate related

courses. Non-elective courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §1101.356 and §1101.358, of the Act.

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

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

(2) the content of the course must satisfy the requirements of §1101.455 of the Act and this section; and

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

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

(1) the content of the course must satisfy the requirements of §1101.455 of the Act and this section;

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

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

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

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

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

(i) has completed all instructional modules; and

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

(x) Correspondence courses for required non-elective credit. The commission may approve a provider to offer a non-elective course by corre-

spondence subject to the following conditions:

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

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

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

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

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

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

(y) Each non-elective course offered by correspondence must contain the following:

- (1) course description;
- (2) learning objectives;
- (3) evaluation techniques;
- (4) lessons;
- (5) learning activities;
- (6) final examination;

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

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

(z) Alternative delivery method courses for non-

elective credit. The commission may accept non-elective courses offered by alternative delivery method subject to the following conditions.

(1) The content of the course must satisfy the requirements of §1101.455 of the Act and this section and must be substantially similar to the legal courses disseminated and updated by the Commission.

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

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

(4) The provider:

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

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

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

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

(iii) passed either:

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

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

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

(aa) Supervised Video Instruction for elective course credit. A provider may register a course under subsection (q) of this section to be taught by supervised video instruction if:

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

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

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

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

(1) complies with subsection (aa)(1) - (3) of this section;

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

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

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

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

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

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

(1) the provider is an accredited college or university or a professional trade association; and

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

§535.72. Presentation of Courses, Advertising and Records. *[Adopted September 1, 2004; amended December 30, 2007; January 1, 2011 and March 21, 2012; Ref: §1101.455]*

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

(b) Partial credit.

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

(A) the course is approved for elective credit only;

(B) the course is not a distance learning course;

(C) the student attends less than the complete number of hours in the course;

(D) the student, by completing an MCE Partial Credit Request Form, requests credit only for the hours the student completed and the student does not claim credit for an hour that the student did not attend in its entirety except as provided by subsection (c) of this section;

(E) the provider signs the MCE Partial Credit Request Form as evidence that the provider has no reason to believe the amount of credit claimed is inaccurate;

(F) the provider submits the MCE Partial Credit Request Form to the commission within the time required to submit the course completion roster under subsection (a) of this section.

(2) Partial credit may not be granted for any course that contains as part of its curriculum all or part of the non-elective hours of mandatory continuing education required by §1101.455 and §1101.458 of the Act.

(c) Attendance. While a provider is expected to ensure that each student is present in the classroom for the hours of time for which credit is awarded, this section is not intended to penalize students who must leave the classroom for brief periods of time for personal reasons. Providers shall make every reasonable effort to ensure that no student is given course credit if the student persists in disrupting the orderly conduct of a class after being cautioned by the provider or the instructor to cease disruptive behavior. Providers may not use students for administration or monitoring duties during the course if the use prevents the student's participation in a significant portion of the course.

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

(e) Pre-course announcements. A provider shall, prior to commencement of a course, announce that the provider will not certify a student for full MCE credit unless the student attends all sessions of the course, that no makeups or written work will be allowed for MCE credit, that students may evaluate the course and instructor by downloading an evaluation form from the TREC web site and submitting the form electronically or by mail, and that the student must determine if the course is timely and appropriate for the student's MCE requirement. If the provider accepts partial credit for partial attendance at an elective credit course, the provider shall explain the procedure for granting partial credit. If the provider has not advertised or otherwise made students aware of

the provider's refund policy, the pre-course announcement must also contain the refund policy. The provider may allow a ten-minute break for every 50 minutes of session time, but a break must be given at least every two hours, using all accumulated break time, and the daily course presentation may not exceed ten hours.

(f) Facilities. Facilities used by providers for classroom presentations must be adequate to accommodate students. Providers shall ensure each student has seating, a writing surface and writing materials. Rigid tablets or clipboards may be provided as a writing surface. For a classroom course, the provider must offer the course in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.

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

(h) Open enrollment. All MCE courses must be open to enrollment by the general public. Providers may give preference in enrollment to persons who need MCE credit to obtain, renew or activate a license and may enroll all others on a space available basis.

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

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(j) Advertising. Advertising of MCE shall be subject to the following conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§535.73. Compliance and Enforcement. *[Adopted September 1, 2004; Amended January 1, 2011; Ref: §1101.455]*

(a) Complaints. The commission shall investigate complaints against MCE providers or instructors that allege acts constituting violations of these sections. Complaints must be in writing and the commission shall not initiate an investigation or take action against a provider or instructor based on an anonymous complaint. Commission employees may file written complaints against providers or instructors if documents filed with the commission provide reasonable cause to believe a violation of these sections has occurred.

(b) Complaint investigation. Complaints received by the MCE section of the education division of the commission or by any other division of the commission shall be referred to the enforcement division for appropriate resolution. The provider or instructor named in the complaint shall be provided with a copy of the complaint. Proceedings involving MCE providers or instructors shall be conducted in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001 and the commission's general rules of practice and procedure. Venue for any hearing conducted under this section shall be in Travis County.

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

(d) Cooperation with investigation. A provider or instructor shall fully assist any employee of the commission engaged in the performance of an audit or investigation of a complaint and shall provide records in his possession for examination by the commission or provide such information as is requested by the commission within 15 days of receiving a request for examination of records or information.

(e) Disciplinary action. The commission may reprimand, suspend or revoke the authority of a provider to offer MCE courses or suspend or revoke the approval of an instructor to teach MCE courses when it has been determined that the provider or instructor has been guilty of:

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

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

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

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

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

(6) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against the provider or instructor.

(f) Instructor teaching skills. Instructors must conduct themselves in a professional and courteous manner when performing their instructional duties. An instructor must have reasonable experience or education in the subject matter to be taught. An instructor must maintain an appropriate learning environment and effective control of the class. An instructor must present information in an accurate, logical, and orderly manner. Providers are responsible to utilize instructors who meet the requirements under this section.

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

§535.74. Additional Information Related to an Application. *[Adopted January 1, 2011]*

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

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

§535.75. Education Standards Advisory Committee. *[Adopted March 21, 2012; amended November 29, 2012.]*

(a) The function of the Education Standards Advisory Committee (the committee) is to regularly review and revise curriculum standards, course content requirements and instructor certification requirements for core and MCE courses.

(b) The committee consists of 12 members appointed by the commission as follows:

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

(2) Four members who are real estate instructors or owners of real estate schools accredited by the commission that provide core or continuing education;

(3) One member who represents the public.

(c) The Commission may appoint a non-voting member from the commission.

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

(e) Members of the committee serve two-year terms, expiring on February 1 of each even-numbered year. A member may serve up to three consecutive terms on the committee, and may be reappointed after a break in service of at least two

years. A member whose term has expired holds office until the member's successor is appointed. If a vacancy occurs during a member's term, the commission shall appoint a person to fill the unexpired term.

(f) At a regular meeting in May of each year, the committee shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(g) The commission may remove a committee member if the member:

(1) does not have the qualifications required by subsection (b)(1) of this section;

(2) cannot discharge the member's duties for a substantial part of the member's term;

(3) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during each calendar year, unless the absence is excused by majority vote of the committee; or

(4) violates Chapter 1101 or Chapter 1102.

(h) If the administrator of the commission has knowledge that a potential ground for removal exists, the administrator shall notify the presiding officer of the commission that the potential ground exists.

(i) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(j) The committee may meet at the call of a majority of its members. The committee shall meet at the call of the commission.

(k) A quorum of the committee consists of seven members.

(l) The committee shall conduct its meetings in substantial compliance with Robert's Rules of Order.

(m) The secretary of the committee, or in the secretary's absence, a member designated by the chairman, shall prepare written minutes of each meeting and submit the minutes to the committee for approval and for filing with the commission.

(n) The committee shall submit semiannual reports to the commission on or before March 1 and September 1 of each year detailing the performance of the committee. The commission may require the report to be submitted on a form approved by the commission for that purpose. The committee may submit its written recommendations concerning the licensing and regulation of

real estate inspectors to the commission at any time the committee deems appropriate. If the commission submits a rule to the committee for development, the chairman of the committee or the chairman's designate shall report to the commission after each meeting at which the proposed rule is discussed on the committee's consideration of the rule.

(o) The committee is automatically abolished on September 1, 2020 unless the commission subsequently establishes a different date.

H. Recovery Fund

§535.81. Recovery fund: Fee. *[Adopted January 1, 1976. Amended May 27, 1998; Ref: §1101.603]* If a person licensed as a real estate salesperson has paid the recovery fund fee, the person would not be required to pay a recovery fund fee in connection with the processing of an application for real estate broker licensure.

§535.82. Proration of Payments from the Recovery Trust Account. *[Adopted March 21, 2012.]* In the event of multiple valid pending claims against a licensee or certificate holder in excess of the limitations in §1101.610 of the Act, the claims shall be prorated as follows:

(1) Actual damages shall be allocated first. If the total of the eligible actual damages of all claims exceeds the maximum that may be paid from the Recovery Trust Account, the actual damages shall be prorated, and no interest, attorney fees, or court costs shall be paid.

(2) If, after allocating the actual damages as provided by paragraph (1) of this section, the limitations in §1101.610 of the Act are not reached, interest on actual damages (pre-judgment and post-judgment) shall be allocated second. If the total of the interest on eligible actual damages of all claims exceeds the amount remaining to be paid from the Recovery Trust Account, the interest on eligible actual damages shall be prorated, and no other interest, attorney fees, or court costs shall be paid.

(3) If, after allocating the actual damages and interest thereon as provided by paragraphs (1) and (2) of this section, the limitations in §1101.610 of the Act are not reached, other interest, attorney fees, and court costs shall be allocated third. If the total of the other interest, attorney fees, and court costs of all claims exceeds the amount remaining to be paid from the Recovery Trust Account, the

other interest, attorney fees, and court costs shall be prorated.

I. Licenses

§535.91. Renewal Notices. *[Adopted January 1, 1976. Amended July 20, 1981; June 1, 1990; August 19, 1991 July 18, 1994; July 16, 1996; September 1, 2000; October 4, 2001; January 1, 2004; September 1, 2004; July 1, 2006; December 30, 2007; January 1, 2011; November 1, 2011 and September 9, 2012; Ref: §1101.363]*

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

(b) Except as authorized by §535.92 of this subchapter, for the renewal of a license on active status that is not subject to the annual education requirements of §1101.454 of the Act, the license holder must attend during the term of the current license, at least two commission developed legal courses consisting of a three-hour legal update course and a three-hour legal ethics course to comply with the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(c) To renew a license on active status on or after September 1, 2012, a broker who sponsors a salesperson, a designated broker of a business entity, or a license holder who is a delegated supervisor of one or more license holders pursuant to §535.2 of this chapter (relating to Broker Responsibility) for six months or more during the course of the current license must attend the six-hour broker responsibility course required by §1101.458 of the Act.

(d) A broker shall provide to the commission, within 30 days of delegation, the name of each license holder who is anticipated to be or has been a delegated supervisor of one or more license holders pursuant to §535.2 of this chapter (relating to Broker Responsibility) for six months or more during the course of the current license, or the termination of such delegation by:

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(1) initiating the appropriate transaction, if available, through the TREC online license management system, including payment of any required fees; or

(2) submitting a notice on a form approved by the commission for this purpose, if any.

(e) Licensees who are otherwise required to take the broker responsibility course who have completed all MCE requirements prior to July 1, 2012 may, but are not required to take the course for the first renewal of their license after September 1, 2012.

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

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

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

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

[Adopted January 1, 1976. Amended November 14, 1979; July 20, 1981; October 13, 1982; April 7, 1983; March 17, 1989; June 1, 1990; November 9, 1990; June 18, 1991; January 1, 1992; April 8, 1993; November 23, 1993; May 27, 1998; October 5, 1998; March 1, 1999; September 1, 2000; October 4, 2001; September 1, 2004; July 1, 2006; December 30, 2007; June 1, 2008; January 1, 2011 and January 1, 2013. Ref: §1101.363]

(a) A renewal application is timely filed if it is received by the commission or postmarked on or before the expiration date of the license. If the license expires on a Saturday, Sunday or other day on which the headquarters office of the commission is not open for business, the renewal application is timely filed if the application is received or postmarked no later than the first business day after the expiration date of the license.

(b) If an application is filed within one year after the expiration of an existing license, the commission may issue the new license prior to completing the investigation of any complaint pending against the applicant or of any matter revealed by the application. The commission may thereafter initiate an action to suspend or revoke the license after notice and hearing in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(c) The commission shall advise each licensee of the time period for filing a renewal application and paying the renewal fee by mailing an appropriate notice to the licensee as prescribed by §535.91 of this subchapter (relating to Renewal Notices). If the licensee is subject to MCE requirements, the notice must also contain the number of MCE hours for which the licensee has been given credit and the number of additional MCE hours required for renewal of the license. The commission shall have no obligation to so notify an inactive licensee who has failed to furnish the commission with the person's mailing address and email address or a corporation, limited liability company or partnership that has failed to designate an officer, manager or partner who meets the requirements of the Act.

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

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

(f) The commission may not renew a license issued to a business entity unless the business entity has designated an officer, manager or partner who meets the requirements of the Act, including satisfaction of MCE requirements. No person may act as designated officer, manager or partner if the person has failed to meet MCE requirements. For the purpose of this section, MCE requirements for the designated officer, manager or partner must be satisfied during the term of any individual broker license held by the officer, manager or partner. A designated partner who is not licensed individually as a broker must complete MCE required for a two-year license

within the term of the partnership's license in order to renew the license of the partnership. If the individual real estate broker license of a designated partner expires, the partnership may only renew its license if the designated partner has satisfied MCE requirements that would have been imposed if the license of the designated partner had not expired.

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

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

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

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

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

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

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

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

(E) pay a late reporting fee.

(4) For the purpose of this section, a renewed license is effective the day following the expiration of the current license. MCE courses completed after expiration of the current license under this

provision may not be applied to the following renewal of the license.

(h) Credit will not be given for attendance of the same course more than once during the term of the current license or during the two-year period preceding the filing of an application for late renewal or return to active status. Each licensee attending all sessions of a course shall sign the course completion roster, and provide the information required for each licensee on the form. A real estate licensee may receive partial credit for partial attendance at an MCE elective credit course if the provider permits partial credit and the provider and student verify attendance on the Individual MCE Partial Credit Request Form. A false statement to the commission concerning attendance at an MCE course will be deemed a violation of the Act and of this section.

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

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

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

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

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

(5) the Texas licensee has filed a Credit Request for an Out of State Course Credit Request, with the commission.

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

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

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

- (1) ABR--Accredited Buyer Representative
- (2) CRE--Counselor in Real Estate
- (3) CPM--Certified Property Manager
- (4) CCIM--Certified Commercial-Investment Member
- (5) CRB--Certified Residential Broker
- (6) CRS--Certified Residential Specialist
- (7) GRI--Graduate, Realtor Institute
- (8) IREM--Institute of Real Estate Management
- (9) SIOR--Society of Industrial and Office Realtors

(m) A member of the Texas Legislature who is a licensee need only take three (3) hours in legal ethics to satisfy the legal mandatory continuing education requirements. To obtain an exemption, the licensee must be a current member of the Legislature.

§535.93. Late Renewal Applications. *[Adopted September 1, 2011; amended November 1, 2011]*

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

(b) To renew a license on active status without any lapse in active licensure, a salesperson must also submit a Salesperson Sponsorship Form certifying sponsorship for the period from the day after the previous license expired to the day the renewal license issued, and for the period beginning on the day after the renewal license issued. The same broker may be the sponsor for both periods. The commission shall renew the license on inactive status for the period(s) in which the salesperson was not sponsored.

(c) A licensee who has not completed all Mandatory Continuing Education (MCE) before the expiration of the previous license and who files a late application not later than the 60th day after the expiration of the previous license may renew the license on active status subject to the following conditions.

(1) Not later than the 60th day after the expiration of the previous license, the licensee must:

- (A) pay an MCE deferral fee of \$200; and
- (B) complete the MCE.

(2) If, within 15 days after the end of the 60-day period set out in paragraph (1) of this subsection, the commission has not been provided with evidence that the licensee has completed the MCE and paid the MCE deferral fee of \$200, the renewed license shall be placed on inactive status. In order to reactivate a license placed on inactive status under this subsection, the licensee must:

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

(B) pay the \$200 MCE deferral fee if it has not yet been paid;

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

(D) pay a late reporting fee of \$250.

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

(1) provide the commission with evidence that the licensee has completed the MCE;

(2) pay the \$200 MCE deferral fee;

(3) complete and submit a Salesperson Sponsorship Form if a salesperson; and

(4) pay a late reporting fee of \$250.

(e) If a licensee files a late application to renew a license in an active status and has completed all MCE before the expiration of the previous license, the licensee is not required to pay the \$200 MCE deferral fee or the \$250 late reporting fee.

(f) MCE completed after expiration of the previous license under this section may not be applied to any subsequent renewal of the license.

(g) A licensee may file a late application to renew a license on inactive status under this section.

§535.94. Hearing on Application Disapproval: Probationary Licenses. *[Adopted February 5, 1981; amended June 22, 1990; September 20, 2000 and September 1, 2004; December 30, 2007 and January 1, 2011; Ref: §§1101.364, 1101.365]*

(a) For the purposes of §1101.364 and §1101.505 of the Act and §1102.114 of Chapter 1102, "denial of a license" means to disapprove an applicant for a license for failure to comply with the requirement of §1101.354(2) of the Act, to satisfy the commission as to the applicant's honesty, trustworthiness and integrity, or, if the applicant seeks registration as an easement or right-of-way agent, to disapprove an application for registration under §535.400 of this title (relating to Registration of Easement or Right-of-Way Agents).

(b) If the commission or a SOAH administrative law judge determines that issuance of a probationary license is appropriate, the order entered by the commission with regard to the application must set forth the terms and conditions for the probationary license. Terms and conditions for a probationary license may include any of the following:

(1) that the probationary licensee comply with the Act and with the rules of the Texas Real Estate Commission;

(2) that the probationary licensee fully cooperate with the enforcement division of the Texas Real Estate Commission in the investigation of any complaint filed against the licensee;

(3) that the probationary licensee attend a prescribed number of classroom hours in specific areas of study during the probationary period;

(4) that the probationary licensee limit real estate brokerage practice as prescribed in the order;

(5) that the probationary licensee report regularly to the commission on any matter which is the basis of the probationary license; or

(6) that the probationary licensee comply with any other terms and conditions contained in the order which have been found to be reasonable and appropriate by the commission after due consideration of the circumstances involved in the particular application.

(c) Unless the order granting a probationary license specifies otherwise, a probationary licensee may renew the license after the probationary period by filing a renewal application, satisfying applicable education requirements and paying the prescribed renewal fee.

(d) If a license expires prior to the completion of a probationary term and the licensee files a late renewal application as authorized by §535.93 of this subchapter (relating to Late Renewal Applications), any remaining probationary period shall be reinstated effective as of the day following the renewal of the previous license.

§535.95. Miscellaneous Provisions Concerning License or Registration Applications or Renewals, Including Fingerprinting Requirements. *[Adopted February 11, 1992; amended May 27, 1998; September 1, 2000; June 1, 2008 and September 9, 2012; Ref: H.B. 1393, 72nd Leg.; §57.491 Education Code]*

(a) As used in this section, the term "license" includes a registration issued by the commission, and the term "licensee" includes registrants.

(b) A licensee on active duty in the United States armed forces serving outside the State of Texas may renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the licensee:

(1) provides a copy of official orders or other official documentation acceptable to the commission showing that the licensee was on active duty outside the state during the licensee's last renewal period;

(2) applies for the renewal within 90 days after the licensee's active duty ends; and

(3) pays the renewal application fee in effect when the previous license expired.

(c) Education requirements that would have been imposed for a timely renewal shall be deferred under this section to the next renewal of the license.

(d) Renewals of licenses issued by the commission are subject to the policies established by the Texas Education Code, §57.491. Before the commission declines to renew a license due to a default on a loan guaranteed by Texas Guaranteed Student Loan Corporation (TGS LC), a default on a repayment agreement with TGS LC or a failure to enter a repayment agreement with TGS LC, the

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commission shall give notice and provide an opportunity for a hearing in accordance with the provisions of the Administrative Procedure Act, Texas Government Code, §§2001.001, et seq. The commission shall advise licensees in renewal notices and license application forms that default on a loan guaranteed by the TGSLC may prevent a subsequent renewal of a license.

(e) To provide for an orderly implementation of fingerprinting requirements and minimize disruption of licensure, the commission may issue a renewal license on active status if the licensee has provided at least one set of fingerprints to the Department of Public Safety (DPS), the fingerprints were rejected by the DPS or the Federal Bureau of Investigation FBI, and the licensee has otherwise complied with all other renewal requirements. If it is subsequently determined that the DPS or the FBI requires additional data from the licensee to complete a criminal history record check, the commission shall so notify the licensee. The commission may take disciplinary action against a licensee for failing to provide the requested data within a reasonable time, as specified in the notice.

(f) This subsection applies to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

(1) The commission may issue a license to an applicant described under this subsection who:

(A) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or

(B) within the five years preceding the application date held a license in this state that expired while the applicant lived in another state for at least six months.

(2) The commission may allow an applicant described under paragraph (1) of this subsection to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the commission. For purposes of this subsection, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a particular license.

(3) In lieu of the standard method(s) of demonstrating competency for a particular license and based on the applicant's circumstances, the

alternative methods for demonstrating competency may include any combination of the following as determined by the commission:

(A) education;

(B) continuing education;

(C) examinations (written and/or practical);

(D) letters of good standing;

(E) letters of recommendation;

(F) work experience; or

(G) other methods required by the administrator.

(4) The administrator may issue a license by endorsement in the same manner as the commission to an applicant described under paragraph (1) of this subsection.

(5) The applicant described under paragraph (1) of this subsection shall submit an application and proof of the requirements under this subsection and for that particular license on a form and in a manner prescribed by the commission.

(6) The applicant described under paragraph (1) of this subsection shall submit the applicable fee(s) required for that particular license.

(7) The applicant described under paragraph (1) of this subsection shall undergo a criminal history background check.

§535.96. Mailing Address and other Contact Information. *[Adopted January 1, 2011; amended November 1, 2011]*

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

(b) The commission shall mail a notice or correspondence to an active broker or an inactive licensee to the mailing or email address of the broker or licensee as shown in the commission's records. The commission shall mail a notice or correspondence to an active salesperson to the mailing or email address of the salesperson's sponsoring broker as shown in the commission's records.

J. Fees

§535.101. Fees. *[Adopted January 1, 1976; amended October 27, 1978; November 14, 1979, March 19, 1990; July 1, 1992 and August 31, 1992; November 1, 1993; September 1, 1995; May 27, 1998; October 11, 1999; September 1, 2000; October 15, 2001; June 24, 2002; January 1, 2004; May 10, 2004; August 31, 2004; October 25, 2007; June 1, 2008; November 17, 2008; November 1, 2009; September 1, 2010; November 1, 2011 and January 1, 2013; Ref: §1101.152]*

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

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

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

(2) a fee of \$39 for annual renewal of a real estate broker license;

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

(4) a fee of \$39 for annual renewal of a real estate salesperson license;

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

(6) a fee of \$50 for filing a request for, or renewal of, a license for each additional office or place of business for a period of two years;

(7) a fee of \$20 for filing a request for a license for a change of place of business, change of a licensee name, or to establish a relationship with a sponsoring broker;

(8) a fee of \$50 to request an inactive broker license be returned to active status;

(9) a fee of \$40 for preparing a license history;

(10) a fee of \$50 for the filing of a moral character determination;

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

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

(13) a fee of \$50 plus \$20 per classroom hour approved by the commission for each core education course for a period of four years;

(14) a fee of \$400 for filing an application for accreditation as a Mandatory Continuing Education (MCE) provider for a period of two years under the Act, §1101.302;

(15) a fee of \$50 plus \$10 per classroom hour approved by the commission for each MCE course for a period of two years;

(16) a fee of \$150 for the filing of an application for approval as an instructor for a two-year period for real estate core or MCE courses, or both;

(17) a fee of \$58.50 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less;

(18) a fee of \$78 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than six months;

(19) the fee charged by the Federal Bureau of Investigation and Texas Department of Public Safety for fingerprinting or other service for a national or state criminal history check in connection with a license application or renewal;

(20) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(21) an MCE deferral fee of \$200 if MCE is not completed by scheduled license expiration date;

(22) a late reporting fee of \$250 to reactivate a license under §535.92(g) of this chapter (relating to Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements);

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(23) a fee of \$30 for processing a check or other equivalent instrument returned by a bank or depository as dishonored for insufficient funds; and

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

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

K. Place of Business

§535.112. Branch Office. *[Adopted January 1, 1976; amended November 8, 1977; May 28, 1984; June 22, 1990; May 27, 1998 and September 1, 2000. Ref: §1101.552]* A broker shall apply for a branch office license if the broker maintains more than one place of business. A "place of business" means a place where the licensee meets with clients and customers to transact business. A license is required for each branch office maintained by the broker, and the license certificate for each branch office must display the address at which the broker's office is located.

L. Termination of Salesperson's Association with Sponsoring Broker

§535.121. Inactive License. *[Adopted January 1, 1976; amended November 14, 1979; July 20, 1981; March 19, 1990; January 4, 1993; May 27, 1998; September 1, 2000; July 4, 2005; January 1, 2011 November 1, 2011 and June 3, 2012; Ref: §1101.367]*

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

(1) the death of the salesperson's sponsoring broker;

(2) the expiration, suspension, revocation or inactivation of the license of the sponsoring broker;

(3) if the sponsoring broker is a business entity, the dissolution of the entity or the forfeiture of its charter, which also places the license of the

entity on inactive status;

(4) if the sponsoring broker is a business entity, the expiration, suspension, revocation or inactivation of the license of the designated broker of the entity, which also places the license of the entity on inactive status; or

(5) if a broker notifies the commission in writing that the broker no longer sponsors the salesperson.

(b) The commission will no longer consider the broker to sponsor the salesperson upon receipt of the license or upon receipt of a written request from a new sponsoring broker to sponsor the salesperson, whichever first occurs. If the sponsorship has ended because the broker has terminated the sponsorship, the broker shall immediately notify the salesperson in writing. If the sponsorship has ended because the salesperson has left the sponsorship, the salesperson shall immediately notify the broker in writing. If the commission receives a request from a broker to sponsor a salesperson shown in the commission's records as sponsored by another broker, the commission shall notify the former broker of the change in sponsorship.

(c) When the sponsorship of a salesperson ends, the broker shall immediately return the salesperson's license or copy thereof to the commission or otherwise notify the commission in writing that the sponsorship has ended.

§535.122. Reactivation of License. *[Adopted January 1, 1976; amended June 1, 1990, March 1, 1991; March 19, 1991; June 18, 1991; May 27, 1998; September 1, 2000; August 31, 2004; January 1, 2011 and November 1, 2011; Ref: §1101.367]*

(a) When a salesperson whose license status is active enters the sponsorship of a broker, the salesperson and broker whose sponsorship the salesperson has entered shall notify the commission within 10 days, submit the appropriate fee, and request issuance of a new license reflecting the new association. The salesperson may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission.

(b) When a salesperson whose license status is inactive enters the sponsorship of a broker and the salesperson is subject to MCE requirements, the salesperson is not returned to active status until MCE requirements are satisfied and the commission has received documentation of course completion in a form satisfactory to the

commission. If the salesperson has satisfied all MCE requirements, the salesperson may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission. A salesperson whose original application or renewal application was subject to educational requirements imposed by the Act, §1101.358 and §1101.454, is not subject to MCE requirements as a condition of returning to active status during the term of the license issued from the original application or renewal application.

§535.123. Inactive Broker Status. *[Adopted November 18, 1991; Amended November 23, 1993; May 27, 1998; August 31, 2004 and January 1, 2011; Ref: §1101.366]*

(a) For the purposes of this section, "inactive broker" means a licensed broker who does not sponsor salespersons or perform any activities for which a broker license is required and who has been placed on inactive status by the commission.

(b) To be placed on inactive status, a broker must do the following:

(1) apply to the commission on a form approved by the commission for that purpose or by a letter providing the broker's name, license number and current mailing address, telephone number and email address;

(2) confirm in writing that the broker has given any salespersons sponsored by the broker written notice of termination of sponsorship at least 30 days prior to filing the request for inactive status; and

(3) return the broker's current license certificate to the commission.

(c) To return to active status a broker who has been placed on inactive status must apply to the commission for return to active status on a form approved by the commission, pay the appropriate fee and satisfy MCE requirements specified in §1101.455 of the Act and the Rules.

(d) A broker who has been on inactive status may resume practice once the broker has satisfied MCE requirements, and the application for return to active status and appropriate fee have been mailed to or delivered to the commission.

M. Nonresidents

§535.131. Unlawful Conduct; Splitting Fees. *[Adopted January 1, 1976; amended March 11, 1981; May 27, 1998; October 1, 2000; August 31,*

2004 and January 1, 2011; Ref: §1101.651]

(a) The Act, permits Texas-licensed brokers to cooperate with and share earned commissions with persons licensed as brokers in other states, but all negotiations physically conducted within Texas must be handled by Texas licensees.

(b) A resident of a foreign state that does not require a person to be licensed to act as a real estate broker is considered to be licensed as a broker for the purposes of §1101.651 of the Act, if the person complies with the law of the foreign state and practices there as a real estate broker.

§535.132. Eligibility for Licensure. *[Adopted January 1, 1976; amended November 14, 1979; July 20, 1981, April 15, 1982; November 23, 1993; April 1, 1996; December 1, 1997; October 1, 2000; August 31, 2004; January 1, 2011 and November 1, 2011; Ref: §§1101.357, 360, .552]*

(a) A person residing in another state may apply for a license under this section if the person:

(1) is licensed as a broker by the other state; or

(2) was licensed as a Texas real estate salesperson or broker no more than two years prior to the filing of the application.

(3) The commission may waive education and experience requirements if the applicant satisfies the conditions established by §535.56(h) of this title (relating to Education and Experience Requirements for a Broker License) or §535.55 of this title (relating to Education Requirements for a Salesperson License).

(b) A business entity created or chartered under the laws of another state may apply for a Texas real estate broker license if the entity meets one of the following requirements.

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

(2) The entity is licensed as a broker in a state in which it is permitted to engage in real estate brokerage business as a foreign business entity.

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

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

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

§535.133. Consent to be Sued; Exception to Requirements. *[Adopted January 1, 1976; amended April 7, 1983 and May 27, 1998; Ref: §1101.360]* A consent to service of legal process must be filed with the commission by a broker or salesperson who moves to another state.

N. Suspension and Revocation of Licensure

§535.141. Initiation of Investigation. *[Adopted January 1, 1976; amended October 20, 1983; February 8, 1991; May 7, 1992; November 23, 1993; May 27, 1998; October 1, 2000; August 31, 2004; March 23, 2008; January 1, 2011 and November 1, 2011; Ref: §§1101.204, 1101.652]*

(a) As used in this section, the term "licensee" includes a person licensed or registered under the Act and Chapter 1102 and the term "license" includes a registration issued by the commission.

(b) Except as authorized under Texas Government Code §402.031(b), the commission may not conduct an undercover or covert investigation of a person under the Act and Chapter 1102. Notwithstanding §1101.204(d), the commission shall not disclose to any person who is the subject of an investigation involving fraudulent activity, that the activity has been reported to the proper authority pursuant to Texas Government Code §402.031.

(c) A complaint which names a licensed real estate salesperson as the subject of the complaint but does not specifically name the salesperson's sponsoring broker, is a complaint against the broker sponsoring the salesperson at the time of any alleged violation for the limited purposes of determining the broker's involvement in any alleged violation and whether the broker fulfilled his or her professional responsibilities provided the complaint concerns the conduct of the salesperson as an agent for the broker.

(d) The designated broker is responsible for all real estate brokerage activities performed by, on

behalf of, or through a business entity. A complaint which names a business entity licensed as a broker as the subject of the complaint but which does not specifically name the designated broker is a complaint against the designated broker at the time of any alleged violation for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities. A complaint which names a salesperson sponsored by a licensed business entity but which does not specifically name the designated broker of the business entity is a complaint against the designated broker at the time of any alleged violation by the salesperson for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities provided the complaint concerns the conduct of the salesperson as an agent of the business entity.

(e) Once a written and signed complaint has been filed with the commission, the commission has jurisdiction to consider, investigate and take action based on the complaint. Complaints may be withdrawn only with the consent of the commission.

(f) If information obtained during the course of an investigation of a complaint reveals reasonable cause to believe the respondents to the complaint may have committed other violations of the Act or a rule of the commission, no additional authorization shall be required to investigate and take action based upon the information.

(g) If the commission suspends or revokes a license or probates an order of suspension or revocation against a licensee, the commission may monitor compliance with its order and initiate action based on the authority of the original complaint or original authorization by the members of the commission.

(h) A person whose license has been suspended may not during the period of any suspension:

(1) perform, attempt to perform, or advertise to perform any act for which a license is required by the Act or Rules; or

(2) unless instructed otherwise in writing by both principals to the transaction, continue to hold any trust funds received in a real estate transaction in which the person acted as a broker or salesperson.

(i) A person whose license is subject to an order

suspending the license must prior to the suspension taking effect:

(1) if the person is a salesperson, notify his or her sponsoring broker in writing that his or her license will be suspended;

(2) if the person is a broker, notify in writing any salespersons he or she sponsors, or any business entity for which the person is designated broker that:

(A) his or her broker license will be suspended; and

(B) once the suspension is effective any salesperson he or she sponsors or who is sponsored by the business entity will not be authorized to engage in real estate brokerage unless the salespersons associate with another broker and file a change of sponsorship with the commission or the business entity designates a new broker and files a change of designated broker with the commission;

(3) if the person is an apprentice inspector or real estate inspector, notify his or her sponsoring professional inspector in writing that his or her license will be suspended;

(4) if the person is a professional inspector, notify in writing any apprentice or real estate inspectors he or she sponsors that:

(A) his or her professional inspector license will be suspended; and

(B) once the suspension is effective any apprentice or real estate inspectors he or she sponsors will not be authorized to inspect any real property unless the apprentice or real estate inspectors associate with another professional inspector and file a change of sponsorship with the commission.

(5) if the person has a contractual obligation to perform services for which a license is required by law or commission rule, notify in writing all other parties to the contract that the services cannot be performed during the suspension;

(6) if the person is a salesperson and is directly involved in any real estate transaction in which the salesperson acts as an agent, notify in writing all other parties, including principals and other brokers, that the person cannot continue performing real estate brokerage services during the suspension; and

(7) if the person holds money in trust in any transaction in which the person is acting as a broker, remit such money in accordance with the

instructions of the principals.

(j) If, in conjunction with an application or disciplinary matter, an applicant or licensee agrees to automatic suspension or revocation of his or her license for failing to comply with an administrative term or requirement of an agreed order such as payment of a penalty or completion of coursework, the license may be automatically suspended or revoked with no further action by the commission.

(k) A licensee may not assign to another licensee a listing agreement, buyer's representation agreement or other personal service contract to which the licensee is a party and which obligates the licensee to perform acts for which a license is required without first obtaining the written consent of the other parties to the contract.

§535.143. Fraudulent Procurement of License.

[Adopted January 1, 1976; amended March 19, 1990; May 27, 1998; October 1, 2000; August 31, 2004 and January 1, 2011; Ref: §1101.652(a)(2)] A violation of, §1101.652(a)(2) of the Act occurs if an applicant, including a designated broker for any business entity eligible for licensure under this chapter, omits material information or makes material misstatements, written or oral, in connection with the filing of an application or renewal application to obtain licensure. This does not include an unintentional mistake of fact the determination of which is within the discretion of the commission and subject to judicial review.

§535.144. When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child.

[Adopted January 1, 1976; amended March 22, 1978; August 6, 1980; October 20, 1983; May 27, 1998; October 1, 2000; May 24, 2006 and January 1, 2011; Ref: §1101.652(a)(3)]

(a) For purposes of §1101.652(a)(3) of the Act "a person related to the license holder within the first degree by consanguinity" means a license holder's parent or child.

(b) A licensee, when engaging in a real estate transaction on his or her own behalf, on behalf of a business entity in which the licensee is more than a 10% owner, or on behalf of the licensee's spouse, parent, or child, is obligated to disclose in writing to any person with whom the licensee deals that he or she is a licensed real estate broker or salesperson acting on his or her own behalf or on behalf of the licensee's spouse, parent or child in any contract of sale or rental agreement

or in any other writing given prior to entering into any contract of sale or rental agreement. A licensee shall not use the licensee's expertise to the disadvantage of a person with whom the licensee deals.

§535.145. False Promise. *[Adopted January 1, 1976; amended October 1, 2000; January 1, 2011 and November 29, 2012; Ref: §1101.652(b)(5)]* For purposes of §1101.652(b)(5) of the Act "false promise" includes both oral and written promises. The fact that a written contract between the parties to a real estate transaction does not recite a promise made by a real estate licensee to one of the parties or that a person did not detrimentally rely on the false promise will not prevent the commission from determining that a false promise was made. In determining whether this section has been violated, neither a written contractual provision disclaiming oral representations nor the Texas Rules of Evidence Rule 1004, the parol evidence rule, shall prevent the commission from considering oral promises made by a licensee.

§535.146. Failure to Properly Account for Money; Commingling. *[Adopted January 1, 1976; amended August 7, 1977; May 27, 1998; October 1, 2000 and January 1, 2011; Ref: §1101.652(b)(9) & (10)]*

(a) A broker who maintains trust funds shall either keep a separate trust account or use an escrow agent for all such trust funds.

(b) A broker may designate a salesperson as an authorized signatory on any trust account; however, the broker shall be solely responsible and accountable for all trust funds received by the broker and all deposits to or disbursements from the trust account.

(c) A salesperson shall immediately deliver to the sponsoring broker any trust funds received in connection with a real estate transaction not otherwise deposited with a title company.

(d) A licensee maintaining a trust account shall retain for a period of four years a documentary record of each deposit or withdrawal from the account.

(e) A licensee shall not commingle trust funds with personal funds or other non-trust funds and shall not deposit or maintain trust funds in a personal account or any kind of business account except a specifically designated trust account in the name of the sponsoring broker.

(f) If a licensee accepts money belonging to others, the licensee holds such money in a fiduciary capacity.

(g) If any or all of the parties to a real estate transaction make demand for the money, the licensee must, within a reasonable time, properly account for or remit the money. "Reasonable time" means within 30 days after demand is made for an accounting or for remittance of money belonging to others. "Properly account for or remit" is defined as the licensee's obligation to pay the money to the party or parties entitled to the money if it can be reasonably determined to which party or parties the money should be paid. A licensee may pay the money into the registry of a court and interplead the parties if it cannot be reasonably determined to which party or parties the money should be paid.

(h) If, by written agreement of the parties to the real estate transaction, the licensee holding money belonging to others has the right to require the receipt, release and authorization in writing from all parties before paying the money to any party or parties, and if the licensee chooses to exercise that right, "properly account for or remit" means to furnish every party with a written statement requesting such receipt, release and authorization and detailing the amount and place of custody of the money and to pay the money to the party or parties in accordance with the receipts, releases and authorizations, if obtained. When a broker makes a disbursement to which all parties to the contract have not expressly agreed in writing, the broker must immediately notify all parties in writing of the disbursement. A licensee may pay the money into the registry of a court and interplead the parties if the receipts, releases and authorizations that the licensee has the right to require cannot be obtained.

(i) If trust funds are held by a licensee, they must be maintained in the broker's trust account. Placing such money in a licensee's operating account is prima facie evidence of commingling.

(j) If a licensee acquires ownership of money, including entitlement to a real estate commission for the real estate transaction, held in the licensee's trust account that was originally held in trust for another in connection with the real estate transaction, such money must be removed from the trust account within a reasonable time. "Reasonable time" in this context means within 30 days after the licensee acquires ownership of the money.

(k) The balance of a broker's trust account shall at all times equal the total of the trust funds received for which the broker is accountable, provided, however, the broker may deposit and maintain a reasonable amount of funds in the trust account to cover bank service fees, including fees charged for insufficient funds. Detailed records must be kept for any funds deposited under this exception. Paying operating expenses or making withdrawals from a broker's trust account for any purpose other than proper disbursement of money held in trust is prima facie evidence of commingling money held in trust with the broker's own funds.

§535.147. Splitting Fee with Unlicensed Person.

[Adopted January 1, 1976; amended March 11, 1981; October 1, 2000; August 31, 2004 and January 1, 2011; Ref: §1101.652(b)(11)]

(a) Except as otherwise provided by the Act or Rules, a broker or salesperson may not share a commission or fees with any person who engages in acts for which a license is required and is not actively licensed as a broker or salesperson.

(b) An unlicensed person may share in the income earned by a business entity licensed as a broker or exempted from the licensing requirements under the Act if the person engages in no acts for which a license is required and does not lead the public to believe that the person is in the real estate brokerage business.

(c) A broker or salesperson may not share a commission or fees with an unlicensed corporation or limited liability company created by a licensee for the purpose of collecting a commission or fees on behalf of the licensee.

(d) It is not a violation of this section for a licensee to rebate or pay a portion of the licensee's commission or fees to a party in the transaction. However, no commission or fees may be paid to any party to the transaction in a manner which would mislead a broker, lender, title company or governmental agency regarding the real estate transaction or the financial resources or obligations of the buyer. A licensee who intends to pay a portion of the licensee's fee or commission to a party the licensee does not represent must obtain the consent of the party represented by the licensee prior to making the payment.

§535.148. Receiving an Undisclosed Commission or Rebate. *[Adopted January 1, 1976; amended October 1, 2000; amended July 2, 2001; January 1,*

2011; Ref: §1101.652(b)(13)]

(a) A licensee may not receive a commission, rebate, or fee in a transaction from a person other than the person the licensee represents without first disclosing to the licensee's client that the licensee intends to receive the commission, rebate or fee, and obtaining the consent of the licensee's client. This subsection does not apply to referral fees paid by one licensed real estate broker or salesperson to another licensed broker or salesperson.

(b) If a party the licensee does not represent agrees to pay a service provider in the transaction, the licensee must also obtain the consent of that party to accept a fee, commission or rebate from the service provider. As used in this section, the term "service provider" does not include a person acting in the capacity of a real estate broker or salesperson.

(c) A licensee may not enter into a contract or agreement with a service provider to a real estate transaction in which the licensee represents one or both of the parties if, pursuant to the contract or agreement:

(1) the licensee provides services for or on behalf of the service provider; and

(2) the contract or agreement prohibits the licensee from offering similar services for or on behalf of a competing service provider.

(d) A licensee may not accept a fee or payment for services provided for or on behalf of a service provider to a real estate transaction the payment of which is contingent upon a party to the real estate transaction purchasing a contract or services from the service provider.

(e) Effective March 1, 2011, a licensee must use TREC Form RSC-1, Disclosure of Relationship with Residential Service Company, to disclose to a party to a real estate transaction in which the licensee represents one or both of the parties any payments received for services provided for or on behalf of a residential service company licensed under Texas Occupations Code Chapter 1303.

(f) The Texas Real Estate Commission adopts by reference TREC Form No. RSC-1, Disclosure of Relationship with Residential Service Company, approved by the commission for use by licensees to disclose payments received from a residential service company. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

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§535.149. Lottery or Deceptive Trade Practice. *[Adopted January 1, 1976; amended January 1, 2011; Ref: §1101.652(b)(14)&(15)]*

(a) For the purposes of §1101.652(b)(14) of the Act, the elements of a "lottery" are the award or distribution of a prize or prizes by chance and the payment of consideration for the opportunity to win the prize.

(b) The giving of gifts as an inducement for prospective clients does not violate this section or §1101.652(b)(14) of the Act, but licensees when procuring prospects must otherwise comply with the provisions of §535.20 of this chapter (relating to Referrals From Unlicensed Persons).

(c) "Deceptive practices" include, but are not limited to the acts described in the Texas Business and Commerce Code §17.46, done in a manner defined in that section.

§535.153. Violating an Exclusive Agency. *[Adopted January 1, 1976; amended June 22, 1990; August 31, 2004 and January 1, 2011; Ref: §1101.652(b)(22)]* Although a licensee, including one acting as agent for a prospective buyer or prospective tenant, may not attempt to negotiate a sale, exchange, lease, or rental of property under exclusive listing with another broker, §1101.652(b)(22) of the Act does not prohibit a licensee from soliciting a listing from the owner while the owner's property is subject to an exclusive listing with another broker.

§535.154. Advertising. *[Adopted March 9, 2011]*

(a) For the purposes of this section, an "advertisement" is a written or oral statement or communication by or on behalf of a licensee which induces or attempts to induce a member of the public to use the services of the licensee or service provider. The term "advertisement" includes, but is not limited to, all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards. The provisions of this section apply to all advertisements by or on behalf of a licensee unless the context of a particular provision indicates that it is intended to apply to a specific form of advertisement.

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

(1) a communication from a licensee to a member of the public after the member of the public agreed for the licensee to provide services, provided the first communication from the

licensee contains the information required by this section; or

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

(c) An advertisement must clearly and conspicuously contain the name of the broker, either a business entity or an individual. For purposes of this section, the broker, or a salesperson sponsored by the broker, may use the broker's assumed name instead of the name in which the broker is licensed, if the assumed name is registered with the commission under subsection (e) of this section. An advertisement may not contain an assumed name unless a broker has registered that assumed name with the commission. If the broker's name or its assumed name includes a salesperson's name, the advertisement must include another assumed name of the broker that does not include a salesperson's name, or the designated agent's name.

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

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

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

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

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

(5) advertising a property in a manner that creates a reasonable likelihood of confusion regarding the permitted use of the property.

(e) A broker, individually or as the designated officer, manager or partner of a business entity licensed as a broker shall notify the commission in writing within 30 days after the broker, or a salesperson sponsored by the broker, starts or stops using an assumed name in business other than the name in which the person is licensed.

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

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

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

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

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

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

(j) A real estate licensee placing an advertisement on the Internet, electronic bulletin board or the like must include on each page on which the licensee's advertisement appears any information required by this section and §1101.652(b)(23) of the Act. For purposes of this subsection, "page" means each html document of a website, which may include several screens of information that are viewed by scrolling down to the end of the document.

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

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

or providing directions to real property listed for sale, rental or lease with the broker who has placed the sign, provided the signs otherwise comply with this section and the Act.

(m) An advertisement containing an offer to rebate a portion of a licensee's commission must disclose that payment of the rebate is subject to the consent of the party the licensee represents in the transaction. If payment of the rebate is contingent upon a party's use of a selected service provider, the advertisement also must contain a disclosure that payment of the rebate is subject to restrictions.

(n) If an advertisement offers, recommends or promotes the use of services of a real estate service provider other than the licensee and the licensee expects to receive compensation if a party uses those services, the advertisement must contain a disclosure that the licensee may receive compensation from the service provider.

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

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

§535.156. Dishonesty; Bad Faith; Untrustworthiness. *[Adopted January 1, 1976; amended May 24, 1976; June 9, 1981; May 27, 1998; and October 1, 2000; Ref: §1101.652(b)(2)]*

(a) A licensee's relationship with the licensee's principal is that of a fiduciary. A licensee shall convey to the principal all known information which would affect the principal's decision on whether or not to make, accept or reject offers; however, if the principal has agreed in writing that offers are not to be submitted after the principal has entered into a contract to buy, sell, rent, or lease a property, the licensee shall have no duty to submit offers to the principal after the principal has accepted an offer.

(b) The licensee must put the interest of the licensee's principal above the licensee's own interest. A licensee must deal honestly and fairly with all parties; however, the licensee represents only the principal and owes a duty of fidelity to such principal.

(c) A licensee has an affirmative duty to keep the principal informed at all times of significant

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information applicable to the transaction or transactions in which the licensee is acting as agent for the principal.

(d) A licensee has a duty to convey accurate information to members of the public with whom the licensee deals.

§535.159. Failing to Properly Deposit Escrow Monies. *[Adopted January 1, 1976; amended April 3, 1980; May 27, 1998; October 1, 2000 and January 1, 2011; Ref: §1101.652(b)(3)]*

(a) A broker is not required to maintain a trust account unless the broker undertakes to accept trust funds belonging to others.

(b) When money is deposited with a broker to be held in escrow, the broker becomes the trustee accountable to the party making the deposit and to the party for whose benefit said trust funds are deposited.

(c) It is up to principals to a transaction to decide who shall act as escrow agent for them. A broker may not require the principals to a real estate transaction to designate the broker as their escrow agent.

(d) Nonresident brokers acting as real estate agents in Texas who accept trust funds as escrow agents must deposit said funds in a trust account at a banking institution or title company authorized to do business in Texas.

(e) It is permissible for a broker to establish a savings account as a trust account, provided said funds may be withdrawn at the appropriate time for disbursement. In the absence of an agreement to the contrary signed by the person depositing the funds with the broker, any interest earned on a savings account must be distributed to the person or persons who are the equitable owners of the funds during the time the interest is earned.

(f) A salesperson may not maintain a trust account or act as an escrow agent. Any money received by a real estate salesperson, to be held in trust pursuant to a real estate transaction, must be delivered to the salesperson's sponsoring broker to be deposited in accordance with the agreement of the principals in the transaction.

(g) A broker may, but is not required to, maintain separate trust accounts for earnest money deposits, security deposits received for the management of rental property, and for other trust funds.

(h) If a broker maintains a trust account, that account must be clearly identified as a trust account.

(i) Unless a different time to deposit money is expressly agreed upon in writing by the principals to the transaction, "reasonable time" as used in this section means by the close of business of the second working day after execution of the contract by the principals. If all principals agree, a deposit may be delayed in accordance with their agreement.

(j) If trust funds held by a broker are deposited in a noninterest bearing account, the broker is not liable for interest or for charges on the funds unless there is an agreement to the contrary.

(k) If a broker accepts a check as escrow agent and later finds that such check has been dishonored by the bank on which it was drawn, the broker shall immediately notify all parties to the transaction in writing.

§535.160. Failing to Properly Disburse Escrow Money. *[Adopted January 1, 1976; amended May 27, 1998 and January 1, 2011; Ref: §1101.652(b)(31)]* A broker shall make no disbursement from the broker's trust account except in accordance with the agreement under which the money was received.

§535.161. Failing to Provide Information. *[Adopted January 1, 1976; amended January 1, 2011; Ref: §1101.652(a)(6)]* For the purposes of §1101.652(a)(5) of the Act, "reasonable time" means 10 working days from receipt of a request made by the commission.

O. Hearing on Suspension or Revocation of Licensure

§535.171. Hearing: Subpoenas and Fees. *[Adopted January 1, 1976; amended December 25, 1980 and August 31, 2004 and January 1, 2011; Ref: §1101.157]*

(a) In addition to the provisions of the Texas Government Code §2001.089, process may be served by an employee of the Texas Real Estate Commission if that person is designated by the commission.

(b) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding is entitled to receive mileage of \$.20 a mile for going to and returning from the place of the hearing or where the deposition is taken, if the place is more than 25

miles from the person's place of residence and a fee of \$20 a day for each day or part of a day the person is necessarily present as a witness or deponent.

(c) Pursuant to Texas Government Code §2001.089, a party who requests the issuance of a subpoena for a witness or deponent under subsection (b) of this section, must deposit an amount with the Texas Real Estate Commission that will reasonably ensure payment of the amounts estimated to accrue under subsection (b) of this section and Texas Government Code §2001.103.

(d) Pursuant to Texas Government Code §2001.177, a party seeking judicial review of a final decision of the Texas Real Estate Commission in a contested case shall pay all costs of preparing the original or certified copy of a record of the contested case proceedings.

P. Penalty for Unlicensed Activity

§535.181. Penalty. *[Amended January 1, 1976; amended December 25, 1980 and January 1, 2011; Ref: §1101.758]* If the Texas Real Estate Commission receives information that indicates that a person has engaged in unlicensed activity, it shall conduct an investigation to determine if such information is accurate. If the information establishes evidence to indicate a probable violation of the Act, the commission may impose an administrative penalty; issue an order to cease and desist; file a complaint, alleging unlicensed activity, with the appropriate law enforcement official; or take such other action as may be necessary and proper.

Q. Administrative Penalties

§535.191. Schedule of Administrative Penalties. *[Adopted December 30, 2007; amended January 1, 2011 and September 1, 2011; Ref: §1101.758]*

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

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

(c) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for

violations of the following sections of the Act and Rules:

- (1) §1101.552;
- (2) §1101.652(a)(8);
- (3) §1101.652(b)(23);
- (4) §1101.652(b)(29);
- (5) 22 TAC §535.91(d); and
- (6) 22 TAC §535.154.

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

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

(e) An administrative penalty range of \$1,000 - \$5,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

- (1) §1101.351;
- (2) §1101.366(d);
- (3) §1101.557(b);
- (4) §1101.558(b) - (c);
- (5) §1101.559(a), (c);
- (6) §1101.560;
- (7) §1101.561(b);
- (8) §1101.615;
- (9) §1101.651;
- (10) §1101.652(a)(2) - (3);
- (11) §1101.652(a)(9) - (10);
- (12) §1101.652(b)(2) - (6);
- (13) §1101.652(b)(9) - (11);
- (14) §1101.652(b)(13);
- (15) §1101.652(b)(15) - (21);

§§535.191(e)(16)-.206(l)

- (16) §1101.652(b)(24) - (27);
- (17) §1101.652(b)(32) - (33);
- (18) 22 TAC §§535.145 - 535.148;
- (19) 22 TAC §535.156; and
- (20) 22 TAC §§535.159 - 535.160.

(f) The commission may assess an additional administrative penalty of up to two times that assessed under subsections (c), (d) and (e) of this section if a person has a history of previous violations.

R. Real Estate Inspectors

§535.201. Definitions. *[Adopted January 1, 2011.]* The following definitions shall apply to this subchapter.

(1) Code organization -- A non-profit organization whose primary mission is to develop and advocate scientifically-based codes and standards relating to one or more of the systems found in an improvement to real estate.

(2) Texas Standards of Practice/Legal/Ethics Update -- Course addressing developments related to the inspection field, including the requirements of Chapter 1102, Rules, case law, and agency enforcement actions.

(3) Trade association -- A cooperative, voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

§535.206. The Texas Real Estate Inspector Committee. *[Adopted January 1, 1992; amended January 1, 2001; August 31, 2004; December 30, 2007 and January 1, 2011.]*

(a) The functions of the committee are as prescribed by Chapter 1102.

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

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

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

estate industry.

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

(d) Members of the committee serve staggered six-year terms, with the terms of two inspector members and one public member expiring on February 1 of each odd-numbered year. Initial appointments may be made for terms shorter than six years in order to establish staggered terms. A member whose term has expired holds office until the member's successor is appointed. If a vacancy occurs during a member's term, the commission shall appoint a person to fill the unexpired term.

(e) At a regular meeting in February of each year, the committee shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(f) The commission may remove a committee member if the member:

(1) does not have the qualifications required by subsection (b)(1) of this section;

(2) cannot discharge the member's duties for a substantial part of the member's term;

(3) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during each calendar year, unless the absence is excused by majority vote of the committee; or

(4) violates Chapter 1102.

(g) If the administrator of the commission has knowledge that a potential ground for removal exists, the administrator shall notify the presiding officer of the commission that the potential ground exists.

(h) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(i) The committee may meet at the call of a majority of its members. The committee shall meet at the call of the commission.

(j) A quorum of the committee consists of five members.

(k) The committee shall conduct its meetings in substantial compliance with Robert's Rules of Order.

(l) The secretary of the committee, or in the secretary's absence, a member designated by the chairman, shall prepare written minutes of each

meeting and submit the minutes to the committee for approval and for filing with the commission.

(m) The committee shall submit semiannual reports to the commission on or before March 1 and September 1 of each year detailing the performance of the committee. The commission may require the report to be submitted on a form approved by the commission for that purpose. The committee may submit its written recommendations concerning the licensing and regulation of real estate inspectors to the commission at any time the committee deems appropriate. If the commission submits a rule to the committee for development, the chairman of the committee or the chairman's designate shall report to the commission after each meeting at which the proposed rule is discussed on the committee's consideration of the rule.

(n) The committee is automatically abolished on September 1, 2019 unless the commission subsequently establishes a different date.

§535.208. Application for a License. *[Adopted January 1, 1992; amended December 21, 1993; September 15, 1994; January 3, 1996; May 2, 1996; March 14, 1997; December 1, 1999; January 1, 2001; October 4, 2001 and December 24, 2001; April 1, 2003; August 31, 2004; November 15, 2005; December 30, 2007; September 14, 2008; March 1, 2010 and September 1, 2010]*

(a) A person desiring to be licensed shall file an application using forms prescribed by the commission. The commission may require an applicant to furnish materials such as source outlines, syllabi, course descriptions or official transcripts to verify course content or credit to meet education requirements. The commission may not accept an application for filing if the application is materially incomplete or the application is not accompanied by the appropriate fee. The commission may not issue a license unless the applicant:

- (1) pays the fee prescribed by the commission;
- (2) satisfies any experience or education requirements established by Texas Occupations Code, Chapter 1102 (Chapter 1102), or by these sections;
- (3) successfully completes any qualifying examination required by Chapter 1102;
- (4) provides all supporting documentation or information requested by the commission in connection with the application; and
- (5) submits proof of professional liability insurance,

or any other insurance that provides coverage for violations of Chapter 1102, as required by Chapter 1102 and §535.211 of this title (relating to Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102).

(b) A person also may apply for a license by accessing the commission's web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. An applicant for an apprentice inspector license must provide the commission with the applicant's photograph prior to issuance of a license certificate.

(c) An application shall be considered void and subject to no further evaluation or processing when one of the following events occurs.

(1) The applicant fails to satisfy a current education requirement or examination requirement within six months from the date the application is accepted for filing.

(2) The applicant fails to provide information or documentation within 60 days after the commission makes written request for the information or documentation.

(3) The applicant fails to submit a required fee within twenty (20) days after the commission makes written request for payment of the fee.

(4) The applicant fails to submit the required proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, within 60 days after the commission makes written request for proof of insurance.

(d) A person may not file an application while another application for the same license type is pending. An application submitted while another is pending will be returned to the applicant with no further processing.

(e) An application for a license may be denied if the commission determines that the applicant has failed to satisfy the commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines). Notice of the denial and any hearing on the denial shall be as provided in Texas Occupations Code, §1101.364, and §533.34 of this title (relating to Commencement of ADR).

§535.208(f) -.210(a)(14)

(f) Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the commission in an application for a license for an apprentice or a real estate inspector.

§535.209. Examinations. *[Adopted January 1, 2011; amended September 9, 2012.]*

(a) Effective January 1, 2013, there shall be an examination for a real estate inspector license and for a professional inspector license, consisting of a national part and a state part. The commission adopts the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors for the national part of the examination. For the state part of the examination, questions shall be used which measure competency in the subject areas required for a license by Chapter 1102, and which demonstrate an awareness of its provisions relating to inspectors. Each real estate inspector applicant must achieve a score of at least 70% on the state part of the examination. Each professional inspector applicant must achieve a score of at least 75% on the state part of the examination.

(b) Except as otherwise required by Chapter 1102 or this section, examinations shall be conducted as provided by §535.61 of this title (relating to Examinations).

(c) The commission may waive the national part of the examination of an applicant for a real estate or professional inspector license if the applicant maintains an active license in another state and has passed the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors.

(d) An applicant who, as of December 31, 2012, has a current application open, has taken and failed the inspector examination in effect prior to January 1, 2013 ("Prior Examination") and who qualifies for reexamination under Texas Occupations Code §1102.155, may choose to retake the Prior Examination in lieu of taking both the national and state parts of the examination required by this section by notifying the commission in writing of that selection when the applicant applies for reexamination.

§535.210. Fees. *[Adopted January 1, 1992; amended December 31, 1993; October 11, 1999; October*

4, 2001; September 1, 2002; December 29, 2005; May 24, 2006; December 30, 2007; November 17, 2008; September 1, 2010; November 1, 2011 and January 1, 2013.]

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

(1) a fee of \$84 for filing an original application for a license as an apprentice inspector;

(2) a fee of \$89 for filing an original application for a license as a real estate inspector, which includes a fee for transcript evaluation;

(3) a fee of \$104 for filing an original application for a license as a professional inspector, which includes a fee for transcript evaluation;

(4) a fee of \$27 for the annual renewal of the license of an apprentice inspector;

(5) a fee of \$32 for the annual renewal of the license of a real estate inspector;

(6) a fee of \$32 for the annual renewal of the license of a professional inspector;

(7) a fee of \$230 for taking the a license examination consisting of a national part and a state part or retaking the national part of the license examination;

(8) a fee of \$61 for taking a license examination without a national part or retaking the state part of the license examination;

(9) a fee of \$20 for requesting a change of a licensee name, or to establish a relationship with a sponsoring professional inspector;

(10) a fee of \$50 to request an inactive professional inspector license be returned to active status;

(11) fee of \$40 for preparing a license history;

(12) a fee of \$50 for the filing of a moral character determination;

(13) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(14) unless a core inspector program of study is accredited as part of a program under Texas Occupations Code §1101.301, a fee of \$400 for filing an application for accreditation of a core inspector education program for a period of four years under Texas Occupations Code Chapter 1101;

(15) after approval under paragraph (14) of this subsection, a fee of \$200 a year for operation of a core education program under Texas Occupations Code Chapter 1101;

(16) a fee of \$50 plus \$10 per classroom hour approved by the commission for each core inspector education course for a period of four years;

(17) a fee of \$400 for filing an application for accreditation as an Inspector Continuing Education (ICE) provider for a period of two years under Texas Occupations Code §1102.205 when such accreditation program is developed by the commission;

(18) a fee of \$50 plus \$10 per classroom hour approved by the commission for each ICE course for a period of two years;

(19) a fee of \$50 for the filing of an application for approval as an instructor for a two-year period for core or ICE courses, or both;

(20) a fee of \$30 for processing a check or other equivalent instrument returned by a bank or depository as dishonored for insufficient funds;

(21) a fee of \$100 for deposit in the real estate inspection recovery fund upon an applicant's successful completion of an examination; and

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

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

§535.211. Professional Liability Insurance, or Any Other Insurance That Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102. *[Adopted December 30, 2007; amended January 2, 2012 and June 3, 2012.]*

(a) When an applicant for a license issued under Texas Occupations Code, Chapter 1102 (Chapter 1102), has met all other licensing requirements, the commission shall notify the applicant that the applicant must provide proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Texas Occupations Code, Chapter 1102, before the license will be issued.

(b) An inspector must maintain professional liability insurance coverage, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, during the period the license is active.

(c) The applicant must provide proof of insurance using a Certificate of Insurance form approved by the commission and signed by the applicant's insurance agent, or any other proof of insurance acceptable to the commission.

(d) An inspector must notify the commission within 10 days of the cancellation or non-renewal of professional liability insurance coverage, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102.

(e) An inspector must retain sufficient records of professional liability insurance coverage, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, to document to the commission continuous coverage for the preceding two year license period.

(f) The requirement that an inspector carry professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 does not require coverage for violations wherein providing such insurance coverage would be as against public policy.

§535.212. Education and Experience Requirements for a License. *[Adopted January 1, 2011.]*

(a) To become licensed as a real estate inspector or professional inspector, a person must satisfy:

(1) the education and experience requirements outlined in §1102.108 and §1102.109 of Chapter 1102; or

(2) the substitute education and experience requirements established by the commission pursuant to §1102.111.

(b) Effective September 1, 2011, a person may satisfy the 90-hour education requirement for licensure as a real estate inspector pursuant to subsection (a)(1) of this section by completing the following coursework:

- (1) 10 hours in foundations;
- (2) 8 hours in framing;
- (3) 10 hours in building enclosure;
- (4) 10 hours in roof systems;
- (5) 8 hours in plumbing systems;

§§535.212(b)(6)-.212(f)(1)(B)(iii)

- (6) 10 hours in electrical systems;
- (7) 10 hours in heating, ventilation, and air conditioning systems;
- (8) 8 hours in appliances;
- (9) 4 hours in Texas Standards of Practice;
- (10) 4 hours in Texas Standard Report Form/Report Writing; and
- (11) 8 hours in Texas Legal/Ethics.

(c) Effective September 1, 2011, a person may satisfy the 128-hour education requirement for licensure as a professional inspector pursuant to subsection (a)(1) of this section by completing the following coursework:

- (1) the courses required for licensure as a real estate inspector in subsection (b) of this section;
- (2) 8 additional hours in Texas Standard Report Form/Report Writing;
- (3) 6 hours in Texas Standards of Practice/Legal/Ethics Update; and
- (4) 24 additional hours in any core inspection subject(s).

(d) For the purpose of measuring the number of inspections required to receive a license or to sponsor apprentice inspectors or real estate inspectors, the commission considers an improvement to real property to be any unit capable of being separately rented, leased or sold. Subject to the following restrictions, an inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

(1) Half credit will be given for an inspection limited to structural components only or to equipment/systems only.

(2) No more than 80% of the inspections for which experience credit is given may be limited to structural components only or to equipment/systems components only.

(3) A report addressing two or more improvements is considered a single inspection.

(4) The commission may not give experience credit to the same applicant or professional inspector for more than three complete or six partial inspections per day. No more than three applicants may receive credit for the inspection of the same unit within a 30 day period, and no more than three apprentice inspectors may receive credit for an inspection of the same unit on the same day.

(e) For the purpose of satisfying any requirement that an applicant hold a license for a period of time in order to be eligible for a license as a real estate inspector or professional inspector, the commission shall not give credit for periods in which a license was on inactive status. An applicant for a real estate inspector license must have been licensed on active status for a total of at least three months within the 12 month period prior to the filing of the application. An applicant for a professional inspector license must have been licensed on active status for a total of at least 12 months within the 24 month period prior to the filing of the application.

(f) Substitute requirements for a real estate inspector license. A person may satisfy the substitute education and experience requirements to become licensed as a real estate inspector as follows:

(1) A person who does not have two years of experience as an architect, engineer, or engineer-in-training must:

(A) complete a total of 120 hours of core inspection coursework. Effective September 1, 2011, these hours must include the following:

(i) 90 hours of coursework as outlined in subsection (b) of this section;

(ii) 8 additional hours in Texas Standard Report Form/Report Writing;

(iii) 6 hours in Texas Standards of Practice/Legal/Ethics Update; and

(iv) 16 additional hours in any core inspection subject(s); and

(B) satisfy the substitute experience requirement by:

(i) completing 60 hours of an approved interactive experience training module presented by a licensed professional inspector and submitting a certificate of completion;

(ii) accompanying a licensed professional inspector eligible to sponsor for 60 hours of inspections and submitting a letter from the professional inspector certifying that the applicant attended 60 hours of such training; or

(iii) having three years of personal experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property and providing two

affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

(2) A person who has at least two years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training must:

(A) complete a total of 104 hours of core inspection coursework. Effective September 1, 2011, these hours must include the following:

(i) 90 hours of coursework as outlined in subsection (b) of this section;

(ii) 8 additional hours in Texas Standard Report Form/Report Writing; and

(iii) 6 hours in Texas Standards of Practice/Legal/Ethics Update; and

(B) submit a license history from the regulatory agency that issued the license or registration documenting the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(g) Substitute requirements for a professional inspector license. A person may satisfy the substitute education and experience requirements to become licensed as a professional inspector as follows:

(1) A person who does not have three years of experience as an architect, engineer, or engineer-in-training must:

(A) complete a total of 328 hours of core inspection coursework. Effective September 1, 2011, these hours must include the following:

(i) 128 hours of coursework as outlined in subsection (c) of this section;

(ii) 30 additional hours in foundations;

(iii) 30 additional hours in framing;

(iv) 12 additional hours in building enclosure;

(v) 25 additional hours in roof systems;

(vi) 25 additional hours in plumbing systems;

(vii) 25 additional hours in electrical systems;

(viii) 25 additional hours in heating, ventilation, and air conditioning systems;

(ix) 6 additional hours in appliances;

(x) 8 additional hours in Standards of Practice/Legal/Ethics;

(xi) 8 additional hours in Standard Report Form/Report Writing; and

(xii) 6 additional hours in any core inspection subject(s); and

(B) satisfy the substitute experience requirement by:

(i) completing 120 hours of an approved interactive experience training module presented by a licensed professional inspector and submitting a certificate of completion;

(ii) accompanying a licensed professional inspector eligible to sponsor for 120 hours of inspections and submitting a letter from the professional inspector certifying that the applicant attended 120 hours of such training; or

(iii) having five years of personal experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property, and providing two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

(2) A person who has at least three years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training must:

(A) complete a total of 142 hours of core inspection coursework. Effective September 1, 2011, these hours must include the following:

(i) 128 hours of coursework as outlined in subsection (c) of this section;

(ii) 8 additional hours in Texas Standard Report Form/Report Writing; and

(iii) 6 hours in Texas Standards of Practice/Legal/Ethics Update; and

(B) submit a license history from the regulatory agency that issued the license or registration documenting the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(h) Not more than two persons may accompany a licensed professional inspector on any inspection used to meet the experience requirement of §1102.111(a) of Chapter 1102.

§§535.213-.213(e)(2)(S)

§535.213. Approval of Courses in Real Estate Inspection. *[Adopted January 1, 2011.]*

(a) To be accepted for inspector licensing, a course must meet each of the following requirements.

(1) The course was devoted to a subject listed in §1102.001(5) of Chapter 1102 or this section; provided, however, that the commission will not accept more than 30 hours of course credit for inspection-related business, legal, report writing or ethics courses.

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

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

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

(5) The course was offered by a provider accredited by the commission to offer inspection courses or exempt from the requirement to be accredited by the commission.

(b) A classroom course may include up to 50% of total course time for appropriate field work relevant to the course topic. Field work may not be included as part of correspondence or alternative delivery courses.

(c) Except as provided to the contrary by this section, the review and acceptance of correspondence courses or courses offered by alternative delivery systems such as computers will be conducted in the manner prescribed by §535.62 of this title (relating to Acceptable Courses of Study). Correspondence courses are acceptable only if offered by or in association with an accredited college or university.

(d) Providers wishing to obtain prior approval of a classroom course shall submit the following items to the commission:

(1) a course description, including the number of hours of credit to be awarded;

(2) a timed course outline;

(3) a copy of any textbook, course outline, syllabus or other written course material provided to students;

(4) a cross reference to the course material which demonstrates in a manner that is

satisfactory to the commission where the required subject matter is covered in the course; and

(5) a copy of the written final examination which measures a student's mastery of the course.

(e) The following subjects shall be considered core real estate inspection courses:

(1) Foundations, which shall include the following topics:

(A) site analysis/location;

(B) grading;

(C) foundations;

(D) flat work;

(E) material;

(F) foundation walls;

(G) foundation drainage;

(H) foundation waterproofing and damp proofing;

(I) columns; and

(J) under floor space.

(2) Framing, which shall include the following topics:

(A) flashing;

(B) wood frame - stick/balloon;

(C) roof structure - rafters/trusses;

(D) floor structure;

(E) porches/decks/steps/landings/balconies;

(F) doors;

(G) ceilings;

(H) interior walls;

(I) stairways;

(J) guardrails/handrails/balusters;

(K) fireplace/chimney;

(L) sills/columns/beams/joist/sub-flooring;

(M) wall systems/structure - headers;

(N) rammed earth;

(O) straw bale;

(P) ICF;

(Q) panelized;

(R) masonry;

(S) wood I joist;

- (T) roof sheathing;
- (U) wood wall;
- (V) steel wall;
- (W) wood structural panel; and
- (X) conventional concrete.

(3) Building Enclosure, which shall include the following topics:

- (A) review of foundation and roofing relation;
- (B) review of flashing;
- (C) cladding;
- (D) windows/glazing;
- (E) weather barriers;
- (F) vapor barriers;
- (G) insulation;
- (H) energy codes; and
- (I) Ingress/egress.

(4) Roof Systems, which shall include the following topics:

- (A) review - rafters, roof joist, ceiling joist, collar ties, knee walls, purling, trusses, wood I joist, roof sheathing, steel framing;
- (B) roof water control;
- (C) skylights;
- (D) flashing;
- (E) ventilation/non-ventilation;
- (F) attic access;
- (G) re-roofing;
- (H) slopes - step roof/low slope/near flat;
- (I) materials - asphalt, fiberglass, wood shake, wood shingle, slate, clay tile, concrete tile, fiber cement (asbestos cement, mineral cement), metal, roll, build up, modified bitumen, synthetic rubber (EPDM), plastic (PVC); and
- (J) valleys.

(5) Plumbing Systems, which shall include the following topics:

- (A) water supply systems;
- (B) fixtures;
- (C) drains;
- (D) vents;
- (E) water heaters (gas and electric);

- (F) gas lines; and
- (G) hydro-therapy equipment.

(6) Electrical Systems, which shall include the following topics:

- (A) general requirements, equipment location and clearances;
- (B) electrical definitions;
- (C) services;
- (D) branch circuit and feeder requirements;
- (E) wiring methods;
- (F) power and lights distribution;
- (G) devices and light fixtures; and
- (H) swimming pool.

(7) HVAC Systems, which shall include the following topics:

- (A) heating;
- (B) ventilation;
- (C) air conditioning; and
- (D) evaporative coolers.

(8) Appliances, which shall include the following topics:

- (A) dishwasher;
- (B) food waste disposer;
- (C) kitchen exhaust hood;
- (D) range, cooktop, and ovens (electric and gas);
- (E) microwave cooking equipment;
- (F) trash compactor;
- (G) bathroom exhaust fan and heater;
- (H) whole house vacuum systems;
- (I) garage door operator;
- (J) doorbell and chimes; and
- (K) dryer vents.

(9) Texas Standards of Practice, which shall include the following topics:

- (A) review of general principles and specific Texas practice standards;
- (B) inspection guidelines for structural systems;
- (C) inspection guidelines for electrical systems;

§§535.213(e)(9)(D)-.214(d)

(D) inspection guidelines for heating, ventilation, and air conditioning systems;

(E) inspection guidelines for plumbing systems;

(F) inspection guidelines for appliances; and

(G) inspection guidelines for optional systems.

(10) Legal/Ethics, which shall include the following topics:

(A) Chapter 1102;

(B) commission rules related to inspectors;

(C) agency enforcement action relating to inspectors; and

(D) related case law.

(11) Texas Standard Report Form/Report Writing, which shall include the following topics:

(A) use of the required inspection report form;

(B) allowed reproductions;

(C) allowed changes;

(D) exceptions from use of the form;

(E) review of typical comments for each heading in the report; and

(F) review of generally accepted technical writing techniques.

(12) Other approved courses as they relate to real estate inspections, which shall include one or more of the following topics:

(A) Environmental Protection Agency;

(B) Consumer Product Safety Commission; and

(C) general business practices.

(f) A course approved to satisfy a specific subject matter requirement must address each part of the subject as described by this subchapter.

(g) A course that combines more than one subject into a composite course may be approved by the commission to satisfy core course education requirements; however, composite courses will not satisfy the requirements for coursework in specific subject areas unless they are approved for a specific number of hours for each subject area.

(h) An applicant may not take the same course more than once for credit toward the education requirements for a license; however, a course for

which credit was granted toward a lower license may be counted again toward the requirements for a higher license.

(i) An applicant will not receive credit for more than one course with substantially the same course content within a two year period.

§535.214. Providers of Real Estate Inspection Courses. *[Adopted January 1, 2011.]*

(a) Except as provided by this section, the accreditation and regulation of schools and courses of study in real estate inspection and the approval of instructors will be conducted as required for real estate schools by §§535.63 - 535.67 of this title.

(b) A person applying for accreditation of a real estate inspection school shall use application forms approved by the commission. All courses must be approved by the commission prior to being offered for credit. A school accredited by the commission to offer real estate courses is not required to apply for accreditation under this section to offer real estate inspection courses, provided all courses offered by the school have been approved by the commission. The commission may submit proposed courses to the Texas Real Estate Inspector Committee for review and recommendation.

(c) An entity is not required to be accredited by the commission in order to offer inspection courses if it is:

(1) a school accredited by an inspector regulatory agency of another state;

(2) a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, or by a recognized national or international accrediting body;

(3) a unit of federal, state or local government;

(4) a nationally recognized building, electrical, plumbing, mechanical or fire code organization;

(5) a professional trade association in the inspection field or in a related technical field; or

(6) an entity whose courses are approved and regulated by an agency of this state.

(d) Providers exempt from the requirement to be accredited by the commission may submit courses to the commission for preapproval. If a course is offered without first being submitted for

preapproval, the commission will evaluate the course at such time as a student submits the course to the commission for credit and may determine that the course does not qualify for credit or qualifies for fewer than the full number of hours of credit.

§535.215. Inactive Inspector Status. *[Adopted September 15, 1994; amended November 19, 2001; August 31, 2004; December 30, 2007 and January 1, 2011 and November 29, 2012.]*

(a) For the purposes of this section, an "inactive" inspector is a licensed professional inspector, real estate inspector, or apprentice inspector who is not authorized by law to engage in the business of performing real estate inspections as defined by Chapter 1102, and who has been placed on inactive status by the commission for any of the following reasons:

- (1) the written request of the inspector to be placed on inactive status;
- (2) termination of sponsorship by a professional inspector;
- (3) the death of the inspector's sponsoring professional inspector;
- (4) the failure of the licensee to satisfy continuing education requirements for an active license;
- (5) the expiration, suspension, or revocation of the license of the inspector's sponsoring professional inspector;
- (6) the failure of the licensee to provide to the commission proof of professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102; or
- (7) the expiration or non-renewal of the inspector's professional liability insurance or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102.

(b) To be placed on inactive status by request, an inspector must do the following:

- (1) file a request for inactive status or submit a letter containing the inspector's name, license number and current mailing address; and
- (2) if the inspector is a licensed professional inspector, confirm in writing that the inspector has, at least 30 days prior to filing the request for inactive status, given any real estate inspectors or apprentice real estate inspectors sponsored by the

inspector written notice that the inspector will no longer be their sponsor.

(c) A professional inspector who has been placed on inactive status may apply to the commission for return to active status by filing a request online or on a form approved by the commission and submitting any required fee. A professional inspector may apply on a form approved by the commission to sponsor an apprentice inspector or real estate inspector who has been on inactive status. The commission may not return an inspector to active status or issue a license certificate to the inspector unless the inspector has completed within two years prior to the filing the request for return to active status any applicable continuing education courses required for renewal of the type of license held by the inspector or satisfied the continuing education requirements in order to obtain the current license.

(d) An inspector who applies to renew a license and pays the applicable fee but who fails to complete any continuing education required by the Act as a condition of license renewal shall be placed on inactive status by the commission. The inspector must comply with the requirements of this section in order to return to active status.

(e) If a professional inspector terminates the sponsorship of an apprentice real estate inspector or real estate inspector, the license of the apprentice inspector or real estate inspector becomes inactive. The apprentice real estate inspector or real estate inspector must be sponsored by a professional inspector in order to return to active status.

(f) Inactive inspectors may not perform inspections. Performance of inspections while on inactive status is grounds for disciplinary action against the inactive licensee. An professional inspector who has been placed on inactive status may not return to practice or sponsor apprentices or inspectors until the professional inspector has completed applicable continuing education requirements and, if the inspector was placed on inactive status at the inspector's own request, applied to the commission for return to active status and paid the applicable fee for the filing. An apprentice inspector or real estate inspector who has been placed on inactive status may return to practice if the inspector has completed applicable continuing education requirements, and the inspector's sponsoring professional inspector has requested that the apprentice inspector or real estate inspector be returned to active status under the professional inspector's sponsorship in

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accordance with the provisions of this section. It is a violation of this section and grounds for disciplinary action against a professional inspector for the professional inspector to permit an inactive apprentice inspector or an inactive real estate inspector to perform inspections in association with, or on behalf of, the professional inspector.

§535.216. Renewal of License. *[Adopted February 11, 1992; amended December 21, 1993; September 15, 1994; December 1, 1999 and January 1, 2001; October 4, 2001 and August 31, 2004; December 29, 2005; December 30, 2007; January 1, 2011 and November 29, 2012.]*

(a) A person licensed by the commission under Chapter 1102 may renew the license by timely filing the prescribed application for renewal, paying the appropriate fee to the commission and satisfying applicable continuing education requirements as required by Chapter 1102, and by §535.218 of this title (relating to Continuing Education), and providing to the commission proof of professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102, with a minimum limit of \$100,000 per occurrence as required by §535.211 of this title (relating to Professional Liability Insurance) and §1102.203 of Chapter 1102.

(b) A licensee also may renew an unexpired license by accessing the commission's Internet web site, entering the required information on the renewal application form, satisfying applicable education and professional liability insurance, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 requirements and paying the appropriate fee in accordance with the instructions provided at the site by the commission.

(c) The commission shall send a renewal notice to each licensee at least 90 days prior to the expiration of the license. An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license on an active status. It is the responsibility of the licensee to apply for renewal, and failure to receive a renewal notice does not relieve the licensee of the responsibility of applying for renewal.

(d) A licensee shall provide information requested by the commission in connection with an application to renew a license within 30 days after the commission requests the information. Failure to provide information requested by the commission in connection with a renewal application within the required time is grounds for

disciplinary action under §1101.656 of the Act.

(e) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status. Inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status but must satisfy continuing education requirements before returning to active status.

(f) If the license has expired, the licensee may not renew but must file an original application to reinstate the license and may not practice until the new license is received. If the applicant for reinstatement has held a professional inspector or real estate inspector license during the 24 months preceding the date the application is filed, no examination is required.

§535.217. Mailing Address and Other Contact Information. *[Adopted January 1, 2011; amended May 31, 2011.]* Each licensee shall furnish a mailing address, phone number, and email address to the commission and shall report all subsequent changes within 10 days after a change of any of the listed contact information. If a licensee fails to update the mailing address, the last known mailing address for the licensee will be deemed to be the licensee's mailing address.

§535.218. Continuing Education. *[Adopted February 11, 1992; amended December 21, 1993; September 15, 1994; January 1, 2001; June 27, 2002 and May 11, 2004; December 29, 2005; January 1, 2011 and November 29, 2012.]*

(a) Effective September 1, 2011, continuing education for renewal of a real estate inspector or professional inspector license must include six hours of Texas Standards of Practice/Legal/Ethics Update.

(b) Real estate inspection courses submitted by professional inspectors or real estate inspectors to satisfy the requirements of §1102.205 of Chapter 1102 for continuing education must qualify for core inspection credit under §535.212 of this title (relating to Education and Experience Requirements for a License) or be a course relating to wood destroying insects, radon, asbestos, lead, or other hazardous substances.

(c) Courses submitted for continuing education credit must be successfully completed during the term of the current license. The commission may not grant continuing education credit twice for the same course taken by a licensee within a two-year period.

(d) Other than for correspondence courses or courses offered by alternative delivery methods, such as by computer, completion of a final examination is not required for a licensee to obtain continuing education credit for a course.

(e) A professional inspector or real estate inspector who fails to renew a license that is subject to continuing education requirements and who files an application for reinstatement within two years after the previous license has expired must provide evidence satisfactory to the commission that the applicant has completed any continuing education that would have been required for timely renewal of the previous license.

(f) Providers may request continuing education credit be given to instructors of core real estate inspection courses subject to the following guidelines.

(1) The instructors may receive credit for only those portions of the course which they teach.

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

(g) The commission will not grant partial credit to an inspector who attends a portion of a course.

§535.219 Schedule of Administrative Penalties.
[Adopted September 1, 2011.]

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

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

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

- (1) §1102.118;
- (2) §1102.364;
- (3) 22 TAC §535.216(d);
- (4) 22 TAC §535.220(a)-(d);
- (5) 22 TAC §535.221; and
- (6) 22 TAC §535.223;

(d) An administrative penalty range of \$500-\$3,000 per violation per day may be assessed for

violations of the following sections of the Texas Occupations and Administrative Codes:

- (1) §1102.301;
- (2) 22 TAC §535.222;
- (3) 22 TAC §535.224(b)(1)-(3);
- (4) 22 TAC §535.226(d)-(e); and
- (5) 22 TAC §535.227-.233.

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

- (1) §1102.101;
- (2) §1102.102;
- (3) §1102.103;
- (4) §1102.302;
- (5) §1102.303;
- (6) §1102.304;
- (7) 22 TAC §535.208(f);
- (8) 22 TAC §535.211;
- (9) 22 TAC §535.215;
- (10) 22 TAC §535.220(e)(1),(3)-(7); and
- (11) 22 TAC §535.224(b)(4)-(5).

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

§535.220. Professional Conduct and Ethics.
[Adopted March 6, 1992; amended August 31, 2004 and August 28, 2006]

(a) The responsibility of those persons who engage in the business of performing independent inspections of improvements in real estate transactions imposes integrity beyond that of a person involved in ordinary commerce. Each inspector must maintain a high standard of professionalism, independence, objectivity and fairness while performing inspections in a real estate transaction. Each inspector licensee must also uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession.

(b) The relationship between an inspector and a client should at a minimum meet the following guidelines.

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(1) In accepting employment as an inspector, the inspector should protect and promote the interest of his client to the best of his ability and knowledge, recognizing that the client has placed his trust and confidence in the inspector.

(2) In the interest of his client and his profession, the inspector should endeavor always to maintain and increase his level of knowledge regarding new developments in the field of inspection.

(3) The inspector should conduct his business in a manner that will assure his client of the inspector's independence from outside influence and interests that might compromise his ability to render a fair and impartial opinion regarding any inspection performed.

(c) The relationship between an inspector and the public should at a minimum meet the following guidelines.

(1) The inspector should deal with the general public at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to himself, his business and the inspection industry.

(2) The inspector should attempt to assist the general public in recognizing and understanding the need for inspections, whether the inspector is selected to perform such inspection or not.

(3) The inspector accepts the duty of protecting the public against fraud, misrepresentation or unethical practices in the field of real estate inspections.

(d) The relationship of the inspector with another inspector should at a minimum meet the following guidelines.

(1) The inspector should bind himself to the duty of maintaining fairness and integrity in all dealings with other inspectors and other persons performing real estate inspections.

(2) The inspector should cooperate with other inspectors to insure the continued promotion of the high standards of the real estate inspection profession and pledges himself to the continued pursuit of increasing competence, fairness, education and knowledge necessary to achieve the confidence of the public.

(3) If an inspector has knowledge of a possible violation of the rules of the Texas Real Estate Commission or Texas Occupations Code, Chapter 1102, the inspector should report the possible violation to the Texas Real Estate Commission.

(e) An inspector shall comply with the following requirements.

(1) An inspector shall not inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the closing or settlement of a property.

(2) In this section "settlement service" means any service provided in connection with a prospective or actual settlement, and "settlement service provider" includes, but is not limited to, any one or more of the following:

(A) Federally related mortgage loan originator;

(B) Mortgage broker;

(C) Title service provider;

(D) Attorney;

(E) A person who prepares documents, including notarization, delivery, and recordation;

(F) Appraiser;

(G) Inspector;

(H) Settlement agent;

(I) A person who provides mortgage insurance services;

(J) A person who provides services involving hazard, flood, or other casualty insurance or homeowner's warranties;

(K) Real estate agent or broker; and

(L) A person who provides any other services for which a settlement service provider requires a borrower or seller to pay.

(3) An inspector shall not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following:

(A) the referral of inspections;

(B) inclusion on a list of inspectors, preferred providers, or similar arrangements; or

(C) inclusion on lists of inspectors contingent on other financial agreements.

(4) An inspector shall not receive a fee or other valuable consideration, directly or indirectly, for referring services that are not settlement services or other products to the inspector's client without the client's consent.

(5) This section does not prohibit an inspector from paying or receiving a fee or other valuable

consideration, such as to or from a contractor, for services actually rendered.

(6) An inspector shall not accept employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice under this Subchapter on which the inspector has performed an inspection under a real estate contract, lease, or exchange of real property within 12 months of the date of the inspection.

(7) Inspectors shall not disclose inspection results or client information without prior approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible.

(8) This subsection does not prohibit an inspector from:

(A) engaging in legal promotional or educational activities to or with settlement service providers that are not conditioned on the referral of business; or

(B) purchasing advertising and promoting the inspector at market rates from any person in any publication, event or media.

(f) The inspector should make a reasonable attempt to cooperate with other professionals and related tradespersons at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to himself, his business, and the inspection industry.

§535.221. Advertisements. *[Adopted January 4, 1993; amended December 21, 1993; March 12, 1997; January 1, 2001; January 1, 2011 and March 21, 2012.]*

(a) For the purposes of this section, advertisements are all communications created or caused to be created by a licensed inspector for the purpose of inducing or attempting to induce a member of the public to use the services of the inspector, including but not limited to the following types of communications when disseminated for this purpose: inspection reports, business cards, invoices, signs, brochures, email, the Internet, electronic transmissions, text messages, and purchased telephone directory displays and advertising by newspaper, radio and television.

(b) Advertisements by a person licensed as an inspector must contain the name or assumed business name of the licensee. The advertisements must also contain the license number of the person. If the person is licensed as a real estate

inspector or as an apprentice inspector, the advertisements must also contain the following:

(1) the name or assumed name of the person's sponsoring professional inspector; and

(2) a statement indicating that the person is sponsored by that professional inspector.

(c) A licensed professional inspector, real estate inspector or apprentice inspector shall notify the commission in writing within 30 days after the inspector starts or stops using a name in business other than the name in which the inspector is licensed.

(d) Websites containing advertising by one or more inspectors must include the license number of each licensed person whose name or assumed business name appears on the website. For the purposes of an inspector's or inspection company's own website, it is sufficient for the license number(s) to appear on a single prominent page of the website, such as the main page or the "About Us" page. For the purposes of social networking websites, including websites through which licensees may transmit electronic messages to other members of the same site, it is sufficient for license number(s) to appear on the inspector's main or profile page.

(e) The commission may reprimand or suspend or revoke the license of a person who is found to have engaged in false or misleading advertising or to have failed to comply with provisions of this section.

§535.222. Inspection Reports. *[Adopted February 1, 2009; amended January 1, 2011.]*

(a) For each inspection, the inspector shall:

(1) prepare a written inspection report noting observed deficiencies and other items required to be reported; and

(2) deliver the report to the person for whom the inspection was performed within three days unless otherwise agreed in writing by the client.

(b) The inspection report shall include:

(1) the name and license number of each inspector who participated in performing the inspection, as well as the name(s) and license number(s) of any supervising real estate inspector(s) and sponsoring professional inspector(s), if applicable;

(2) the address or other unique description of the property on each page of the report; and

(3) the client's name.

§535.223-.223(4)(D)

§535.223. Standard Inspection Report Form. [Adopted February 1, 2009; amended September 13, 2009] The Texas Real Estate Commission adopts by reference Property Inspection Report Form REI 7A-1, approved by the Commission in 2008, and Property Inspection Report Form REI 7-2, approved by the Commission in 2009, for use in reporting inspection results. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(1) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of one-to-four family residential property shall be reported on Form REI 7A-1 or Form REI 7-2 adopted by the Commission ("the standard form").

(2) Inspectors may reproduce the standard form by computer or from printed copies obtained from the Commission. Except as specifically permitted by this section, the inspector shall reproduce the text of the standard form verbatim and the spacing, length of blanks, borders, and placement of text on the page must appear to be identical to that in the printed version of the standard form.

(3) An inspector may make the following changes to the standard form:

(A) the inspector may delete the line for name, license number, and signature of the sponsoring inspector if the inspection was performed solely by a professional inspector;

(B) the inspector may change the typeface, provided that fonts are no smaller than those used in the printed version of the standard form;

(C) the inspector may use legal sized (8-1/2" by 14") paper;

(D) the inspector may add a cover page to the report form;

(E) the inspector may add footers to each page of the report except the first page and may add headers to each page of the report;

(F) the inspector may place the property identification and page number at either the top or bottom of the page;

(G) the inspector may add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;

(H) the inspector may list other items in the appropriate section of the form and additional

captions, letters, and check boxes for those items;

(I) the inspector may delete inapplicable subsections of Section VI., Optional Systems, and re-letter any remaining subsections;

(J) the inspector may delete Subsection L., Other, of Section I., Structural Systems;

(K) the inspector may allocate such space in the "Additional Information Provided by the Inspector" section and in each of the spaces provided for comments for each inspected item as the inspector deems necessary or may attach additional pages of comments to the report; and

(L) if necessary to report the inspection of a part, component, or system not contained in the standard form, or space provided on the form is inadequate for a complete reporting of the inspection, the inspector may attach additional pages to the form. When providing comments or additional pages to report on items listed on a form, the inspector shall arrange the comments or additional pages to follow the sequence of the items listed in the form adopted by the commission.

(4) The inspector shall renumber the pages of the form to correspond with any changes made necessary due to adjusting the space for comments or adding additional items and shall number all pages of the report, including any addenda.

(5) The inspector shall indicate, by checking the appropriate boxes on the form, whether each item was inspected, not inspected, not present, and/or deficient and shall explain the findings in the appropriate space on the form.

(6) This section does not apply to the following:

(A) re-inspections of a property performed for the same client; or

(B) inspections performed for or required by a lender or governmental agency;

(C) inspections for which federal or state law requires use of a different report; or

(D) quality control construction inspections of new homes performed for builders, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality and the builder or other entity requires use of a different report, and the first page of the report contains a notice either in bold or underlined reading substantially similar to the following: "This report was prepared for a builder or other entity in

accordance with the builder's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspections performed by a Texas Real Estate Commission licensee and reported on Texas Real Estate Commission promulgated report forms may contain additional information a buyer should consider in making a decision to purchase." If a report form required for use by the builder or builder's employee does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector.

§535.224. Practice and Procedure. *[Adopted January 1, 1992; amended December 21, 1993 and January 1, 2001; August 31, 2004; December 30, 2007 and November 29, 2012]*

(a) Proceedings shall be conducted in the manner contemplated by §§533.1-533.8, §533.20, §§533.30-533.37 and §533.40 of this title (relating to Practice and Procedure) and with the Texas Government Code, Chapter 2001, et seq.

(b) In addition to the grounds for disciplinary action provided in Texas Occupations Code, Chapter 1102 (Chapter 1102), a license of an inspector may be suspended or revoked by the commission if the inspector:

(1) fails to make good a check issued to the commission within 30 days after the commission had mailed a request for payment by certified mail to the inspector last known business address as reflected by the commission's records;

(2) fails or refuses on demand to produce a document, book or record in his possession concerning a real estate inspection conducted by him for examination by the commission or its authorized agent;

(3) fails within 10 days to provide information requested by the commission or its authorized agent in the course of an investigation of a complaint;

(4) fails to maintain professional liability insurance coverage or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102 during the period a license is active; or

(5) fails to notify the commission within 10 days of the cancellation or non-renewal of professional liability insurance coverage, or any other insurance that provides coverage for violations of Subchapter G of Chapter 1102.

§535.226. Sponsorship of Apprentice Inspectors and Real Estate Inspectors. *[Adopted January 1, 1992; amended January 4, 1993; December 21, 1993; September 15, 1994; January 1, 2001; January 1, 2011 and June 3, 2012.]*

(a) An apprentice inspector or real estate inspector may be sponsored by only one licensed professional inspector.

(b) A change in sponsorship shall be reported to the commission immediately. If the sponsorship has ended because the professional inspector has terminated the sponsorship, the professional inspector shall immediately so notify the apprentice or real estate inspector in writing. If the sponsorship has ended because the apprentice inspector or real estate inspector has left the sponsorship, the apprentice inspector or real estate inspector shall immediately so notify the professional inspector in writing.

(c) An apprentice inspector or real estate inspector who is on active status may act for the new sponsoring professional inspector once the commission has been notified of the change and any required fee has been submitted. If the apprentice or real estate inspector is on inactive status, the return to active status shall be subject to the requirements of §535.215 of this title (relating to Inactive Inspector Status).

(d) A licensed professional inspector is responsible for the conduct of a sponsored apprentice inspector. At a minimum, a licensed professional inspector shall provide direct supervision of the apprentice inspector by:

(1) accompanying the apprentice inspector during the performance of all inspections performed by the apprentice or arranging for a real estate inspector to accompany the apprentice; and

(2) reviewing any written inspection report prepared by the apprentice inspector for compliance with the provisions of the standards of practice adopted by the commission.

(e) A licensed professional inspector is responsible for the conduct of a sponsored real estate inspector. A licensed professional inspector shall provide indirect supervision in a manner which protects the public when dealing with the real estate inspector. At a minimum a professional inspector shall provide indirect supervision of the real estate inspector by:

(1) communicating with the real estate inspector on a regular basis about the inspections being performed by the real estate inspector; and

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(2) reviewing on a regular basis written inspection reports prepared by the real estate inspector for compliance with the provisions of the standards of practice adopted by the commission.

(f) A sponsoring professional inspector may delegate the supervision of an apprentice inspector or real estate inspector to another professional inspector who is qualified to sponsor, but the sponsor remains responsible for the conduct of the sponsored inspector.

§535.227. Standards of Practice: General Provisions. *[Adopted February 1, 2009.]*

(a) Definitions.

(1) Accessible -- In the reasonable judgment of the inspector, capable of being approached, entered, or viewed without:

(A) undue hazard to the inspector;

(B) moving furnishings or large, heavy, or fragile objects;

(C) using specialized tools or procedures;

(D) disassembling items other than covers or panels intended to be removed for inspection;

(E) damaging property; or

(F) using a ladder for portions of the inspection other than the roof or attic space.

(2) Chapter 1102 -- Texas Occupations Code, Chapter 1102.

(3) Cosmetic -- Related only to appearance or aesthetics, and not related to structural performance, operability, or water penetration.

(4) Deficiency -- A condition that, in the inspector's reasonable opinion, adversely and materially affects the performance of a system or component or constitutes a hazard to life, limb, or property as specified by these standards of practice. General deficiencies include but are not limited to inoperability, material distress, water penetration, damage, deterioration, missing parts, and unsuitable installation.

(5) Deficient -- Reported as having one or more deficiencies.

(6) Inspect -- To look at and examine accessible items, parts, systems, or components and report observed deficiencies.

(7) Performance -- Achievement of an operation, function, or configuration consistent with accepted industry practice.

(8) Report -- To provide the inspector's opinions and findings on the standard inspection report form.

(9) Specialized tools -- Tools such as thermal imaging equipment, moisture meters, gas leak detection equipment, environmental testing equipment and devices, elevation determination devices, and ladders capable of reaching surfaces over one story above ground surfaces.

(10) Specialized procedures -- Procedures such as environmental testing, elevation measurement, and any method employing destructive testing that damages otherwise sound materials or finishes.

(11) Standards of practice -- §§535.227-535.233 of this title.

(b) Scope.

(1) These standards of practice define the minimum levels of inspection required for substantially completed residential improvements to real property up to four dwelling units. A real estate inspection is a limited visual survey and basic operation of the systems and components of a building using normal controls and does not require the use of specialized tools or procedures. The purpose of the inspection is to provide the client with information regarding the general condition of the residence at the time of inspection. The inspector may provide a higher level of inspection performance than required by these standards of practice and may inspect parts, components, and systems in addition to those described by the standards of practice.

(2) General Requirements. The inspector shall:

(A) operate fixed or installed equipment and appliances listed herein in at least one mode with ordinary controls at typical settings;

(B) visually inspect accessible systems or components from near proximity to the systems and components, and from the interior of the attic and crawl spaces; and

(C) complete the standard inspection report form as required by §535.222 and §535.223 of this title.

(3) General limitations. The inspector is not required to:

(A) inspect:

(i) items other than those listed herein;

(ii) elevators;

(iii) detached structures, decks, docks,

fences, or waterfront structures or equipment;

(iv) anything buried, hidden, latent, or concealed; or

(v) automated or programmable control systems, automatic shut-off, photoelectric sensors, timers, clocks, metering devices, signal lights, lightning arrestor system, remote controls, security or data distribution systems, or solar panels;

(B) report:

(i) past repairs that appear to be effective and workmanlike;

(ii) cosmetic or aesthetic conditions; or

(iii) wear and tear from ordinary use;

(C) determine:

(i) insurability, warrantability, suitability, adequacy, capacity, reliability, marketability, operating costs, recalls, counterfeit products, life expectancy, age, energy efficiency, vapor barriers, thermostatic operation, code compliance, utility sources, or manufacturer or regulatory requirements except as specifically required by these standards;

(ii) the presence or absence of pests, termites, or other wood-destroying insects or organisms;

(iii) the presence, absence, or risk of asbestos, lead-based paint, mold, mildew, or any other environmental hazard, environmental pathogen, carcinogen, toxin, mycotoxin, pollutant, fungal presence or activity, or poison; or

(iv) types of wood or preservative treatment and fastener compatibility;

(D) anticipate future events or conditions, including but not limited to:

(i) decay, deterioration, or damage that may occur after the inspection;

(ii) deficiencies from abuse, misuse or lack of use,

(iii) changes in performance of any part, component, or system due to changes in use or occupancy;

(iv) the consequences of the inspection or its effects on current or future buyers and sellers;

(v) common household accidents, personal injury, or death;

(vi) the presence of water penetration(s);
or

(vii) future performance of any item;

(E) operate shut-off, safety, stop, pressure, or pressure-regulating valves or items requiring the use of codes, keys, combinations, or similar devices;

(F) designate conditions as safe;

(G) recommend or provide engineering, architectural, appraisal, mitigation, physical surveying, realty, or other specialist services;

(H) review historical records, installation instructions, repair plans, cost estimates, disclosure documents, or other reports;

(I) verify sizing, efficiency, or adequacy of the ground surface drainage system;

(J) operate recirculation or sump pumps;

(K) remedy conditions preventing inspection of any item;

(L) apply open flame to operate any appliance;

(M) turn on decommissioned equipment, systems, or utility services; or

(N) provide repair cost estimates, recommendations, or re-inspection services.

(4) In the event of a conflict between specific provisions and general provisions in the standards of practice, specific provisions shall take precedence.

(5) Departure.

(A) An inspector may depart from the standards of practice only if the requirements of subparagraph (B) are met, and:

(i) the inspector and client agree the item is not to be inspected;

(ii) the inspector is not qualified to inspect the item;

(iii) conditions beyond the control of the inspector reasonably prevent inspection of an item;

(iv) the item is a common element of a multi-family development and is not in physical contact with the unit being inspected, such as the foundation under another building or a part of the foundation under another unit in the same building;

(v) the inspector reasonably determines that conditions or materials are hazardous to the health or safety of the inspector; or

§535.227(b)(5)(A)(vi)-.228(d)(2)

(vi) the inspector reasonably determines that actions of the inspector may cause damage to the property.

(B) If a part, component, or system required for inspection is not inspected, the inspector shall:

(i) advise the client at the earliest practical opportunity that the part, component, or system will not be inspected; and

(ii) make an appropriate notation on the inspection report form, clearly stating the reason the part, component, or system was not inspected.

(C) If the inspector routinely departs from inspection of a part, system, or component, the earliest practical opportunity for the notice required by this subsection is the first contact with the prospect and the inspector has reason to believe that the property being inspected has the part, system, or component the inspector routinely does not inspect.

(c) Enforcement. Failure to comply with the standards of practice is grounds for disciplinary action as prescribed by Chapter 1102.

§535.228. Standards of Practice: Minimum Inspection Requirements for Structural Systems.
[Adopted February 1, 2009.]

(a) Foundations. The inspector shall:

(1) inspect slab surfaces, foundation framing components, subflooring, and related structural components;

(2) report:

(A) the type of foundation(s); and

(B) the vantage point from which the crawl space was inspected; and

(3) generally report present and visible indications used to render the opinion of adverse performance, such as:

(A) open or offset concrete cracks;

(B) binding, out-of-square, non-latching, warped, or twisted doors or frames;

(C) framing or frieze board separations;

(D) out-of-square wall openings or separations at wall openings or between the cladding and window/door frames;

(E) sloping floors, countertops, cabinet doors, or window/door casings;

(F) wall, floor, or ceiling cracks;

(G) rotating, buckling, cracking, or deflecting

masonry cladding;

(H) separation of walls from ceilings or floors; and

(I) soil erosion, subsidence or shrinkage adjacent to the foundation and differential movement of abutting flatwork such as walkways, driveways, and patios;

(4) report as Deficient:

(A) exposed or damaged reinforcement;

(B) a crawl space that does not appear to be adequately ventilated;

(C) crawl space drainage that does not appear to be adequate;

(D) deteriorated materials;

(E) damaged beams, joists, bridging, blocking, piers, posts, pilings, or subfloor;

(F) non-supporting piers, posts, pilings, columns, beams, sills, or joists; and

(G) damaged retaining walls related to foundation performance; and

(5) render a written opinion as to the performance of the foundation.

(b) Specific limitations for foundations. The inspector is not required to:

(1) enter a crawlspace or any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high;

(2) provide an exhaustive list of indicators of possible adverse performance; or

(3) inspect retaining walls not related to foundation performance.

(c) Grading and drainage. The inspector shall report as Deficient:

(1) improper or inadequate grading around the foundation (including flatwork);

(2) erosion;

(3) water ponding; and

(4) deficiencies in installed gutter and downspout systems.

(d) Specific limitations for grading and drainage. The inspector is not required to:

(1) inspect flatwork or detention/retention ponds (except as related to slope and drainage);

(2) determine area hydrology or the presence of underground water; or

(3) determine the efficiency or operation of underground or surface drainage systems.

(e) Roof covering materials. The inspector shall:

(1) inspect the roof covering materials from the surface of the roof;

(2) report:

(A) type of roof covering(s);

(B) vantage point from where the roof was inspected

(C) any levels or surfaces that were not accessed;

(D) evidence of previous repairs to roof covering materials, flashing details, skylights, and other roof penetrations; and

(E) evidence of water penetration; and

(3) report as Deficient:

(A) a roof covering that is not appropriate for the slope of the roof;

(B) deficiencies in:

(i) fastening of roof covering material, as determined by a random sampling;

(ii) roof covering materials;

(iii) flashing details;

(iv) skylights; and

(v) other roof penetrations.

(f) Specific limitations for roof covering. The inspector is not required to:

(1) determine the remaining life expectancy of the roof covering;

(2) inspect the roof from the roof level if, in the inspector's reasonable judgment, the inspector cannot safely reach or stay on the roof or significant damage to the roof covering materials may result from walking on the roof;

(3) determine the number of layers of roof covering material;

(4) identify latent hail damage; or

(5) provide an exhaustive list of locations of water penetrations or previous repairs.

(g) Roof structure and attic. The inspector shall:

(1) report:

(A) the vantage point from which the attic space was inspected;

(B) the presence of and approximate average

depth of attic insulation and thickness of vertical insulation, when visible; and

(C) evidence of water penetration; and

(2) report as Deficient:

(A) attic space that does not appear to be adequately ventilated;

(B) deficiencies in installed framing members and decking;

(C) deflections or depressions in the roof surface as related to the adverse performance of the framing and the roof deck;

(D) missing insulation;

(E) deficiencies in attic access ladder and access opening; and

(F) deficiencies in attic ventilators.

(h) Specific limitations for roof structure and attic. The inspector is not required to:

(1) enter attics or unfinished spaces where openings are less than 22 inches by 30 inches or headroom is less than 30 inches;

(2) operate powered ventilators; or

(3) provide an exhaustive list of locations of water penetrations.

(i) Interior walls, ceilings, floors, and doors. The inspector shall:

(1) report evidence of water penetration; and

(2) report as Deficient:

(A) doors and hardware that do not operate properly;

(B) deficiencies related to structural performance or water penetration; and

(C) lack of fire separation between the garage and the residence and its attic space.

(j) Specific limitation for interior walls, doors, ceilings, and floors. The inspector is not required to:

(1) report cosmetic damage or the condition of floor, wall, or ceiling coverings; paints, stains, or other surface coatings; cabinets; or countertops, or

(2) provide an exhaustive list of locations of water penetrations.

(k) Exterior walls, doors, and windows. The inspector shall:

(1) report evidence of water penetration; and

(2) report as Deficient:

§§535.228(k)(2)(A)-.228(s)(2)(a)

(A) the lack of functional emergency escape and rescue openings in all sleeping rooms;

(B) the lack of a solid wood door not less than 1-3/8 inches in thickness, a solid or honeycomb core steel door not less than 1-3/8 inches thick, or a 20-minute fire-rated door between the residence and an attached garage;

(C) missing or damaged screens;

(D) deficiencies related to structural performance or water penetration; and

(E) deficiencies in:

(i) claddings;

(ii) water resistant materials and coatings;

(iii) flashing details and terminations;

(iv) the condition and operation of exterior doors, garage doors, and hardware; and

(v) window operation and components.

(l) Specific limitations for exterior walls, doors, and windows. The inspector is not required to:

(1) report the condition or presence of awnings, shutters, security devices, or systems;

(2) determine the cosmetic condition of paints, stains, or other surface coatings; or

(3) operate a lock if the key is not available.

(m) Exterior and interior glazing. The inspector shall:

(1) inspect the window and door glazing; and

(2) report as Deficient:

(A) insulated windows that are obviously fogged or display other evidence of broken seals;

(B) deficiencies in glazing, weather stripping, and glazing compound in windows and exterior doors; and

(C) the absence of safety glass in hazardous locations.

(n) Specific limitation for exterior and interior glazing. The inspector is not required to:

(1) exhaustively observe insulated windows for evidence of broken seals;

(2) exhaustively observe glazing for identifying labels; or

(3) identify specific locations of damage.

(o) Interior and exterior stairways. The inspector shall report as Deficient:

(1) spacing between intermediate balusters, spindles, or rails for steps, stairways, guards, and railings that permit passage of an object greater than 4 inches in diameter, except that on the open side of the staircase treads, spheres less than 4-3/8 inches in diameter may pass through the guard rail balusters or spindles; and

(2) deficiencies in steps, stairways, landings, guardrails, and handrails.

(p) Specific limitation for stairways. The inspector is not required to exhaustively measure every stairway component.

(q) Fireplace and chimney. The inspector shall report as Deficient:

(1) built-up creosote in visible areas of the firebox and flue;

(2) the presence of combustible materials in near proximity to the firebox opening;

(3) the absence of fireblocking at the attic penetration of the chimney flue, where accessible;

(4) an inoperative circulating fan; and

(5) deficiencies in the:

(A) damper;

(B) lintel, hearth, hearth extension, and firebox;

(C) gas log lighter valve and location;

(D) combustion air vents; and

(E) chimney structure, termination, coping, crown, caps, and spark arrestor.

(r) Specific limitations for fireplace and chimney. The inspector is not required to:

(1) verify the integrity of the flue;

(2) perform a chimney smoke test; or

(3) determine the adequacy of the draft.

(s) Porches, Balconies, Decks, and Carports. The inspector shall:

(1) inspect balconies, attached carports, and attached porches and abutting porches, decks, and balconies that are used for ingress and egress; and

(2) report as Deficient:

(A) on decks 30 inches or higher above the adjacent grade, spacings between intermediate balusters, spindles, or rails that permit passage of an object greater than four inches in diameter;

(B) deficiencies in visible footings, piers, posts, pilings, beams, joists, decking, water proofing at interfaces, flashing, surface coverings, and attachment points of porches, decks, balconies, and carports; and

(C) deficiencies in, or absence of required, guardrails and handrails.

(t) Specific limitation for porches, balconies, decks, and carports. The inspector is not required to:

(1) exhaustively measure the porch, balcony, deck, or attached carport components; or

(2) enter any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high.

§535.229. Standards of Practice: Minimum Inspection Requirements for Electrical Systems.
[Adopted February 1, 2009.]

(a) Service entrance and panels. The inspector shall report as Deficient:

(1) a drop, weatherhead, or mast that is not securely fastened to the structure;

(2) the lack of a grounding electrode system;

(3) the lack of a grounding electrode conductor;

(4) the lack of a secure connection to the grounding electrode system;

(5) deficiencies in the insulation of the service entrance conductors, drip loop, separation of conductors at weatherheads, and clearances;

(6) electrical cabinets, gutters, meter cans, and panel boards that:

(A) are not secured to the structure;

(B) are not appropriate for their location;

(C) have deficiencies in clearances and accessibility;

(D) are missing knockouts; or

(E) are not bonded and grounded;

(7) cabinets, disconnects, cutout boxes, and panel boards that do not have dead fronts secured in place with proper fasteners;

(8) conductors not protected from the edges of electrical cabinets, gutters, or cutout boxes;

(9) trip ties not installed on 240 volt circuits;

(10) deficiencies in the type and condition of

the wiring in the cutout boxes, cabinets, or gutters;

(11) deficiencies in the compatibility of overcurrent devices and conductors;

(12) deficiencies in the overcurrent device and circuit for labeled and listed 240 volt appliances;

(13) a panel that is installed in a hazardous location, such as a clothes closet, a bathroom, where there are corrosive or easily ignitable materials, or where the panel is exposed to physical damage;

(14) the absence of appropriate connections, such as copper/aluminum-approved devices;

(15) the absence of anti-oxidants on aluminum conductor terminations;

(16) the lack of a main disconnecting means;

(17) the lack of arc-fault circuit interrupting devices serving family rooms, dining rooms, living rooms, parlors, libraries, dens, bedrooms, sun-rooms, recreations rooms, closets, hallways, or similar rooms or areas; and

(18) failure of operation of installed arc-fault circuit interrupter devices.

(b) Specific limitations for service entrance and panels. The inspector is not required to:

(1) determine present or future sufficiency of service capacity amperage, voltage, or the capacity of the electrical system;

(2) test arc-fault circuit interrupter devices when the property is occupied or damage to personal property may result, in the inspector's reasonable judgment;

(3) report the lack of arc-fault circuit interrupter protection when the circuits are in conduit;

(4) conduct voltage drop calculations;

(5) determine the accuracy of overcurrent device labeling;

(6) remove covers where hazardous as judged by the inspector;

(7) verify the effectiveness of overcurrent devices; or

(8) operate overcurrent devices.

(c) Branch circuits, connected devices, and fixtures. The inspector shall:

(1) report the type of branch circuit conductors;

§535.229(c)(2)-.230(a)(2)(C)

(2) manually test the accessible smoke alarms by use of the manufacturer's approved test or by the use of canned smoke; and

(3) report as Deficient:

(A) the lack of ground-fault circuit interrupter protection in all:

- (i) bathroom receptacles;
- (ii) garage receptacles;
- (iii) outdoor receptacles;
- (iv) crawl space receptacles;
- (v) unfinished basement receptacles;
- (vi) kitchen countertop receptacles; and

(vii) laundry, utility, and wet bar sink receptacles located within 6 feet of the outside edge of a laundry, utility, or wet bar sink; and

(B) the failure of operation of ground-fault circuit interrupter protection devices;

(C) receptacles that:

- (i) are damaged;
- (ii) are inoperative;
- (iii) have incorrect polarity;
- (iv) are not grounded, if applicable;
- (v) display evidence of arcing or excessive heat;
- (vi) are not securely mounted; or
- (vii) have missing or damaged covers;

(D) switches that:

- (i) are damaged;
- (ii) are inoperative;
- (iii) display evidence of arcing or excessive heat;
- (iv) are not securely mounted; or
- (v) have missing or damaged covers;

(E) deficiencies in or absences of conduit, where applicable;

(F) appliances and metal pipes that are not bonded or grounded;

(G) deficiencies in wiring, wiring terminations, junctions, junction boxes, devices, and fixtures, including improper location;

(H) the lack of equipment disconnects;

(I) the absence of appropriate connections,

such as copper/aluminum approved devices, if branch circuit aluminum conductors are discovered in the main or sub-panel based on a random sampling of accessible receptacles and switches;

(J) improper use of extension cords;

(K) deficiencies in smoke alarms that are not connected to a central alarm system; and

(L) the lack of smoke alarms:

- (i) in each sleeping room;
- (ii) outside each separate sleeping area in the immediate vicinity of the sleeping rooms; and
- (iii) on each additional story of the dwelling, including basements but excluding crawl spaces and uninhabitable attics (in dwellings with split levels and without an intervening door between the levels, a smoke alarm installed on the upper level and the adjacent lower level shall suffice provided that the lower level is less than one full story below the upper level).

(d) Specific limitations for branch circuits, connected devices, and fixtures. The inspector is not required to:

- (1) inspect low voltage wiring;
- (2) disassemble mechanical appliances;
- (3) verify the effectiveness of smoke alarms;
- (4) verify interconnectivity of smoke alarms
- (5) activate smoke alarms that are being actively monitored or require the use of codes; or
- (6) verify that smoke alarms are suitable for the hearing-impaired.

§535.230. Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems. [Adopted February 1, 2009.]

(a) Heating equipment. The inspector shall:

(1) report:

- (A) the type of heating system(s); and
- (B) the energy source(s);

(2) report as Deficient:

- (A) an inoperative unit;
- (B) deficiencies in the controls and operating components of the system;
- (C) the lack of protection from physical damage;

(D) burners, burner ignition devices or heating elements, switches, and thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(E) inappropriate location;

(F) inadequate access and clearances;

(G) deficiencies in mounting and operation of window units; and

(H) deficiencies in thermostats;

(3) in electric units, report as Deficient deficiencies in:

(A) operation of heating elements; and

(B) condition of conductors; and

(4) in gas units, report as Deficient:

(A) gas leaks;

(B) the presence of forced air in the burner compartment;

(C) flame impingement, uplifting flame, improper flame color, or excessive scale buildup;

(D) the lack of a gas shut-off valve; and

(E) deficiencies in:

(i) conditioned, combustion, and dilution air;

(ii) gas shut-off valves and locations;

(iii) gas connector materials and connections; and

(iv) the vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(b) Cooling equipment other than evaporative coolers. The inspector shall:

(1) report the type of system(s); and

(2) report as Deficient:

(A) inoperative unit(s);

(B) inadequate cooling as demonstrated by its performance in the reasonable judgment of the inspector;

(C) inadequate access and clearances;

(D) noticeable vibration of the blower fan or condensing fan;

(E) deficiencies in the condensate drain and auxiliary/secondary pan and drain system;

(F) water in the auxiliary/secondary drain pan;

(G) a primary drain pipe that terminates in a sewer vent;

(H) missing or deficient refrigerant pipe insulation;

(I) dirty evaporator or condensing coils, where accessible;

(J) damaged casings on the coils;

(K) a condensing unit lacking adequate clearances or air circulation or that has deficiencies in the condition of fins, location, levelness, or elevation above ground surfaces;

(L) deficiencies in mounting and operation of window or wall units; and

(M) deficiencies in thermostats.

(c) Evaporative coolers. The inspector shall:

(1) report:

(A) type of system(s) (one- or two-speed);

(B) the type of water supply line; and

(C) winterized units that are drained and shut down; and

(2) report as Deficient:

(A) inoperative units;

(B) inadequate access and clearances;

(C) corrosive and mineral build-up or rust damage/decay at the pump, louvered panels, water trays, exterior housing, or the roof frame;

(D) less than a one-inch air gap between the water discharge at the float and water level in the reservoir;

(E) corrosion, decay, or rust on the pulleys of the motor or blower;

(F) the lack of a damper; and

(G) deficiencies in the:

(i) function of the pump;

(ii) interior housing, the spider tubes, tube clips, bleeder system;

(iii) blower and bearings;

(iv) float bracket;

(v) fan belt;

(vi) evaporative pad(s);

§535.230(c)(2)(G)(vii) - .231(a)(2)(H)(iv)

(vii) installation and condition of the legs on the roof rails and fasteners to the roof structure and the unit;

(viii) roof jack; and

(ix) thermostats.

(d) Duct system, chases, and vents. The inspector shall report as Deficient:

(1) damaged ducting or insulation, improper material, or improper routing of ducts;

(2) the absence of air flow at accessible supply registers in the habitable areas of the structure;

(3) improper or inadequate clearance from the earth; and

(4) deficiencies in:

(A) duct fans;

(B) filters;

(C) grills or registers;

(D) the location of return air openings; and

(E) gas piping, sewer vents, electrical wiring, or junction boxes in the duct system, plenum(s), and chase(s).

(e) Specific limitations for the heating equipment, cooling equipment, duct system, chases, and vents. The inspector is not required to:

(1) program digital thermostats or controls;

(2) inspect:

(A) for pressure of the system refrigerant, type of refrigerant, or refrigerant leaks;

(B) winterized evaporative coolers; or

(C) humidifiers, dehumidifiers, air purifiers, motorized dampers, electronic air filters, multi-stage controllers, sequencers, heat reclaimers, wood burning stoves, boilers, oil-fired units, supplemental heating appliances, de-icing provisions, or reversing valves;

(3) operate:

(A) setback features on thermostats or controls;

(B) cooling equipment when the outdoor temperature is less than 60 degrees Fahrenheit;

(C) radiant heaters, steam heat systems, or unvented gas-fired heating appliances; or

(D) heat pumps when temperatures may damage equipment;

(4) verify:

(A) compatibility of components;

(B) the accuracy of thermostats; or

(C) the integrity of the heat exchanger; or

(5) determine:

(A) sizing, efficiency, or adequacy of the system;

(B) uniformity of the supply of conditioned air to the various parts of the structure; or

(C) types of materials contained in insulation.

§535.231. Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.
[Adopted February 1, 2009.]

(a) Plumbing systems. The inspector shall:

(1) report:

(A) static water pressure;

(B) location of water meter; and

(C) location of main water supply valve; and

(2) report as Deficient:

(A) the presence of active leaks;

(B) the lack of fixture shut-off valves;

(C) the lack of dielectric unions, when applicable;

(D) the lack of back-flow devices, anti-siphon devices, or air gaps at the flow end of fixtures;

(E) water pressure below 40 psi or above 80 psi static;

(F) the lack of a pressure reducing valve when the water pressure exceeds 80 PSI;

(G) the lack of an expansion tank at the water heater(s) when a pressure reducing valve is in place at the water supply line/system; and

(H) deficiencies in:

(i) water supply pipes and waste pipes;

(ii) the installation and termination of the vent system;

(iii) the operation of fixtures and faucets not connected to an appliance;

(iv) water supply, as determined by viewing functional flow in two fixtures operated simultaneously;

§§535.231(a)(2)(H)(v)-.231(c)(5(E)(ii)

- (v) functional drainage at fixtures;
- (vi) orientation of hot and cold faucets;
- (vii) installed mechanical drain stops;
- (viii) installation, condition, and operation of commodes;
- (ix) fixtures, showers, tubs, and enclosures; and
- (x) the condition of the gas distribution system.

(b) Specific limitations for plumbing systems. The inspector is not required to:

- (1) operate any main, branch, or shut-off valves;
- (2) operate or inspect sump pumps or waste ejector pumps;
- (3) inspect:

(A) any system that has been winterized, shut down or otherwise secured;

(B) circulating pumps, free-standing appliances, solar water heating systems, water-conditioning equipment, filter systems, water mains, private water supply systems, water wells, pressure tanks, sprinkler systems, swimming pools, or fire sprinkler systems;

(C) the inaccessible gas supply system for leaks;

(D) for sewer clean-outs; or

(E) for the presence or operation of private sewage disposal systems;

(4) determine:

(A) quality, potability, or volume of the water supply; or

(B) effectiveness of backflow or anti-siphon devices; or

(5) verify the functionality of clothes washing drains or floor drains.

(c) Water heaters. The inspector shall:

- (1) report the energy source;
- (2) report the capacity of the unit(s);
- (3) report as Deficient:
 - (A) inoperative unit(s);
 - (B) leaking or corroded fittings or tank(s);
 - (C) broken or missing parts or controls;

(D) the lack of a cold water shut-off valve;

(E) if applicable, the lack of a pan and drain system and the improper termination of the pan drain line;

(F) an unsafe location;

(G) burners, burner ignition devices or heating elements, switches, or thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(H) inappropriate location;

(I) inadequate access and clearances;

(J) the lack of protection from physical damage;

(K) a temperature and pressure relief valve that:

(i) does not operate manually;

(ii) leaks;

(iii) is damaged;

(iv) cannot be tested due to obstructions;

(v) is corroded; or

(vi) is improperly located; and

(L) temperature and pressure relief valve discharge piping that:

(i) lacks gravity drainage;

(ii) is improperly sized;

(iii) has inadequate material; or

(iv) lacks proper termination;

(4) in electric units, report as Deficient deficiencies in:

(A) operation of heating elements; and

(B) condition of conductors; and

(5) in gas units, report as Deficient:

(A) gas leaks;

(B) lack of burner shield(s);

(C) flame impingement, uplifting flame, improper flame color, or excessive scale build-up;

(D) the lack of a gas shut-off valve; and

(E) deficiencies in:

(i) combustion and dilution air;

(ii) gas shut-off valve(s) and location(s);

§§535.231(c)(5(E)(iii))-232(d)(4)(A)

(iii) gas connector materials and connections; and

(iv) vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(d) Specific limitations for water heaters. The inspector is not required to:

(1) verify the effectiveness of the temperature and pressure relief valve, discharge piping, or pan drain pipes;

(2) operate the temperature and pressure relief valve if the operation of the valve may, in the inspector's reasonable judgment, cause damage to persons or property; or

(3) determine the efficiency or adequacy of the unit.

(e) Hydro-massage therapy equipment. The inspector shall report as Deficient:

(1) inoperative unit(s) and controls;

(2) the presence of active leaks;

(3) inaccessible pump(s) or motor(s);

(4) the lack or failure of required ground-fault circuit interrupter protection; and

(5) deficiencies in the ports, valves, grates, and covers.

(f) Specific limitation for hydro-massage therapy equipment. The inspector is not required to determine the adequacy of self-draining features of circulation systems.

§535.232. Standards of Practice: Minimum Inspection Requirements for Appliances. [Adopted February 1, 2009.]

(a) Dishwasher. The inspector shall report as Deficient:

(1) inoperative unit(s);

(2) rust on the interior of the cabinet or components;

(3) failure to drain properly;

(4) the presence of active water leaks; and

(5) deficiencies in the:

(A) door gasket;

(B) control and control panels;

(C) dish racks;

(D) rollers;

(E) spray arms;

(F) operation of the soap dispenser;

(G) door springs;

(H) dryer element;

(I) door latch and door disconnect;

(J) rinse cap;

(K) secure mounting of the unit; and

(L) backflow prevention.

(b) Food waste disposer. The inspector shall report as Deficient:

(1) inoperative unit(s);

(2) unusual sounds or vibration level;

(3) the presence of active water leaks; and

(4) deficiencies in the:

(A) splash guard;

(B) grinding components;

(C) exterior casing; and

(D) secure mounting of the unit.

(c) Range exhaust vent. The inspector shall report as Deficient:

(1) inoperative unit(s);

(2) a vent pipe that does not terminate outside the structure, if the unit is not of a recirculating type or configuration;

(3) inadequate vent pipe material;

(4) unusual sounds or vibration levels from the blower fan(s);

(5) blower(s) that do not operate at all speeds; and

(6) deficiencies in the:

(A) filter;

(B) vent pipe;

(C) light and lens;

(D) secure mounting of the unit; and

(E) switches.

(d) Electric or gas ranges, cooktops, and ovens. The inspector shall report as Deficient:

(1) inoperative unit(s);

(2) the lack of a gas shut-off valve;

(3) gas leaks; and

(4) deficiencies in the:

(A) controls and control panels;

- (B) thermostat(s) sensor support;
- (C) glass panels;
- (D) door gasket(s), hinges, springs, closure, and handles;
- (E) door latch;
- (F) heating elements or burners;
- (G) thermostat accuracy (within 25 degrees at a setting of 350 °F);
- (H) drip pans;
- (I) lights and lenses;
- (J) clearance to combustible material;
- (K) anti-tip device;
- (L) gas shut-off valve(s) and location(s);
- (M) gas connector materials and connections; and
- (N) secure mounting of the unit.

(e) Microwave oven. The inspector shall:

- (1) inspect built-in units; and
- (2) report as Deficient:

(A) inoperative unit(s); and

(B) deficiencies in the:

- (i) controls and control panels;
- (ii) handles;
- (iii) the turn table;
- (iv) interior surfaces;
- (v) door and door seal;
- (vi) glass panels;
- (vii) lights and lenses;
- (viii) secure mounting of the unit; and

(ix) operation, as determined by heating a container of water or with other means of testing.

(f) Trash compactor. The inspector shall report as Deficient:

- (1) noperative unit(s);
- (2) unusual sounds or vibration levels; and
- (3) deficiencies in the secure mounting of the unit.

(g) Mechanical exhaust vents and bathroom heaters. The inspector shall report as Deficient:

- (1) inoperative unit(s);

- (2) unusual sounds, speed, and vibration levels;
- (3) vent pipes that do not terminate outside the structure;

(4) a gas heater that is not vented to the exterior of the structure; and

(5) the lack of an exhaust ventilator in required areas.

(h) Garage door operators. The inspector shall report as Deficient:

- (1) inoperative unit(s);
- (2) door locks or side ropes that have not been removed or disabled; and
- (3) deficiencies in:
 - (A) installation;
 - (B) condition and operation of the garage door operator;

(C) automatic reversal during the closing cycle;

(D) electronic sensors;

(E) the control button; and

(F) the emergency release components.

(i) Doorbell and chimes. The inspector shall report as Deficient:

- (1) inoperable unit(s); and
- (2) deficiencies in components.

(j) Dryer vents. The inspector shall report as Deficient:

- (1) improper routing and length of vent pipe;
- (2) inadequate vent pipe material;
- (3) improper termination;
- (4) the lack of a dryer vent system when provisions are present for a dryer; and
- (5) damaged or missing exterior cover.

(k) Specific limitations for appliances. The inspector is not required to:

- (1) operate or determine the condition of other auxiliary components of inspected items;
- (2) test for microwave oven radiation leaks;
- (3) inspect self-cleaning functions;
- (4) test trash compactor ram pressure; or
- (5) determine the adequacy of venting systems.

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§535.233. Standards of Practice: Minimum Inspection Requirements for Optional Systems. *[Adopted February 1, 2009.]* If an inspector agrees to inspect a component described in this section, §535.227 of this title relating to Standards of Practice: General Provisions and the applicable provisions below apply.

(1) Lawn and garden sprinkler systems. The inspector shall:

(A) manually operate all zones or stations on the system; and

(B) report as Deficient:

(i) surface water leaks;

(ii) the absence or improper installation of anti-siphon devices and backflow preventers;

(iii) the absence of shut-off valves;

(iv) deficiencies in water flow or pressure at the zone heads;

(v) the lack of a rain or freeze sensor;

(vi) deficiencies in the condition of the control box; and

(vii) deficiencies in the operation of each zone, associated valves, and spray head patterns.

(2) Specific limitations for lawn and garden sprinkler systems. The inspector is not required to inspect:

(A) for effective coverage of the sprinkler system;

(B) the automatic function of the timer or control box;

(C) the effectiveness of the rain or freeze sensor; or

(D) sizing and effectiveness of anti-siphon devices or backflow preventers.

(3) Swimming pools, spas, hot tubs, and equipment. The inspector shall:

(A) report the type of construction;

(B) report as Deficient:

(i) a pump motor, blower, or other electrical equipment that lacks bonding;

(ii) the absence of or deficiencies in safety barriers;

(iii) water leaks in above-ground pipes and equipment;

(iv) deficiencies in lighting fixture(s);

(v) The lack or failure of required ground-fault circuit interrupter protection; and

(vi) deficiencies in:

(I) surfaces;

(II) tiles, coping, and decks;

(III) slides, steps, diving boards, handrails, and other equipment;

(IV) drains, skimmers, and valves; and

(V) filters, gauges, pumps, motors, controls, and sweeps; and

(C) when inspecting a pool heater, report deficiencies that these standards of practice require to be reported for the heating system.

(4) Specific limitations for swimming pools, spas, hot tubs, and equipment. The inspector is not required to:

(A) dismantle or otherwise open any components or lines;

(B) operate valves;

(C) uncover or excavate any lines or concealed components of the system or determine the presence of sub-surface leaks;

(D) fill the pool, spa, or hot tub with water;

(E) inspect any system that has been winterized, shut down, or otherwise secured;

(F) determine the presence of sub-surface water tables; or

(G) inspect ancillary equipment such as computer controls, covers, chlorinators or other chemical dispensers, or water ionization devices or conditioners other than required by this section.

(5) Outbuildings. The inspector shall report as Deficient:

(A) the lack of ground-fault circuit interrupter protection in grade-level portions of unfinished accessory buildings used for storage or work areas, boathouses, and boat hoists; and

(B) deficiencies in the structural, electrical, plumbing, heating, ventilation, and cooling systems that these standards of practice require to be reported for the principal structure.

(6) Outdoor cooking equipment. The inspector shall:

(A) inspect the built-in equipment; and

(B) report the energy source; and

(C) report as Deficient:

- (i) inoperative unit(s);
- (ii) a unit or pedestal that is not stable;
- (iii) gas leaks; and
- (iv) deficiencies in:
 - (I) operation;

(II) control knobs, handles, burner bars, grills, the box, the rotisserie (if present), and heat diffusion material;

(III) gas shut-off valve(s) and location(s);

and

(IV) gas connector materials and connections.

(7) Gas supply systems. The inspector shall:

(A) test gas lines using a local or an industry-accepted procedure; and

(B) report as Deficient:

- (i) leaks; and
- (ii) deficiencies in the condition and type of gas piping, fittings, and valves.

(8) Specific limitation for gas lines. The inspector is not required to inspect sacrificial anode bonding or for its existence.

(9) Private water wells. The inspector shall:

(A) operate at least two fixtures simultaneously;

(B) recommend or arrange to have performed water quality or potability testing;

(C) report:

- (i) the type of pump and storage equipment; and
- (ii) the proximity of any known septic system; and

(D) report as Deficient deficiencies in:

- (i) water pressure and flow and operation of pressure switches;
- (ii) the condition of visible and accessible equipment and components; and
- (iii) the well head, including improper site drainage and clearances.

(10) Specific limitations for private water wells. The inspector is not required to:

(A) open, uncover, or remove the pump,

heads, screens, lines, or other components or parts of the system;

(B) determine the reliability of the water supply or source; or

(C) locate or verify underground water leaks.

(11) Private sewage disposal (septic) systems. The inspector shall:

(A) report:

- (i) the type of system;
- (ii) the location of the drain field; and
- (iii) the proximity of any known water wells, underground cisterns, water supply lines, bodies of water, sharp slopes or breaks, easement lines, property lines, soil absorption systems, swimming pools, or sprinkler systems; and

(B) report as Deficient:

- (i) visual or olfactory evidence of effluent seepage or flow at the surface of the ground;
- (ii) inoperative aerators or dosing pumps; and
- (iii) deficiencies in:
 - (I) accessible or visible components;
 - (II) functional flow;
 - (III) site drainage and clearances around or adjacent to the system; and
 - (IV) the aerobic discharge system.

(12) Specific limitations for individual private sewage disposal (septic) systems. The inspector is not required to:

- (A) excavate or uncover the system or its components;
- (B) determine the size, adequacy, or efficiency of the system; or
- (C) determine the type of construction used.

(13) Whole-house vacuum system. The inspector shall report as Deficient:

- (A) inoperative units;
- (B) deficiencies in the main unit; and
- (C) deficiencies in outlets.

(14) Specific limitations for whole-house vacuum systems. The inspector is not required to:

- (A) inspect the attachments or hoses; or
- (B) verify that accessory components are present.

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(15) Other built-in appliances. The inspector shall report deficiencies in condition or operation of other built-in appliances not listed in this section.

§535.240 Proration of Payments from the Real Estate Inspection Recovery Fund. *[Adopted March 21, 2012.]* In the event of multiple valid pending claims against a licensee or certificate holder in excess of the limitations in §1102.359, Texas Occupations Code, the claims shall be prorated as follows:

(1) Actual damages shall be allocated first. If the total of the eligible actual damages of all claims exceeds the maximum that may be paid from the Real Estate Inspection Recovery Fund, the actual damages shall be prorated, and no interest, attorney fees, or court costs shall be paid.

(2) If, after allocating the actual damages as provided by paragraph (1) of this section, the limitations in Section 1102.359 are not reached, interest on actual damages (pre-judgment and postjudgment) shall be allocated second. If the total of the interest on eligible actual damages of all claims exceeds the amount remaining to be paid from the Real Estate Inspection Recovery Fund, the interest on eligible actual damages shall be prorated, and no other interest, attorney fees, or court costs shall be paid.

(3) If, after allocating the actual damages and interest thereon as provided by paragraphs (1) and (2) of this section, the limitations in §1102.359 are not reached, other interest, attorney fees, and court costs shall be allocated third. If the total of the other interest, attorney fees, and court costs of all claims exceeds the amount remaining to be paid from the Real Estate Inspection Recovery Fund, the other interest, attorney fees, and court costs shall be prorated.

S. Residential Rental Locators

§535.300. Advertising by Residential Rental Locators. *[Adopted April 1, 1996; Amended October 1, 1996; May 27, 1998; August 31, 2004 and January 1, 2011.; Ref: §1101.002(6)]*

(a) This section is intended to establish standards relating to permissible forms of advertising by a person licensed as a real estate broker or salesperson and functioning as a residential rental locator ("locator"). For the purposes of this section, the term "residential rental locator" shall have the meaning provided by §1101.002(6) of the

Act. For the purposes of this section, the term "advertisement" shall have the same meaning provided by §535.154(a) of this chapter (relating to Advertising).

(b) If a locator advertises more than one apartment unit in the same advertisement and lists amenities or features generally without providing the features or amenities available at a specific rent for a specific unit, the advertisement must include a statement having a meaning substantially equivalent to one of the following.

(1) "All units do not have the advertised features or amenities."

(2) "The rent is \$_____ or more, depending on the features of the unit."

(3) "The rent quoted is the minimum for a unit which may not have all the features advertised."

(c) Advertisements in a printed publication shall be deemed to be in compliance with the requirements of subsection (b) of this section if the publication in which an advertisement appears contains this notice at the beginning of the section in which the advertisement appears: Notice. Residential rental locators are required to be licensed by the Texas Real Estate Commission (P.O. Box 12188, Austin, Texas 78711-2188 1-800-250-8732 or 512-465-3960). Locators may advertise apartment units in general terms, and all units may not have the same features. The amount of rent quoted in an advertisement may be the starting rent for a basic unit or for a unit which does not have all advertised features.

(d) An advertisement by a locator of an apartment unit by general terms is misleading unless at the time the advertisement is placed at least one unit meeting the description of the unit contained in the advertisement is available through the locator at the lowest rent stated in the advertisement within either a time stated in the advertisement or within 30 days after the advertisement is submitted for publication if no time is stated. Prior to offering a unit for rent or lease, the locator also must also obtain the consent of the unit's owner or of the owner's authorized agent.

(e) Advertising by locators must also comply with the provisions of §1101.652(b)(23) of the Act and §535.154 of this chapter.

(f) Failure to comply with this section is grounds for the commission to reprimand a licensee, to suspend or revoke a license, to take other disciplinary action, and/or to impose an administrative penalty in accordance with §1101.701 of the Act.

T. Easement or Right-of-Way Agents

§535.400. Registration of Easement or Right-of-Way Agents. *[Adopted November 30, 1997; amended August 18, 1998; January 1, 2001; December 24, 2001; August 31, 2004; January 7, 2009; March 9, 2011 and April 1, 2012; Ref §1101.501]*

(a) An individual desiring to be registered by the commission as an easement or right-of-way agent must file an application on form ERW 1-3 approved by the commission. If the applicant is a business, the applicant must file form ERW 2-3. All applicants must submit the required fee. The commission will not accept an application which has been submitted without the correct filing fees or which has been submitted in pencil. A person also may apply for registration by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. If the person is an individual, the person must provide the commission with the person's photograph and signature prior to issuance of a registration certificate. The person may provide the photograph prior to the submission of an electronic application. If the applicant does not complete the application process as required by this subsection, the commission shall terminate the application.

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

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

(d) The commission may terminate an application with written notice to the applicant for failure to submit information or documentation within 60

days after the commission makes written request for the information or documentation.

(e) The commission may disapprove an application for registration with written notice to the applicant if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines) or the applicant has engaged in conduct prohibited by the Act. Provided a timely written request for a hearing is made by the applicant in accordance with the Act, §1101.364, an applicant whose application for registration has been disapproved is entitled to a hearing. The hearing on the application will be conducted in accordance with the provisions of the Act, §1101.364, and Chapter 533 of this title (relating to Practice and Procedure).

§535.401. Required Notices. *[Adopted December 1, 1997; Ref §9A]*

(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission. These forms are published by and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188.

(1) Form ERW 3-0, Registrant's Office Notice; and

(2) Form ERW 4-0, Notice Regarding Easements and Rights-of-Way.

(b) Each registrant shall display form ERW 3-0 in a prominent location in each place of business the registrant maintains.

(c) Each registrant shall, before a party in a transaction other than the party the registrant represents is obligated to sell, buy, lease, or transfer a right-of-way or easement, provide to the party a copy of form ERW 4-0 completed by the registrant.

§535.402. Complaints, Disciplinary Action and Appeals. *[Adopted November 30, 1997; amended August 31, 2004; Ref §1101.505]*

(a) The investigation of complaints and disciplinary action by the commission against registrants will be conducted in accordance with the Act and §535.141 of this title (relating to Initiation of Investigation). In addition to the grounds for revoking or suspending a registration listed in the Act, the commission may revoke or suspend the registration of a registrant on the following grounds:

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(1) procuring or attempting to procure a registration by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application;

(2) failing or refusing on demand to produce a document, book, or record in the registrant's possession concerning an easement or right-of-way transaction involving the registrant for examination by the commission or its authorized agent; and

(3) failing within 10 days to provide information requested by the commission or its authorized agent in course of an investigation of a complaint.

(b) Appeals from disciplinary orders against a registrant will be governed by the Act, §1101.658 and by Chapter 533 of this title (relating to Practice and Procedure).

§535.403. Renewal of Registration. *[Adopted August 18, 1998; amended January 1, 2001; October 4, 2001; May 19, 2003; August 31, 2004; March 9, 2011 and April 1, 2012; Ref §1101.504]*

(a) The commission shall establish a time period for renewal of each registration, which shall end with the expiration date of the current registration. Each registrant has the responsibility to apply for renewal of a registration by making proper application as specified by this section. Applications must be made on the current renewal application form approved by the commission accompanied by the required fee. Failure to receive a registration renewal application form from the commission does not relieve a registrant of the obligation to obtain the appropriate form and to apply for renewal to maintain registration. A registrant also may renew an unexpired registration by accessing the commission's Internet web site, entering the required information on the renewal application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Failure to provide information requested by the commission in connection with a renewal application is grounds for disciplinary action under the Act, §1101.653. A registrant who fails timely to pay a renewal fee must apply for and receive a new registration in order to act as an easement or right-of-way agent.

(b) The commission shall advise each registrant of the time period for filing a renewal application and paying the renewal fee by mailing a renewal application form to the registrant's last known per-

manent mailing address as shown in the commission's computerized records at least three months before expiration of the current registration. Each registrant shall furnish a permanent mailing address to the commission and report a change in permanent mailing address within 10 days after the change occurs. If a registrant fails to provide a permanent mailing address, the last known mailing address for the registrant will be deemed to be the registrant's permanent mailing address. The commission shall have no obligation to so notify a business entity such as a corporation, limited liability company or partnership, that has failed to designate an officer, manager or partner who meets the requirements of §1101.502 of the Act. The commission may not renew a registration issued to a business entity unless the entity has designated an officer, manager or partner who meets the requirements of the Act.

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

(d) Renewals by registrants who are on active duty in the United States armed forces or who are subject to the provisions of the Texas Education Code, §57.491, concerning certain student loans also will be governed by §535.92 of this title (relating to Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements).

§535.404. Fees. *[Adopted April 1, 2012.]* The commission shall charge and collect a fee of \$200 for the application or renewal of a registration for a two-year period.

§535.405. Employee of Owner or Purchaser. *[Adopted April 1, 2012.]*

(a) An easement or right of way registration is not required for an individual employed by an owner or purchaser for the purpose of selling, buying, leasing or transferring an easement or right-of-way for the owner. A person is considered to be an owner if it holds an interest in or wishes to acquire an easement or right-of-way or has an equitable title or right acquired by contract with the record

title holder.

(b) An easement or right of way agent employed by an owner means a person employed and directly compensated by an owner. An independent contractor is not an employee.

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

CHAPTER 537 PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS (Ref: §1101.155)
Professional Agreements

§537.11. Use of Standard Contract Forms.

[Adopted March 3, 1976; amended April 5, 1979; October 23, 1983; February 27, 1985; May 16, 1985; May 15, 1986; October 5, 1990; September 1, 1992; February 1, 1994; September 1, 1994; March 1, 1995; January 3, 1996; September 1, 1998; March 1, 1999; September 1, 1999; January 1, 2000; April 20, 2000; September 1, 2000; April 1, 2001; February 1, 2002; April 1, 2003; April 1, 2004; September 1, 2004; May 1, 2006; December 27, 2006 and September 1, 2010.]

(a) When negotiating contracts binding the sale, exchange, option, lease or rental of any interest in real property, a real estate licensee shall use only those contract forms promulgated by the Texas Real Estate Commission (the commission) for that kind of transaction with the following exceptions:

(1) transactions in which the licensee is functioning solely as a principal, not as an agent;

(2) transactions in which an agency of the United States government requires a different form to be used;

(3) transactions for which a contract form has been prepared by a principal to the transaction or prepared by an attorney and required by a principal to the transaction; or

(4) transactions for which no standard contract form has been promulgated by the commission, and the licensee uses a form prepared by an attorney at law licensed by this state and approved by the attorney for the particular kind of transactions involved or prepared by the Texas Real Estate Broker-Lawyer Committee (the committee) and made available for trial use by licensees with the consent of the commission.

(b) A licensee may not:

(1) practice law,

(2) offer, give or attempt to give legal advice, directly or indirectly;

(3) give advice or opinions as to the legal effect of any contracts or other such instruments which may affect the title to real estate;

(4) give opinions concerning the status or validity of title to real estate; or

(5) attempt to prevent or in any manner whatsoever discourage any principal to a real estate transaction from employing a lawyer.

(c) Nothing in this section shall be deemed to

limit the licensee's fiduciary obligation to disclose to the licensee's principals all pertinent facts which are within the knowledge of the licensee, including such facts which might affect the status of or title to real estate.

(d) A licensee may not undertake to draw or prepare documents fixing and defining the legal rights of the principals to a real estate transaction.

(e) In negotiating real estate transactions, the licensee may fill in forms for such transactions, using exclusively forms which have been approved and promulgated by the commission or such forms as are otherwise permitted by these rules.

(f) When filling in a form authorized for use by this section, the licensee may only fill in the blanks provided and may not add to or strike matter from such form, except that licensees shall add factual statements and business details desired by the principals and shall strike only such matter as is desired by the principals and as is necessary to conform the instrument to the intent of the parties.

(g) A licensee may not add to a promulgated contract form factual statements or business details for which a contract addendum, lease or other form has been promulgated by the commission for mandatory use.

(h) Nothing in this section shall be deemed to prevent the licensee from explaining to the principals the meaning of the factual statements and business details contained in the said instrument so long as the licensee does not offer or give legal advice.

(i) It is not the practice of law as defined in this Act for a real estate licensee to complete a contract form which is either promulgated by the commission or prepared by the committee and made available for trial use by licensees with the consent of the commission.

(j) Contract forms prepared by the committee for trial use may be used on a voluntary basis after being approved by the commission.

(k) Contract forms prepared by the committee and approved by the commission to replace previously promulgated forms may be used by licensees on a voluntary basis prior to the effective date of rules requiring use of the replacement forms.

(l) Where it appears that, prior to the execution of any such instrument, there are unusual matters involved in the transaction which should be

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resolved by legal counsel before the instrument is executed or that the instrument is to be acknowledged and filed for record, the licensee shall advise the principals that each should consult a lawyer of the principal's choice before executing same.

(m) A licensee may not employ, directly or indirectly, a lawyer nor pay for the services of a lawyer to represent any principal to a real estate transaction in which the licensee is acting as an agent. The licensee may employ and pay for the services of a lawyer to represent only the licensee in a real estate transaction, including preparation of the contract, agreement, or other legal instruments to be executed by the principals to the transactions.

(n) A licensee shall advise the principals that the instrument they are about to execute is binding on them.

(o) Forms approved or promulgated by the commission may be reproduced only from the following sources:

(1) numbered copies obtained from the commission, whether in a printed format or electronically reproduced from the files available on the commission's web site;

(2) printed copies made from copies obtained from the commission;

(3) legible photocopies made from such copies; or

(4) computer-driven printers following these guidelines:

(A) The computer file or program containing the form text must not allow the end user direct access to the text of the form and may only permit the user to insert language in blanks in the forms or to strike through language at the direction of the parties to the contract.

(B) Typefaces or fonts must appear to be identical to those used by the commission in printed copies of the particular form.

(C) The text and number of pages must be identical to that used by the commission in printed copies of the particular form.

(D) The spacing, length of blanks, borders and placement of text on the page must appear to be identical to that used by the commission in printed copies of the form.

(E) The name and address of the person or firm responsible for developing the software program must be legibly printed below the border at the bottom of each page in no less than six point

type and in no larger than 10 point type.

(p) Forms approved or promulgated by the commission must be reproduced on the same size of paper used by the commission with the following changes or additions only:

(1) The business name or logo of a broker, organization or printer may appear at the top of a form outside the border.

(2) The broker's name may be inserted in any blank provided for that purpose.

§537.20. Standard Contract Form TREC No. 9-10.

[Adopted November 1, 1982; amended August 1, 1985; February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000; April 1, 2003; May 1, 2006; December 27, 2006; September 1, 2008; August 24, 2011 and March 1, 2012.] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-10 approved by the Texas Real Estate Commission in 2012 for use in the sale of unimproved property where intended use is for one to four family residences. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.21. Standard Contract Form TREC No. 10-6.

[Adopted November 1, 1982; amended December 1, 1987; September 1, 1994; September 1, 1999; January 1, 2000; February 1, 2002; December 27, 2006; July 1, 2007; November 17, 2008 and March 1, 2012.] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 10-6 approved by the Texas Real Estate Commission in 2012 for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.22. Standard Contract Form TREC No. 11-7.

[Adopted November 11, 1982; amended December 1, 1987; September 1, 1994; and September 1, 1998; February 1, 2002; April 1, 2004 December 27, 2006; July 1, 2007; November 17, 2008 and March 1, 2012.] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 11-7 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. This document is published by and available from

the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.23. Standard Contract Form TREC No. 12-3. *[Adopted November 1, 1982; amended September 1, 1992; December 27, 2006; July 1, 2007; November 17, 2008 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 12-3 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.26. Standard Contract Form TREC No. 15-5. *[Adopted November 1, 1982; amended August 1, 1985; September 1, 1994; March 1, 1999; December 27, 2006; November 17, 2008 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 15-5 approved by the Texas Real Estate Commission in 2012 for use as a residential lease when a seller temporarily occupies property after closing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, www.trec.texas.gov.

§537.27. Standard Contract Form TREC No. 16-5. *[Adopted November 1, 1982; amended August 1, 1985; September 1, 1994; March 1, 1999; December 27, 2006; November 17, 2008 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 16-5 approved by the Texas Real Estate Commission in 2012 for use as a residential lease when a buyer temporarily occupies property prior to closing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711, www.trec.texas.gov.

§537.28. Standard Contract Form TREC No. 20-11. *[Adopted August 1, 1985; amended September 1, 1992; February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000; February 1, 2002; April 1, 2003; May 1, 2006; December 27, 2006; September 1, 2008; August 24, 2011 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-11 approved by the Texas Real Estate Commission in 2012 for use in the resale of residential real estate. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188,

Austin, Texas 78711-2188, www.trec.texas.gov.

§537.30. Standard Contract Form TREC No. 23-12. *[Adopted December 1, 1987; amended February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000; September 1, 2000; April 1, 2003; May 1, 2006; December 27, 2006; December 30, 2007; September 1, 2008; December 1, 2009; August 24, 2011 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-12 approved by the Texas Real Estate Commission in 2012 for use in the sale of a new home where construction is incomplete. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.31. Standard Contract Form TREC No. 24-12. *[Adopted December 1, 1987; amended February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000; September 1, 2000; April 1, 2003; May 1, 2006; December 27, 2006; December 30, 2007; September 1, 2008; December 1, 2009; August 24, 2011 and March 1, 2012]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-12 approved by the Texas Real Estate Commission in 2012 for use in the sale of a new home where construction is completed. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.32. Standard Contract Form TREC No. 25-9. *[Adopted December 1, 1987; amended February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000; April 1, 2003; May 1, 2006; December 27, 2006; September 1, 2008; August 24, 2011 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-9 approved by the Texas Real Estate Commission in 2012 for use in the sale of a farm or ranch. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.33. Standard Contract Form TREC No. 26-6. *[Adopted December 1, 1987; amended September 1, 1992; February 1, 1994; April 1, 2001; February 1, 2002; December 27, 2006; November 17, 2008 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 26-6 approved by the Texas Real Estate Commission in 2012 for use as an addendum concerning seller financing. This document is pub-

lished by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.35. Standard Contract Form TREC No. 28-2. *[Adopted February 1, 1994; amended December 27, 2006; July 1, 2007; November 17, 2008 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 28-2 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.37. Standard Contract Form TREC No. 30-10. *[Adopted September 1, 1994; amended January 1, 1998; January 1, 2000; April 20, 2000; February 1, 2002; April 1, 2003; May 1, 2006; December 27, 2006; September 1, 2008; August 24, 2011 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-10 approved by the Texas Real Estate Commission in 2012 for use in the resale of a residential condominium unit. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.39. Standard Contract Form TREC No. 32-3. *[Adopted September 1, 1994; amended December 27, 2006; July 1, 2007; September 1, 2008 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 32-3 approved by the Texas Real Estate Commission in 2012 for use as a condominium resale certificate. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.40. Standard Contract Form TREC No. 33-2. *[Adopted March 1, 1995; amended December 27, 2006; July 1, 2007; November 17, 2008 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 33-2 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. This document is published by

and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.41. Standard Contract Form TREC No. 34-4. *[Adopted March 1, 1995; amended February 1, 2002; December 27, 2006; July 1, 2007; December 30, 2007 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form, TREC No. 34-4 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.43. Standard Contract Form TREC No. 36-7. *[Adopted January 3, 1996; amended September 1, 1999; January 1, 2000; April 1, 2003; April 1, 2004; May 1, 2006 and December 27, 2006 and September 1, 2008 and July 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-7 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.44. Standard Contract Form TREC No. 37-4. *[Adopted January 3, 1996; amended September 1, 1999; January 1, 2000; May 1, 2006 and December 27, 2006; September 1, 2008 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 37-4 approved by the Texas Real Estate Commission in 2012 for use as a resale certificate when the property is subject to mandatory membership in an owners' association. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.45. Standard Contract Form TREC No. 38-4. *[Adopted September 1, 1998; amended February 1, 2002; December 27, 2006; September 1, 2008; May 31, 2011 and March 1, 2012.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 38-4 approved by the Texas Real Estate Commission in 2012 for use as a notice of termination of contract. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas

78711-2188, www.trec.texas.gov.

§537.46. Standard Contract Form TREC No. 39-7.
[Adopted September 1, 1998; amended September 1, 1999; January 1, 2000; April 1, 2001; February 1, 2002; April 1, 2003; September 1, 2004; May 1, 2006; December 27, 2006; November 17, 2008 and March 1, 2012.] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 39-7 approved by the Texas Real Estate Commission in 2012 for use as an amendment to promulgated forms of contracts. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.47. Standard Contract Form TREC No. 40-5.
[Adopted February 1, 2002; amended April 1, 2004; May 1, 2006; December 27, 2006; December 30, 2007 and March 1, 2012.] The Texas Real Estate Commission adopts by reference standard contract form, TREC No. 40-5 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.48. Standard Contract Form TREC No. 41-2.
[Adopted February 1, 2002; amended December 27, 2006; July 1, 2007; November 17, 2008 and March 1, 2012.] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 41-2 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.51. Standard Contract Form TREC No. 44-1.
[Adopted March 1, 2009; amended March 1, 2012.] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 44-1 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be added to promulgated forms of contracts for the reservation of oil, gas, and other minerals. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.52. Standard Contract Form TREC No. 45-1.
[Adopted March 1, 2009; amended March 1, 2012.] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 45-1 approved by the Texas Real Estate Commission in 2012 for use as an addendum to be added to promulgated forms of contracts in the short sale of property. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

CHAPTER 539 RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT

D. Definitions

§539.31. Residential Service Contract. *[Adopted February 11, 1980; amended September 8, 2005]* A contract or agreement whereby a person, for a fee, undertakes to indemnify against or reimburse the costs of maintenance, repair, or replacement of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property is not a "residential service contract" within the meaning of Texas Occupations Code, Chapter 1303, §1303.002(5).

E. Disclosures

§539.41. Disclosures. *[Adopted September 1, 2010.]* A residential service company that pays persons not employed by the company for the sale, advertising, inspection, or processing of a residential service contract under Texas Occupations Code §1303.304 may not offer to sell a residential service contract unless the contract contains the following statement in at least 10-point bold type: NOTICE: THIS COMPANY PAYS PERSONS NOT EMPLOYED BY THE COMPANY FOR THE SALE, ADVERTISING, INSPECTION, OR PROCESSING OF A RESIDENTIAL SERVICE CONTRACT UNDER TEXAS OCCUPATIONS CODE §1303.304.

F. Authorized Personnel

§539.51. "Employed By" Defined. *[Adopted October 7, 1982; amended November 30, 1990; October 5, 1998; September 7, 2005 and September 1, 2010.]* For the purposes of Texas Occupations Code, Chapter 1303, §1303.101(b) a person is "employed by a residential service company" if the person is other than a licensed real estate salesperson, real estate broker, mobile home dealer, or insurance agent and is authorized by a licensed residential service company to sell, offer to sell, arrange or solicit the sale of, or receive applications for residential service contracts subject to the following conditions.

(1) The residential service company must have the right to direct and control the employee's performance.

(2) The residential service company must accept responsibility for representations made by the employee within the scope of the employee's employment.

G. Application for License

§539.61. Application and Licensing. *[Adopted February 11, 1980; amended July 18, 1994; September 1, 2010 and March 9, 2011; Ref: Chapter 1303, Texas Occupations Code]*

(a) The Texas Real Estate Commission adopts by reference Application Form RSC 1-2 approved by the commission. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(b) The commission shall assign a license number to each residential service company licensed by the commission.

(c) An application for residential service company license or an application to approve evidence of coverage/schedule of charges in §539.71(2) of this chapter (relating to Miscellaneous Forms) will be terminated and the commission shall take no further action if the applicant fails to submit a response within 90 days after the commission mails a request to the applicant for curative action.

H. Miscellaneous Forms

§539.71. Miscellaneous Forms. *[Adopted May 14, 2001; amended May 24, 2006 and September 1, 2010; Chapter 1303, Texas Occupations Code]* The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(1) Residential Service Company Bond, Form RSC 2-4; and

(2) Application to Approve Evidence of Coverage/Schedule of Charges, Form RSC 3-2.

I. Funded Reserves

§539.81. Funded Reserves. *[Adopted August 19, 1991; amended July 18, 1994 and September 8, 2005]*

(a) Each residential service company licensed by the commission shall maintain funded reserves in the amount required by the Residential Service Company Act (Act), Texas Occupations Code Chapter 1303, Subchapter D. Accounts containing

§539.81(a)-.140(c)(3)

funded reserves must be identified as such and may not be encumbered or commingled with funds which are not reserves. Separate funded reserves are required for service contracts written in Texas unless the company's combined funded reserves meet the minimum reserve requirements of the Act, Subchapter D, calculated on the basis of all outstanding contracts. Each company shall maintain a level of liquidity equal to or greater than the amount of its funded reserve. Funded reserves may be maintained in the following liquid assets only:

(1) in cash or savings deposits, time deposits, certificates of deposit, NOW accounts or money market accounts in solvent banks, savings and loan associations and credit unions and branches thereof, organized under the laws of the United States of America or its states; or

(2) in investment grade notes, bonds, bills or other evidences of indebtedness or obligations of the United States of America or of a state or unit of local government or in a money market mutual fund which invests in the securities listed in this paragraph. For the purposes of this section, the term "investment grade" shall mean a security rated BBB and above by a nationally recognized securities rating organization such as Standard & Poor's.

(b) The commission may suspend or revoke the license of a residential service company for failure to comply with this section.

J. Annual Report

§539.91. Annual Report. *[Adopted March 11, 1981; amended February 19, 1990; May 14, 2001 and September 1, 2010; Ref: §10(b), Art. 6573b]* The Texas Real Estate Commission adopts by reference the Annual Report Form RSC 6-3 approved by the commission. This document is published by and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

M. Examinations

§539.121. Examinations. *[Adopted September 15, 1994; Amended September 7, 2005 and March 9, 2011; Ref: Chapter 1303, Texas Occupations Code]* The commission shall examine the affairs of each licensed residential service company as the commission deems necessary, but no less than once every five years. A company's failure to provide

access to the commission to the books and records of the company is a violation of Texas Occupations Code, Chapter 1303, §1303.053, and may subject the company to the penalties provided in Chapter 1303.

N. Mid-year Report

§539.137. Mid-year Report. *[Adopted July 20, 1981; amended February 19, 1990; July 18, 1994 and March 9, 1995 and September 1, 2010; Ref: Chapter 1303, Texas Occupations Code]*

(a) The Texas Real Estate Commission adopts by reference Mid-year Report Form RSC 7-2 approved by the commission. This document is published by and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(b) Each residential service company shall file a mid-year report no later than August 15 of each year for the preceding months of January through June.

O. Administrative Penalties

§539.140. Schedule of Administrative Penalties. *[Adopted December 30, 2007.]*

(a) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1303.355(c) of the Texas Occupations Code.

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

- (1) 22 TAC §539.137(b);
- (2) §1303.202(a);
- (3) §1303.202(b);
- (4) §1303.052; and
- (5) §1303.352(a)(1).

(c) An administrative penalty range of \$500 - \$5,000 per violation per day may be assessed for the following violations of the Texas Occupations and Administrative Codes:

- (1) §1303.101;
- (2) §1303.151;
- (3) 22 TAC §539.81;

- (4) §1303.153;
- (5) §1303.352(a)(2);
- (6) §1303.352(a)(3); and
- (7) §1303.352(a)(6).

(d) The commission may assess an additional administrative penalty of up to two times that assessed under subsections (b) and (c) of this section if the residential service company has a history of previous violations.

P. Complaints

§539.150. Complaints. *[Adopted March 9, 2011; Ref: Chapter 1303,*

(a) Complaints regarding licensed residential service companies and contracts issued by those companies shall be in writing and signed by the person filing the complaint.

(b) The commission shall not investigate a complaint submitted more than four years after the date of the transaction that is the subject of the complaint.

(c) A residential service company shall provide information or documents requested by the commission or a commission representative in the course of the investigation of a complaint within 10 working days of receipt of the request.

X. Fees

§539.231. Fees. *[Adopted February 11, 1980; amended July 18, 1994 and May 14, 2001; Ref: Chapter 1303, Texas Occupations Code]* The commission shall charge and collect the following fees:

- (1) a fee of \$3,500 for filing an application for a license;
- (2) a fee of \$3,500 for filing an annual report;
- (3) a fee of \$250 for filing an evidence of coverage; and
- (4) a fee of \$250 for filing a schedule of charges.

§541.1. Criminal Offense Guidelines. *[Adopted May 19, 1982; amended November 6, 1990; December 8, 1992; February 23, 1998; May 4, 1999; January 1, 2004; January 7, 2009 and September 1, 2010]*

(a) For the purposes of Texas Occupations Code, Chapter 53, §§1101.354, 1102.107, 1102.108, 1102.109, and §535.400(f) of this title, the Texas Real Estate Commission considers that a deferred adjudication deemed a conviction under §53.021 or a conviction of the following criminal offenses directly relate to the duties and responsibilities of a real estate broker, real estate salesperson, easement or right-of-way agent, professional inspector, real estate inspector or apprentice inspector for the reason that the commission of the offenses tends to demonstrate the person's inability to represent the interest of another with honesty, trustworthiness and integrity:

- (1) offenses involving fraud or misrepresentation;
- (2) offenses involving forgery, falsification of records, or perjury;
- (3) offenses involving the taking of bribes, kick-backs, or other illegal compensation;
- (4) offenses against real or personal property belonging to another, if committed knowingly or intentionally;
- (5) offenses against the person;
- (6) offenses against public administration;
- (7) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;
- (8) offenses involving moral turpitude;
- (9) offenses in violation of Chapter 21, Texas Penal Code (sexual offenses);
- (10) offenses for which the person has been required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure;
- (11) offenses of attempting or conspiring to commit any of the foregoing offenses;
- (12) offenses involving aiding and abetting the commission of an offense listed in this section;
- (13) repeated or multiple violations of any criminal statute evidencing a disregard for or inability to comply with the law;
- (14) felonies involving driving while intoxicated

(DWI) or driving under the influence (DUI); and

(15) any other offense that the commission determines is directly related to an occupation regulated by the commission using the factors described in subsection (b) of this section.

(b) In determining whether a criminal offense listed in subsection (a) of this section or any other criminal offense is directly related to an occupation regulated by the commission, the commission shall consider and make appropriate findings of fact in a contested case upon the following factors:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(c) In addition to the factors under subsection (b) of this section, the commission, in determining a person's present fitness for a license, shall consider the following evidence:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the offense;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) the person's compliance with the court-ordered terms and conditions while on parole, supervised release, probation, or community supervision;
- (6) the person's repeated offenses over a period of time which tend to demonstrate a lack of respect for, disregard for, or apparent inability to comply with, the law;
- (7) the time remaining, if any, on the person's term of parole, supervised release, probation, or community supervision;
- (8) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following

§541(c)(8)-541.2

release; and

(9) other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the person.

(d) It shall be the responsibility of the applicant to provide to the commission:

(1) the recommendations of prosecution, law enforcement, and correctional authorities;

(2) signed letters of character reference from persons in the applicant's business or professional community which confirm that the writer knows about the applicant's prior criminal conduct;

(3) proof in such form as may be required by the commission that he or she has maintained a record of steady employment;

(4) proof that the applicant has supported his or her dependents, if any;

(5) proof that the applicant has maintained a record of good conduct;

(6) proof that the applicant has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases; and

(7) if the applicant submits a letter of character reference from a prospective sponsor, the letter must confirm that the writer knows about the applicant's prior criminal conduct.

§541.2. Criminal History Evaluation Letters.

[Adopted September 1, 2010.] Pursuant to Texas Occupations Code, Chapter 53, Subchapter D and §1101.353, a person may request that the commission evaluate the person's eligibility for a specific occupational license regulated by the commission by:

(1) submitting a request on a form approved by the commission for that purpose; and

(2) paying the required fee.

CHAPTER 543 RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT
(Ref: Chapter 221, Property Code)

§543.1. Registration. *[Adopted December 27, 1985; amended May 15, 2001 and January 15, 2006]*

(a) A developer who wishes to register a timeshare plan shall submit an application for registration using forms approved by the commission. The commission may not accept for filing an application submitted without a completed application form and the appropriate filing fee.

(b) If the commission determines that an application for registration of a timeshare plan satisfies all requirements for registration, the commission shall promptly register the timeshare plan. The commission shall notify the applicant in writing that the timeshare plan has been registered, specifying the anniversary date of the registration and shall assign a registration number to the timeshare plan.

(c) If the commission determines that an application for registration of a timeshare plan fails to satisfy any requirement for registration, the commission shall promptly notify the applicant of any deficiency in writing. The commission may require an applicant to revise and resubmit written documents filed with the application or to provide additional information if the commission determines that the application is incomplete or inaccurate. Upon submission by an applicant of a response sufficient in the opinion of the commission to cure any deficiency in the application, the commission shall promptly register the timeshare plan and provide the applicant with the written notice required by these rules. An application will be terminated and the commission shall take no further action if the applicant fails to submit a response to the commission within 90 days after the commission mails a request to the applicant for curative action.

§543.2. Amendments. *[Adopted December 30, 1985; amended May 14, 2001; January 15, 2006 and June 8, 2008]*

(a) A person who wishes to amend the registration of a timeshare plan shall submit an application to amend the registration using forms approved by the commission. A developer may file an application to amend a registration prior to the occurrence of the change. The commission may not accept for filing an application submitted without a completed application form and the appropriate filing fee.

(b) For the purposes of Section 221.023 and Section 221.032, subsections (b)(26), (c)(9) and (d)(32) of the Texas Timeshare Act, a developer shall file amendments to the registration reporting to the commission any material or materially adverse change in any document contained in a registration.

(c) "Material" includes, but is not limited to:

- (1) a change of developer;
- (2) a change of exchange company or association with an additional exchange company;
- (3) an increase in assessments of 15% or more;
- (4) any substantial change in the accommodations that are part of the timeshare plan;
- (5) an increase or decrease in the number of timeshare interests in the timeshare plan registered by the commission;
- (6) a change of escrow agent or type of escrow or other financial assurance;
- (7) if applicable, an increase of more than 20% in an original alternative assurance as defined by Section 221.063(a) of the Texas Timeshare Act;
- (8) a change to a substantive provision of the escrow agreement between the escrow agent and the developer;
- (9) a change of management company; or
- (10) a change to a substantive provision of the management agreement.

(d) Materially adverse means any material change to the timeshare plan that substantially reduces the benefits or increases the costs to purchasers.

(e) Material or materially adverse does not include the correction of any typographical or other nonsubstantive changes.

(f) If the commission determines that a registration, if amended in the manner indicated in an application to amend a registration, would continue to satisfy all requirements for registration, the commission shall promptly notify the applicant in writing that the registration has been amended, specifying the effective date of the amendment.

(g) If the commission determines that a registration, if amended in the manner indicated in an application to amend a registration, would fail to satisfy a requirement for registration, the commis-

§§543.2(g)-.4(h)

sion shall promptly notify the applicant of any deficiency. The commission may require the applicant to revise and resubmit written documents filed with the application or to provide additional information if the commission determines that the application or written material filed with the application is incomplete or inaccurate. Upon submission by an applicant of a response sufficient in the opinion of the commission to cure any deficiency in the application, the commission shall promptly notify the applicant that the registration has been amended, specifying the effective date of the amendment.

§543.3. Fees. *[Adopted December 30, 1985; amended May 14, 2001; January 15, 2006 and August 28, 2006]*

(a) An applicant for registration of a timeshare plan or an applicant for abbreviated registration of a timeshare plan shall pay a filing fee of \$2.00 for each 7 days of annual use availability in each accommodation that is a part of the timeshare plan, provided, however, that the commission shall charge and collect a minimum filing fee of \$500.00 and that no registration filing fee shall exceed \$3,500.00.

(b) An applicant for amendment of the registration of a timeshare plan shall pay a minimum filing fee of \$100.00, provided, however, that the filing fee for an amendment that increases the number of timeshare interests to be sold from the number that existed or were proposed for sale in the original registration shall be \$2.00 for each 7 days of annual use availability in each timeshare unit that is being added to the timeshare plan and that no filing fee shall exceed \$2,000.00.

(c) An applicant for pre-sale authorization shall pay a filing fee of \$100.00 in addition to the filing fee due under subsection (a) of this section.

(d) A filing fee is not refundable once an application is accepted for filing by the commission.

(e) A developer of a registered timeshare plan shall pay a fee of \$100 to renew a registration.

(f) To reinstate an expired registration of the timeshare plan, a developer shall pay, in addition to the fee of \$100 to renew a timeshare plan, an additional fee of \$25 for each month the registration has been expired.

§543.4. Forms. *[Adopted December 27, 1985; amended October 2, 1986, February 19, 1990; February 11, 1994; May 14, 2001; January 15, 2006; August 28, 2006; June 8, 2008 and January 5,*

2010]

(a) The Texas Real Estate Commission adopts by reference revised Application to Register a Timeshare Plan, Form TSR 1-5, approved by the commission in 2009. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(b) The Texas Real Estate Commission adopts by reference revised Application to Amend a Timeshare Registration, Form TSR 2-5, approved by the commission in 2009. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(c) The Texas Real Estate Commission adopts by reference Application for Abbreviated Registration of a Timeshare Plan, Form TSR 3-3, approved by the commission in 2009. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(d) The Texas Real Estate Commission adopts by reference Application for Pre-sale Authorization, Form TSR 4-0, approved by the commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(e) The Texas Real Estate Commission adopts by reference Escrow Surety Bond, Form TSR 5-0, approved by the commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(f) The Texas Real Estate Commission adopts by reference Construction Surety Bond, Form TSR 6-0 approved by the commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(g) The Texas Real Estate Commission adopts by reference Consent to Service of Process, Form TSR 7-0 approved by the commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(h) The Texas Real Estate Commission adopts by reference Application to Renew the Registration of a Timeshare Plan, Form TSR 8-1, approved by the Commission in 2009. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188,

www.trec.state.tx.us.

(i) Applicants may reproduce the forms adopted by the commission from printed copies and by computer. With the exception of the changes to the forms which are permitted by this section, the applicant shall reproduce the text of the forms verbatim and the spacing, length of blanks, fonts and placement of text on the page must appear to be substantially similar to that used by the commission in the printed version of the form.

(j) When using the forms, the applicant must comply with the following:

(1) The applicant may select the type and size of the fonts, provided the fonts are no smaller than those used in the printed version of the form adopted by the commission.

(2) The forms must be printed on letter sized ("8 1/2 by 11") paper.

(3) Whether a form is reproduced by computer or is preprinted by the applicant, the applicant may allocate such space for narrative responses where noted as the applicant deems necessary or may attach additional pages containing narrative responses to the application.

(4) The applicant may renumber the pages of a form to correspond with any changes made necessary due to adjusting the space for narrative responses.

(5) The applicant may not alter the text of a promulgated application form.

§543.5. Violations. *[Adopted December 25, 1985; amended May 14, 2001; January 15, 2006 and January 5, 2010.]*

(a) It is a material violation of the Texas Timeshare Act (the Act) for a person to engage in any of the acts described in Section 221.071(a) of the Act.

(b) It is a material violation of the Act for a developer to represent to a potential purchaser of a timeshare interest by advertising or any other means that a timeshare plan has been approved by the State of Texas or the Texas Real Estate Commission or to represent that the State of Texas or the Texas Real Estate Commission has passed upon the merits of a timeshare plan. It is not a material violation of the Act for a registrant to represent that a timeshare plan has been registered if the registrant discloses at the same time and in the same manner that the State of Texas and the Texas Real Estate Commission have not approved the timeshare plan or passed upon the merits of the timeshare plan.

(c) It is a material violation of the Act for a developer to fail to file an application to amend a registration within 30 days of the occurrence of a material or materially adverse change in any document contained in the registration or to fail to submit a response together with any related material in a good faith effort to cure a deficient application to amend a registration within 90 days after the commission has mailed to the applicant a request for curative action.

(d) It is a material violation of the Act for a person to procure or attempt to procure a registration or amendment to a registration by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application filed with the commission.

(e) It is a material violation of the Act for a person to disregard or violate a rule of the commission.

(f) It is a material violation of the Act for a developer to fail to make good a check issued to the commission within 30 days after the commission has mailed a request for payment by certified mail to the developer's last known permanent mailing address as reflected by the commission's records.

(g) It is a material violation of the Act for a developer to fail within 10 working days to provide information or documents requested by the commission or a commission representative in the course of the investigation of a complaint.

(h) It is a material violation of the Act for a developer to fail to properly file an assumed name as required by §221.037(b) of the Act or to fail to give the commission timely written notice of the developer's use of an assumed name.

§543.6. Complaints and Disciplinary Proceedings. *[Adopted December 25, 1985; amended May 14, 2001 and January 15, 2006]*

(a) Complaints regarding registered timeshare plans shall be in writing and signed by the person filing the complaint.

(b) The commission shall not investigate a complaint submitted more than four years after the date of the transaction that is the subject of the complaint.

(c) Disciplinary proceedings, including appeals, shall be conducted in accordance with the provisions of Section 221.024 of the Texas Timeshare Act, Chapter 533 of this title and the Administrative Procedure Act, Chapter 2001, Government Code.

§§543.7-.13

§543.7. Contract Requirements. *[Adopted January 15, 2006]*

(a) For purposes of Section 221.043(a) of the Texas Timeshare Act, "conspicuous manner" means that:

(1) The type of the upper and lower case letters used shall be two point sizes larger than the largest non-conspicuous type, exclusive of heading, on the page on which it appears but in at least 10-point type; or

(2) Where the use of 10-point type would be impractical or impossible, a different style of type or print may be used, so long as the print remains conspicuous under the circumstances.

(b) For purposes of §543.7(a) of this chapter, any conspicuous type utilized shall be separated on all sides from other type and print and may be utilized only where required by the Texas Timeshare Act or authorized by the commission.

§543.8. Disclosure Requirement. *[Adopted January 15, 2006]* A developer may provide the disclosures required by Section 221.032 and Section 221.033 of the Texas Timeshare Act in an alternate format with the written agreement of the purchaser, provided the developer obtains a signed receipt evidencing that consent from the purchaser.

§543.9. Exemptions. *[Adopted January 15, 2006]* For purposes of Section 221.034(b) of the Texas Timeshare Act, the term "developer" shall include any entity in which the developer, or any affiliate of the developer, has at least a 25% interest.

§543.10. Escrow Requirements. *[Adopted January 15, 2006; amended June 8, 2008.]*

(a) For purposes of Section 221.063(a) of the Texas Timeshare Act, the alternative financial assurance from another state or jurisdiction must be for the same timeshare plan as the timeshare plan being registered or registration being amended.

(b) A timeshare developer shall, within 10 days of the change, provide the commission with written notice of any increase or decrease in the original surety bond as provided for in Section 221.063(a) of the Texas Timeshare Act.

§543.11. Maintenance of Registration. *[Adopted January 15, 2006]* A developer shall give the commission written notice of a change of the

developer's permanent mail address within 10 days of the occurrence of the change.

§543.12 Renewal of Registration. *[Adopted August 28, 2006; amended January 5, 2010.]*

(a) If a timeshare plan was registered prior to January 15, 2006, the registration expires on the last day of the month 24 months after its last anniversary date prior to January 15, 2006. For timeshare plans registered on or after January 15, 2006, the registration expires on the last day of the month 24 months after the date the plan was registered.

(b) A developer of a timeshare plan may renew the registration for a 2-year period by completing an Application to Renew the Registration of a Timeshare Plan, Form TSR 8-1, and paying the appropriate filing fee.

(c) Three months prior to the expiration of a registration, the commission shall mail a renewal application form to the developer's last known permanent mail address as shown in the commission's computerized records.

(d) An application to renew a timeshare plan is considered void and is subject to no further evaluation or processing when the developer fails to provide information or documentation within sixty (60) days after the commission makes written request for correct or additional information or documentation.

§543.13. Assumed Names. *[Adopted January 5, 2010.]* A developer who wishes to use an assumed name in business as permitted by §221.037(b) of the Texas Timeshare Act in lieu of using the full name of the developer shall notify the commission in writing at least 10 days prior to using the assumed name.