



**RULES OF
THE
TEXAS REAL ESTATE COMMISSION**

**As Revised and in Effect on
September 1, 2015
and
September 7, 2015**

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

www.trec.texas.gov

NOTES

This publication contains the Commission's Rules in effect on September 1, 2015, and September 7, 2015.

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 v, Subparagraph I, Paragraph 2, Subsection (a) of §535.230 which relates to Real Estate Inspectors Standards of Practice, may be cited as 22 TAC §535.230(a)(2)(I)(v)(II).

Unless noted otherwise, the rules were first effective January 1, 1976.

Table of Contents

CHAPTER 531 CANONS OF PROFESSIONAL ETHICS AND CONDUCT.....	1
§531.1. Fidelity	1
§531.2. Integrity	1
§531.3. Competency	1
§531.18. Consumer Information	1
§531.19. Discriminatory Practices	1
CHAPTER 533 PRACTICE AND PROCEDURE	2
A. Definitions	2
§533.1 Definitions.....	2
B. General Provisions Relating to Practice and Procedure	2
§533.2. Purpose and Scope.....	2
§533.3. Filing and Notice.....	3
§533.4. Failure to Answer, Failure to Attend Hearing and Default.....	3
§533.5. Transcript Cost	3
§533.6. Filing of Exceptions and Replies.....	4
§533.7. Final Decisions and Orders.....	4
§533.8. Motions for Rehearing; Finality of Decisions.....	5
§533.9. Computation of Time	6
C. Alternative Dispute Resolution	6
§533.20. ADR Policy.....	6
§533.21. Negotiated Settlement.....	6
§533.25. Informal Proceedings.....	6
§533.30. Staff Mediation.....	8
§533.32. Appointment of Mediator.....	8
§533.33. Outside Mediation.....	8
§533.35. Stipulations.....	9
§533.36. Agreements.....	9
§533.37. Confidentiality.....	9
D. Negotiated Rulemaking.....	9
§533.40. Negotiated Rulemaking.....	9
CHAPTER 534 GENERAL ADMINISTRATION	10
§534.1. Charges for Copies of Public Information.....	10
§534.2. Processing Fees for Dishonored Payments.....	10
§534.3. Employee Training and Education	10
§534.4. Historically Underutilized Businesses Program.....	11
§534.5. Bid Opening and Tabulation	11
§534.6. Negotiation and Mediation of Certain Contract Disputes.....	11
§534.7. Vendor Protest Procedures.....	11

CHAPTER 535 GENERAL PROVISIONS	12
A. Definitions	12
§535.1. Definitions.....	12
B. General Provisions Relating to the Requirements of Licensure	12
§535.2. Broker's Responsibility	12
§535.3. Compensation to or Paid by a Salesperson.	13
§535.4. License Required.....	13
§535.5. License Not Required.....	14
§535.16. Listings; Net Listings.	15
§535.17. Broker Price Opinion or Comparative Market Analysis.	15
§535.20. Referrals from Unlicensed Persons.	15
§535.21. Mailing Address and Other Contact Information	16
C. Exemptions to Requirements of Licensure	16
§535.31. Attorneys at Law.....	16
§535.32. Attorneys in Fact.....	16
§535.33. Public Officials.	16
§535.34. Salespersons Employed by an Owner of Land and Structures Erected by the Owner	16
D. The Commission	
§535.41. Procedures.....	17
§535.42. Jurisdiction and Authority.....	17
§535.43. Education Standards Advisory Committee	17
§535.44. Commission Seal	18
E. Requirements for Licensure	
§535.50. Definitions.....	18
§535.51. General Requirements for a Real Estate License.....	19
§535.52. Moral Character Requirements for Individual Applicant.	21
§535.53. Business Entities.....	21
§535.54. Hearing on License Denial: Probationary Licenses	22
§535.55. Education and Sponsorship Requirements for a Salesperson License.....	23
§535.56. Education and Experience Requirements for a Broker License	23
§535.57. Examination Requirements for a License.	25
F. Requirements for Education Providers, Courses and Instructors for Qualifying Education.....	26
§535.60. Definitions.....	26
§535.61. Approval of Providers of Qualifying Courses.....	27
§535.62. Approval of Qualifying Courses.	29
§535.63. Approval of Instructors of Qualifying and Non-Elective CE Courses	32
§535.64. Content Requirements for Qualifying Real Estate Courses	34
§535.65. Responsibilities and Operations of Providers of Qualifying Courses.	36
§535.66. Credit for Courses Offered by Accredited Colleges or Universities	40
§535.67. Qualifying Education: Compliance and Enforcement	42
G. Requirements for Continuing Education Providers, Courses and Instructors.....	43
§535.70. Definitions.....	43

§535.71. Approval of CE Providers	43
§535.72. Approval of Non-elective Continuing Education Courses	43
§535.73. Approval of Elective Continuing Education Courses.....	46
§535.74. Approval of Continuing Education Instructors for Elective Courses.....	47
§535.75. Responsibilities and Operations of Continuing Education Providers	48
§535.77. CE Providers: Compliance and Enforcement	50
H. Recovery Fund	50
§535.82. Proration of Payments from the Recovery Trust Account.	50
I. License Renewal	50
§535.91. Renewal of a Real Estate License	50
§535.92. Continuing Education Requirements.....	52
§535.93. Late Renewal Applications	53
J. Fees.....	53
§535.101. Fees.....	53
K. Place of Business	55
§535.112. Branch Office	55
L. Inactive License Status	55
§535.121. Inactive Salesperson License	55
§535.122. Reactivation of Salesperson License	55
§535.123. Inactive Broker Status	56
M. Nonresidents	56
§535.131. Unlawful Conduct; Splitting Fees	56
§535.132. Eligibility for Licensure	56
§535.133. Consent to be Sued; Exception to Requirements.....	57
N. Suspension and Revocation of Licensure.....	57
§535.141. Initiation of Investigation	57
§535.143. Fraudulent Procurement of License	58
§535.144. When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child.....	58
§535.145. False Promise	59
§535.146. Maintaining Trust Money	59
§535.147. Splitting Fee with Unlicensed Person	60
§535.148. Receiving an Undisclosed Commission or Rebate.....	61
§535.149. Lottery or Deceptive Trade Practice.....	61
§535.153. Violating an Exclusive Agency.....	61
§535.154. Advertising.....	61
§535.156. Dishonesty; Bad Faith; Untrustworthiness.....	63
§535.161. Failing to Provide Information	63
O. Hearing on Suspension or Revocation of Licensure.....	64
§535.171. Hearing: Subpoenas and Fees	64
P. Penalty for Unlicensed Activity	64
§535.181. Penalty	64
Q. Administrative Penalties	64
§535.191. Schedule of Administrative Penalties	64

R.	Real Estate Inspectors.....	65
	§535.201. Definitions.....	65
	§535.206. The Texas Real Estate Inspector Committee	65
	§535.208. Application for a License	66
	§535.209. Examinations.....	68
	§535.210. Fees	68
	§535.211. Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Chapter 1102	70
	§535.212. Education and Experience Requirements for a License	70
	§535.213. Qualifying Real Estate Inspector Instructors and Courses	73
	§535.215. Inactive Inspector Status	76
	§535.216. Renewal of License	77
	§535.217. Mailing Address and Other Contact Information.....	78
	§535.218. Continuing Education Required for Renewal	78
	§535.219. Schedule of Administrative Penalties.	79
	§535.220. Professional Conduct and Ethics	79
	§535.221. Advertisements.....	81
	§535.222. Inspection Reports	83
	§535.223. Standard Inspection Report Form	83
	§535.224. Practice and Procedure.....	84
	§535.226. Sponsorship of Apprentice Inspectors and Real Estate Inspectors.....	84
	§535.227. Standards of Practice: General Provisions	85
	§535.228. Standards of Practice: Minimum Inspection Requirements for Structural Systems.....	87
	§535.229. Standards of Practice: Minimum Inspection Requirements for Electrical Systems	91
	§535.230. Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation and Air Conditioning Systems.....	93
	§535.231. Standards of Practice: Minimum Inspection Requirements for Plumbing Systems	95
	§535.232. Standards of Practice: Minimum Inspection Requirements for Appliances.....	97
	§535.233. Standards of Practice: Minimum Inspection Requirements for Optional Systems	98
	§535.240. Proration of Payments from the Real Estate Inspection Recovery Fund...	100
S.	Residential Rental Locators	100
	§535.300. Advertising by Residential Rental Locators	100
T.	Easement or Right-of-Way Agents.....	101
	§535.400. Registration of Easement or Right-of-Way Agents	101
	§535.401. Required Notices	102
	§535.402. Complaints, Disciplinary Action and Appeals	102
	§535.403. Renewal of Registration.....	103
	§535.404. Fees	103
	§535.405. Employee of Owner or Purchaser	103

CHAPTER 537 PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS	104
§537.11. Use of Standard Contract Forms	104
§537.20. Standard Contract Form TREC No. 9-11	105
§537.21. Standard Contract Form TREC No. 10-6.....	105
§537.22. Standard Contract Form TREC No. 11-7.....	106
§537.23. Standard Contract Form TREC No. 12-3.....	106
§537.26. Standard Contract Form TREC No. 15-5.....	106
§537.27. Standard Contract Form TREC No. 16-5.....	106
§537.28. Standard Contract Form TREC No. 20-12.....	106
§537.30. Standard Contract Form TREC No. 23-13.....	106
§537.31. Standard Contract Form TREC No. 24-13.....	106
§537.32. Standard Contract Form TREC No. 25-10.....	106
§537.33. Standard Contract Form TREC No. 26-6.....	106
§537.35. Standard Contract Form TREC No. 28-2.....	106
§537.37. Standard Contract Form TREC No. 30-11.....	106
§537.39. Standard Contract Form TREC No. 32-4.....	106
§537.40. Standard Contract Form TREC No. 33-2.....	106
§537.41. Standard Contract Form TREC No. 34-4.....	107
§537.43. Standard Contract Form TREC No. 36-8.....	107
§537.44. Standard Contract Form TREC No. 37-5.....	107
§537.45. Standard Contract Form TREC No. 38-4.....	107
§537.46. Standard Contract Form TREC No. 39-7.....	107
§537.47. Standard Contract Form TREC No. 40-6.....	107
§537.48. Standard Contract Form TREC No. 41-2.....	107
§537.51. Standard Contract Form TREC No. 44-2.....	107
§537.52. Standard Contract Form TREC No. 45-1.....	107
§537.54. Standard Contract Form TREC No. 47-0.....	107
 CHAPTER 539 PROVISIONS OF THE RESIDENTIAL SERVICE COMPANY ACT	 108
D. Definitions.....	108
§539.31. Definitions.....	108
E. Disclosures	108
§539.41. Disclosures.....	108
F. Authorized Personnel.....	108
§539.51. "Employed By" Defined	108
G. Applications and Maintenance of License.....	108
§539.61. Application for Residential Service Company License	108
§539.62. Application to Approve Evidence of Coverage/Schedule of Charges.....	108
§539.63. Termination of Application.....	109
§539.64. Mailing Address and Other Contact Information.	109
§539.65. Change in Company Ownership or Officers.	109
§539.66. Change in Operation.....	109
H. Miscellaneous Forms	109
§539.71. Miscellaneous Forms.....	109

I. Financial Assurances	109
§539.81. Funded Reserves.....	109
§539.82. Security.....	110
J. Annual Report.....	110
§539.91. Annual Report.....	110
M. Examinations.....	110
§539.121. Examinations.....	110
N. Mid-Year Report	110
§539.137. Mid-Year Report	110
O. Administrative Penalties	110
§539.140. Schedule of Administrative Penalties.....	110
P. Complaints.....	111
§539.150. Complaints.....	111
Q. Issues Affecting Consumers.....	111
§539.160. Copy of Residential Service Company Contract.....	111
§539.161. Advertising.....	111
§539.162. Contract Requirements.....	111
X. Fees.....	112
§539.231. Fees.....	112
CHAPTER 541 RULES RELATING TO THE PROVISIONS OF TEXAS OCCUPATIONS CODE, CHAPTER 53.....	113
§541.1. Criminal Offense Guidelines	113
§541.2. Criminal History Evaluation Letters	114
CHAPTER 543 RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT.....	115
§543.1. Registration.....	115
§543.2. Amendments	115
§543.3. Fees	116
§543.4. Forms.....	116
§543.5. Violations	116
§543.6. Complaints and Disciplinary Procedures.....	117
§543.7. Contract Requirements	117
§543.8. Disclosure Requirement	117
§543.9. Exemptions	117
§543.10. Escrow Requirements	118
§543.11. Maintenance of Registration.....	118
§543.12. Renewal of Registration.....	118
§543.13. Assumed Names	118

TITLE 22 EXAMINING BOARDS

PART 23 TEXAS REAL ESTATE COMMISSION

CHAPTER 531 CANONS OF PROFESSIONAL ETHICS AND CONDUCT

§531.1 Fidelity

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; and

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

§531.2 Integrity

A real estate broker or salesperson has a special obligation to exercise integrity in the discharge of the license holder'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

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

(a) The Texas Real Estate Commission adopts by reference Consumer Information Form 1-1. 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.

(b) Each active 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

(a) No real estate license holder shall inquire about, respond to or facilitate inquiries about, or make a disclosure of an owner, previous or current occupant, potential purchaser, lessor, or potential lessee of real property which indicates or is intended to indicate any preference, limitation, or discrimination based on the following:

(1) race;

(2) color;

(3) religion;

(4) sex;

(5) national origin;

(6) ancestry;

(7) familial status; or

(8) disability.

(b) For the purpose of this section, disability includes AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the United States Public Health Service.

**TITLE 22 EXAMINING BOARDS PART 23
TEXAS REAL ESTATE COMMISSION**

CHAPTER 533 PRACTICE AND PROCEDURE

SUBCHAPTER A DEFINITIONS

§533.1 Definitions

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) Administrator--The Administrator of the Texas Real Estate Commission.
- (3) 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.
- (4) APA--The Administrative Procedure Act (Texas Government Code, Chapter 2001).
- (5) Applicant--Any person seeking a license, certificate, registration, approval or permit from the Commission.
- (6) Commission--The Texas Real Estate Commission.
- (7) Complainant--Any person who has filed a complaint with the Commission against any person whose activities are subject to the jurisdiction of the Commission.
- (8) 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.
- (9) Mailing Address--The mailing address as provided to the Commission by a license holder and maintained as required by the Commission's rules 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.

(10) License--The whole or part of any registration, license, certificate, approval, permit, or similar form of permission required or permitted by law issued by the Commission.

(11) Party--A person admitted to participate in a case before the Commission or the Administrator.

(12) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

(13) 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.

(14) Respondent--Any person, licensed or unlicensed, who has been charged with violating a law that establishes a regulatory program administered by the Commission or a rule or order issued by the Commission.

(15) Sanctions--Any administrative penalty, disciplinary or remedial action imposed by the Commission for violations of Texas Occupations Code, Chapter 1101, 1102, or 1105 or the Rules adopted by the Commission pursuant to those chapters.

(16) SOAH--State Office of Administrative Hearings.

(17) TAC--Texas Administrative Code.

**SUBCHAPTER B GENERAL PROVISIONS
RELATING TO PRACTICE AND
PROCEDURE**

§533.2 Purpose and Scope

This subchapter provides for an efficient and uniform system of practice and procedure before the Commission. This subchapter governs 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. This subchapter does not 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

(a) If the Commission denies an application for a license, the Commission shall send the applicant written notice of the denial. An applicant may accept the denial or make a written request for a hearing on that denial. If an applicant fails to request a hearing in writing not later than the 20th day after the date the notice denying an application is sent, the Commission's denial is final.

(b) 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 to the Respondent. The Commission shall provide notice in accordance with the APA.

(c) Not later than the 20th day after the date on which the Notice of Alleged Violation is sent, the Respondent may:

(1) accept the determination of the Commission, including sanctions recommended by the Commission; or

(2) make a written request for a hearing on that determination.

(d) Upon receipt of a written request for hearing, the Commission shall submit a request to docket case to SOAH accompanied by copies of relevant documents giving rise to a contested case.

(e) When the Commission submits a request to docket case with SOAH, SOAH acquires jurisdiction over a contested case until SOAH issues final amendments or corrections to the Proposal for Decision. In case of a conflict with the Commission's rules, SOAH's rules control while SOAH has jurisdiction.

(f) Pleadings, other documents, and service to SOAH shall be filed in accordance with SOAH's rules.

(g) If a real estate salesperson is a Respondent, the Commission will notify the salesperson's sponsoring broker of the hearing. If an apprentice inspector or real estate inspector is a Respondent, the

Commission will notify the sponsoring professional inspector of the hearing. Notice under this subsection need not be provided by certified or registered mail.

(h) Any document served upon a party is prima facie evidence of receipt, if it is directed to the party's mailing address or email 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

(a) If, not later than the 20th day after the date a Notice of Alleged Violation is sent, the Respondent fails to accept the Commission's determination and recommended sanctions, 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) 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.

(c) SOAH rules relating to Default Proceedings and Dismissal Proceedings apply when a Respondent or Applicant 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 administrative law judge. If the administrative law judge issues an order dismissing the case from the SOAH docket or issues a default Proposal for Decision, the factual allegations against the Respondent or Applicant filed at SOAH are admitted and the Commission shall enter a default order against the Respondent or Applicant as set out in the Notice of Hearing sent to the Respondent or Applicant. No additional proof is required to be submitted to the Commission before the Commission enters the final order.

§533.5 Transcript Cost

(a) Cost of a transcript of a SOAH proceeding ordered by a party are paid by that party. Cost of a transcript of a SOAH proceeding ordered by the administrative law judge are split equally between the parties.

(b) A party or witness who needs an interpreter or translator is responsible for making the request under SOAH rules. The cost of the interpreter or translator is borne by the party requesting the service.

§533.6 Filing of Exceptions and Replies

(a) Any party of record who is adversely affected by the Proposal for Decision of the administrative law judge may file exceptions to the Proposal for Decision in accordance with SOAH's rules.

(b) Exceptions and replies are filed with SOAH with a copy served on the opposing party. The Proposal for Decision may be amended by the administrative law judge pursuant to the exceptions and replies submitted by the parties.

§533.7 Final Decisions and Orders

(a) After a Proposal for Decision has been issued by an administrative law judge, the Commission will render the final decision in a contested case or remand the proceeding for further consideration by the administrative law judge. The Commission is responsible for imposing disciplinary action and/or assessing administrative penalties against Respondents who are found to have violated any of the Commission's statutes or rules. The Commission welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the Commission is not required to give presumptively binding effect to the administrative law judges' recommendations and is not bound by such recommendations.

(b) If the Commission remands the case to the administrative law judge, the Commission may direct that further consideration be accomplished with or without reopening the hearing and may limit the issues to be considered. If, on remand, additional evidence is admitted that results in a substantial revision of the Proposal for Decision, or the underlying facts, the administrative law judge shall prepare an amended or supplemental Proposal for Decision and this subchapter applies. Exceptions and replies are limited to items contained in the supplemental Proposal for Decision.

(c) The Proposal for Decision may be acted on by the Commission after the administrative law judge has ruled on any exceptions or replies to exceptions or on the day following the day exceptions or replies to exceptions were due if no such exceptions or replies

were filed.

(d) Any party may request oral argument before the Commission before the final disposition of the contested case. An oral argument is conducted in accordance with paragraphs (1) - (5) of this subsection.

(1) The chairperson or the Commission 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 presented by the parties.

(2) The hearing on the Proposal for Decision is limited to the record. New evidence may not be presented on the substance of the case unless the party submitting the evidence establishes 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.

(3) In presenting an oral argument, the party bearing the burden of proof opens and closes. The party responding may offer a rebuttal argument. A party may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(4) 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 Commission must direct the questions to the party's attorney. Questions must be limited to the record and to the arguments made by the parties.

(5) 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 motion regarding disposition of the contested case. The presiding member may vote on the motion. A motion is 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.

(e) It is the policy of the Commission to change a finding of fact or conclusion of law in a Proposal for Decision of an administrative law judge when the

Commission determines:

(1) that the administrative law 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 administrative law judge relied is incorrect or should be changed; or

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

(f) 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. If the Commission does not follow the recommended sanctions 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.

(g) Final orders on contested cases shall be in writing and 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. Parties will be notified and given a copy of the decision as provided by the APA. A decision is final as provided by the APA.

(h) If the Commission 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. The decision or order is then final and appealable on the date signed and a motion for rehearing is not required as a prerequisite for appeal.

(i) Conflict of Interest. A Commission member shall recuse himself or herself from all deliberations and votes regarding any matter:

(1) the member reviewed during an Informal Proceeding;

(2) involving persons or transactions about which the member has a conflict of interest; or

(3) involving persons or transactions related to the member sufficiently closely as to create the appearance of a conflict of interest.

§533.8 Motions for Rehearing; Finality of Decisions

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

(b) Motions for rehearing are controlled by the APA, §§2001.145 - 2001.147 and this section.

(c) 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.

(d) Any party may request oral arguments before the Commission prior to the final disposition of the motion for rehearing. Oral arguments will be conducted in accordance with paragraphs (1) - (5) of this subsection.

(1) 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.

(2) 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 evidenced 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.

(3) 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.

(4) 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.

(5) 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.

(e) A petition for judicial review must be filed in a District Court of Travis County Texas, as provided by the APA. A party filing a petition for judicial review must also comply with the requirements of Texas Occupations Code, §1101.707.

(f) 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.

(g) If, after judicial review, the administrative penalty is reduced or not assessed, the Administrator shall remit to the person charged the appropriate amount, plus accrued interest if the administrative 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 administrative penalty is paid to the

Commission and ending on the date the administrative penalty is remitted.

§533.9 Computation of Time

In computing any period of time prescribed or allowed by this Chapter, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

SUBCHAPTER C ALTERNATIVE DISPUTE RESOLUTION

§533.20 ADR Policy

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 and encourages resolution of disputes at any time.

§533.21 Negotiated Settlement

(a) Commission staff and Respondent or Applicant may enter into a settlement agreement following negotiations at any time.

(b) Negotiations may be conducted in person, by phone, or through any form of written communication.

§533.25 Informal Proceedings

(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) 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.

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

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

communication.

(e) 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.

(f) 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

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

(g) 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.

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

(i) 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.

(j) 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.

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

(l) 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.

(m) 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.

(n) 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.

(o) 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 not later than the 10th day after 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.

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

(q) 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.

(r) 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.

(s) A license holder's opportunity for an informal conference under this subchapter shall satisfy the requirement of the APA, §2001.054(c).

(t) 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 settlement 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 Staff Mediation

(a) Commission staff, who have received a minimum of 40 hours of formal mediation training, may mediate a resolution of a complaint between the Commission, a Respondent, and a complainant upon agreement of all parties.

(b) After receipt of a complaint that meets the requirements to be investigated under Texas Occupations Code, §1101.204(b), Commission staff may refer a complaint for mediation to a Commission staff mediator.

(c) Mediation under this section is voluntary.

(d) If an agreed resolution between the Commission, a Respondent, and a complainant cannot be reached, the Commission staff mediator will not have any further involvement with the continued investigation or resolution of the complaint.

§533.32 Appointment of Mediator

(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 Outside Mediation

(a) At the discretion of the Director of Standards and Enforcement Services and with the consent of all parties, mediation with an outside mediator may be scheduled between the Commission and a Respondent or Applicant when the Commission anticipates initiation of an adverse action against a Respondent or Applicant or any time after initiation.

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

(1) have received at least 40 hours of Texas mediation training; and

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

(c) If the mediator is a SOAH judge, that person will not also sit as the administrative law judge for the

case if the contested matter goes to a SOAH hearing.

(d) Upon unanimous motion of the parties and at the discretion of the administrative law judge, this section applies to a case referred to SOAH.

(e) Respondents or Applicants participating in a mediation will pay one-half of any fees incurred for the mediation directly to the Commission before mediation begins.

§533.35 Stipulations

When the ADR procedures do not result in the full settlement of a matter, the parties in conjunction with the mediator, if applicable, 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

All agreements between or among parties that are reached as a result of ADR must be committed to writing, signed by Respondents or Applicants and a Commission staff attorney and submitted to the Commission or Administrator for approval. Once signed by the Commission or Administrator, the agreement will have the same force and effect as a written contract.

§533.37 Confidentiality

(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.

(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.

SUBCHAPTER D NEGOTIATED RULEMAKING

§533.40 Negotiated Rulemaking

(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 by Texas Government Code, §2008.052, 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.

TITLE 22 EXAMINING BOARDS

PART 23 TEXAS REAL ESTATE COMMISSION

CHAPTER 534 GENERAL ADMINISTRATION

§534.1 Charges for Copies of Public Information

(a) Any charges associated with copies of public information provided by the Commission shall be based upon the current charges established by the Office of the Attorney General.

(b) If the actual costs of providing copies exceed the charges established by the Office of the Attorney General, the Commission shall charge its actual costs, if approved by the Office of the Attorney General.

(c) 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 charge is in the public interest. The Commission also may waive the charge if the cost of processing the collection of a charge exceeds the amount of the charge.

§534.2 Processing Fees for Dishonored Payments

(a) If a payment to the Commission is dishonored by a bank or depository for insufficient funds, 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 license holder who has failed to make good a payment issued to the Commission within a reasonable time.

§534.3 Employee Training and Education

(a) The Commission may use state funds to provide training and education for its employees in accordance with the State Employees Training Act (Texas Government Code, §§656.041 - 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.
- (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

To comply 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).

§534.5 Bid Opening and Tabulation

To comply with Texas Government Code, §2156.005(d), 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).

§534.6 Negotiation and Mediation of Certain Contract Disputes

To comply with Texas Government Code, §2260.052(c), the Commission adopts by reference the rules of the Office of the Attorney General in 1 TAC Part 3, Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes). 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

- (a) To comply with Texas Government Code, §2155.076(a), the Commission adopts by reference the rules of the Texas Facilities Commission

regarding purchasing protest procedures as set forth in 1 TAC §111.32 (relating to Protests/Dispute Resolution/Hearing).

- (b) The Commission shall maintain documentation about the purchasing process to be used in the event of a protest by maintaining current information regarding applicable statutory law, administrative rules, and guidelines affecting the purchasing process.

TITLE 22 EXAMINING BOARDS

PART 23 TEXAS REAL ESTATE COMMISSION

CHAPTER 535 GENERAL PROVISIONS

SUBCHAPTER A DEFINITIONS

§535.1 Definitions

The following terms and phrases, when used in this chapter, 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 the Act.
- (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) Delivered--Sent by United States Mail to the last known mailing address or by email to the last known email address of a license holder or an applicant.
- (6) Foreign broker--A real estate broker licensed in another country, territory or state other than Texas.
- (7) License--Any Commission license, registration, certificate, approval, or similar form of permission required by law.
- (8) License holder--A person licensed or registered by the Commission under Chapter 1101 or 1102, Texas Occupations Code.
- (9) Place of business--A place where the license holder meets with clients and customers to transact business.

SUBCHAPTER B GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

§535.2 Broker Responsibility

(a) A broker is required to notify a sponsored salesperson in writing 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 are acts for which the broker is responsible.

(b) A broker owes the highest fiduciary obligation to the principal and is obliged to convey to the principal all information known to the agent which may affect the principal's decision unless prohibited by other law.

(c) A broker is responsible for the proper handling of trust funds placed with the broker and must comply with §535.146 of this title.

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

(e) A broker may delegate to another license holder the responsibility to assist in administering compliance with the Act and Rules, but the broker may not relinquish overall responsibility for the supervision of license holders sponsored by the broker. Any such delegation must be in writing. A broker shall provide the name of each delegated supervisor to the Commission on a form or through the online process approved by the Commission within 30 days of any such delegation that has lasted or is anticipated to last more than six months.

(f) Listings and other agreements for real estate brokerage services must 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.

(h) Except for records destroyed by an "Act of God" such as a natural disaster or fire not intentionally caused by the broker, the broker must, at a minimum, maintain the following records in a format that is readily available to the Commission for at least four years from the date of closing, termination of the contract, or end of a real estate transaction:

- (1) disclosures;
 - (2) commission agreements such as listing agreements, buyer representation agreements, or other written agreements 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) appraisals, broker price opinions, and comparative market analyses; and
 - (8) sponsorship agreements between the broker and sponsored salespersons.
- (i) A broker who sponsors salespersons or is a designated broker for a business entity 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, before 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 maintained by the broker with appropriate controls in compliance with §535.146.

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

(j) A broker or supervisor delegated under subsection (e) of this section must respond to sponsored salespersons, clients, and license holders representing other parties in real estate transactions within three calendar days.

(k) A sponsoring broker or supervisor delegated under subsection (e) of this section shall deliver mail and other correspondence from the Commission to their sponsored salespersons within 10 calendar days after receipt.

(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

A salesperson may not receive a commission or other valuable consideration 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 other valuable consideration. A salesperson may not pay a commission or other valuable consideration to another person except with the written consent of the salesperson's sponsoring broker.

§535.4 License Required

(a) The Act applies to any person acting as a real estate broker or salesperson while physically within Texas, 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 acting within Texas if the real property concerned

is located wholly or partly in Texas.

(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.

(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 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 license holder must be licensed as a broker under the Act.

(g) 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 the person has the authority to:

(1) use the rent to pay for services related to management of the property;

(2) determine where to deposit the rent; or

(3) sign checks or withdraw money from a trust account.

(h) For purposes of subsection (g) of this section, a single-family residential unit includes a single family home or a unit in a condominium, co-operative, 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.

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

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

(k) A person who arranges for a tenant to occupy a residential property must have a real estate license if the person:

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

(2) receives valuable consideration; and

(3) is not exempt under the Act.

(l) 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, including the operation of a service which finds apartments or homes.

(m) 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.

(n) 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 inquiries received in response to such advertisements; and

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

§535.5 License Not Required

(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 the option or contract, or offer to sell the option or contract, without having a real estate license provided the person does not use the options or contracts to purchase to engage in the real estate brokerage business.

(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. An individual employed by a business entity means a person employed and directly compensated by the business entity. An independent contractor is not an employee.

(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

(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 license holder 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 license holder'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

(a) A real estate license holder may not perform an appraisal of, or provide an opinion of value for, real property unless the license holder is licensed or certified under Texas Occupations Code, Chapter 1103.

(b) If a real estate license holder provides a broker price opinion or comparative market analysis under the Act, the license holder 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 OR OPINION OF VALUE. 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

(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:

- (1) money;
 - (2) gifts of merchandise having a retail value greater than \$50;
 - (3) rent bonuses; and
 - (4) 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 license holder 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 license holder, the person refers the person's customers to the real estate license holder.
 - (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.

§535.21 Mailing Address and Other Contact Information

- (a) Each license holder shall provide a mailing address, phone number, and email address, if available, to the Commission and shall report all subsequent changes not later than the 10th day after the date of a change of any of the listed contact information. If a license holder fails to update the contact information, the last known contact information provided to the Commission is the license holder's contact information.
- (b) The Commission shall send a notice or correspondence to an active broker or an inactive license holder to the mailing or email address of the broker or license holder as shown in the

Commission's records. The Commission shall send 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.

SUBCHAPTER C EXEMPTIONS TO REQUIREMENTS OF LICENSURE

§535.31 Attorneys at Law

An attorney licensed and eligible to practice law in Texas is exempt from the requirements of the Act but cannot sponsor real estate salespersons or act as the designated broker for a licensed business entity unless the attorney is also licensed as a real estate broker. This provision does not waive the standards of eligibility and qualification elsewhere established in the Act.

§535.32 Attorneys in Fact

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 may act 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

Public officials and employees of governmental or quasi-governmental units are exempt 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

- (a) For the purposes of the Act and this title, "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 to another person is considered evidence of employment.

SUBCHAPTER D THE COMMISSION

§535.41 Procedures

(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 chair on the chair's own motion or upon the written request of five members.

(b) Quorum. Five members constitutes a quorum.

(c) Officers.

(1) Officers of the Commission consist of a chair, a vice-chair, and secretary.

(2) The chair is designated by the governor and serves at the pleasure of the governor.

(3) The Commission shall elect a vice-chair, and secretary at a regular meeting in February of each year. Elected officers shall serve until their successors are elected.

(d) Order of business.

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

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

§535.42 Jurisdiction and Authority

The Commission does not:

(1) mediate disputes between or among license holders concerning their working relationships or their entitlement to compensation; or

(2) recommend individual license holders to the public.

§535.43 Education Standards Advisory Committee

(a) The Commission establishes an Education Standards Advisory Committee to regularly review and revise curriculum standards, course content requirements and instructor certification requirements for qualifying and continuing education courses.

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

(1) Seven members who are license holders and 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 education members who are real estate instructors or owners of real estate schools, accredited by the Commission, that provide qualifying 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 staggered two-year terms. The terms of the committee members expire as follows:

(1) on December 31 of each even-numbered year, the terms of four license holder members and two education members expire; and

(2) on December 31 of each odd-numbered year, the terms of three license holder members, two education members, and the public member expire.

(f) 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.

(g) At a regular meeting in January of each year, the

committee shall elect from its members a presiding officer, assistant presiding officer, and secretary.

(h) 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.

(i) 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.

(j) 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.

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

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

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

(n) The secretary of the committee shall work with Commission staff to prepare written minutes of each meeting and submit the minutes to the committee for approval and for filing with the Commission.

(o) At least twice a year, the Committee Chair shall report on the activities of the Committee to the Commission. The Committee may submit its written recommendations concerning the licensing and regulation of real estate education providers, instructors, and courses 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.

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

§535.44 Commission Seal

The Commission shall adopt a seal. The seal may be used only by the Commission in connection with official agency business. Any use by other persons, including persons licensed or registered under the Act or Chapter 1102, is prohibited.

SUBCHAPTER E REQUIREMENTS FOR LICENSURE

§535.50 Definitions

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

(1) 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 correspondence

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 Real Estate License

(a) Application.

(1) A person who intends to be licensed by the Commission must file an application for the license:

(A) through the online process approved by the Commission; or

(B) on the form prescribed by the Commission for that purpose; and

(C) submit the required fee under §535.101 of this title.

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) General Requirements for Licensure.

(1) To be eligible for a real estate license, an applicant must:

(A) meet the following requirements at the time of the application:

(i) be 18 years of age;

(ii) meet any applicable residency requirement;

(iii) be a citizen of the United States or a lawfully admitted alien;

(B) comply with the fingerprinting, education, experience and examination requirements of the Act; and

(C) meet the honesty, trustworthiness, and integrity requirements under the Act.

(2) 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.

(3) 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.

(c) License for military service members, military veterans, or military spouses. This subsection applies to an applicant who is a military service member, a military veteran, or the spouse of a person serving on active duty as a member of the armed forces of the United States.

(1) The Commission shall waive the license application and examination fees for an applicant who is:

(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(B) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(2) The Commission shall issue on an expedited basis a license to an applicant who holds a current certificate or license issued by a country, territory, or state other than Texas that has licensing requirements that are substantially equivalent

(3) The Commission may issue a license to an applicant who, within the five years preceding the application date, held the license in Texas.

(4) The Commission may allow an applicant 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.

(5) 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.

(d) Credit for military service. This subsection applies to an applicant who is serving on active duty or is a veteran of the armed forces of the United States.

(1) The Commission shall credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(2) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(3) The applicant must pass the qualifying examination, if any, for the type of license sought.

(e) A person applying for license under Subsection (c) or (d) of this section must also:

(1) submit the commission's approved application form for the type of license sought;

(2) submit the appropriate fee for that application;

(3) submit the supplemental form approved by the Commission applicable to subsection (c) or (d) of this section;

(4) comply with fingerprinting requirements for all license applicants and satisfy the Commission as to the applicant's honesty, trustworthiness and integrity.

(f) The administrator may waive any prerequisite to obtaining a license for an applicant issued under subsection (c) or (d).

(g) Termination of application. An application is terminated and is subject to no further evaluation or processing if:

(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 fails to provide information or documentation requested by the Commission within one year from the date the application is filed; or

(4) the applicant fails to provide fingerprints to the Department of Public Safety within one year from the date the application is filed.

(h) Completion of applicable education and experience.

(1) An applicant is not eligible to take a qualifying examination for a license until the Commission has received evidence of completion of all education and experience required by this subchapter.

(2) The Commission will not grant credit to an applicant for completing a course with substantially the same content as a course for which the applicant received credit within the previous two-year period.

(3) Except as provided by this subchapter and the Act, the Commission will not accept a person's license in another state to meet experience requirements.

(i) Examination. An applicant must take and pass a written examination in accordance with §535.57 of this subchapter.

§535.52 Moral Character Requirements for Individual Applicant

(a) The Commission may deny a license to an applicant who fails to satisfy the Commission as to an individual applicant's honesty, trustworthiness, or integrity under the Act, Texas Occupations Code

Chapter 1102, and the rules of the Commission.

(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 the Act;

(7) violating any provision of the rules of the Commission;

(8) failing to pay a judgment (including any court-ordered costs, fees, penalties, or damages), that is not otherwise discharged in bankruptcy;

(9) failing to provide information or documentation related to moral character requirements not later than the 60th day after the date the Commission sends a written request to an applicant.

§535.53 Business Entity; Designated Broker

(a) Business Entity.

(1) A business entity must be qualified to transact business in Texas to receive a broker license.

(2) A Franchise Tax Account Status page from the Texas Comptroller of Public Accounts issued within 21 days prior to the date of its license application constitutes evidence of being qualified to transact business in Texas.

(3) A foreign business entity must meet the additional requirements of §535.132 of this chapter to be eligible for a broker's license.

(b) Designated Broker.

(1) For the purposes of qualifying for, maintaining, or renewing a license, a business entity must designate an individual holding an active Texas real estate broker license in good standing with the Commission to act for it.

(2) An individual licensed broker is not in good standing with the Commission if:

(A) the broker's license was revoked or suspended, including probated revocation or suspension, in the past two years;

(B) a business entity licensed by the Commission while the broker was the designated broker for that business entity had its license revoked or suspended, including probated revocation or suspension, in the past two years;

(C) the broker has any unpaid or past due monetary obligations to the Commission, including administrative penalties and recovery fund payments;

(D) a business entity licensed by the Commission has any unpaid or past due monetary obligations to the Commission, including administrative penalties and recovery fund payments, that were incurred while the broker was the designated broker for the entity;

(3) Regardless of the type of business entity, the designated broker must be a managing officer of the business entity.

(4) 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.

(5) To obtain or renew a license, or upon any change in the business entity's designated broker, the entity must provide to the Commission:

(A) proof of the designated broker's current status as an officer, manager or general partner for that entity; and

(B) 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.

(6) A broker may not act as a designated broker at any time while the broker's license is inactive, expired, suspended, or revoked.

(c) If a licensed corporation or limited liability company is dissolved with the secretary of state then any license held by that corporation or company immediately becomes null and void.

§535.54 Hearing on License Denial: Probationary Licenses

(a) The Commission will notify an applicant if the application for license is denied. Any hearing on denial of a license will be conducted in accordance with §1101.364 of the Act and Chapter 533 of this title.

(b) If the Commission 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 for a probationary license may include any of the following:

(1) that the probationary license holder comply with the Act and with the rules of the Commission;

(2) that the probationary license holder fully cooperate with the Commission in the investigation of any complaint filed against the license holder;

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

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

(5) that the probationary license holder report regularly to the Commission on any matter which is the basis of the probationary license holder;

(6) that the probationary license holder comply with any other terms contained in the order which have been found to be reasonable and appropriate by the Commission after consideration of the circumstances involved in the particular application; or

(7) that the probationary license holder comply with any other terms contained in an order from any other court or administrative agency under which the probationary license holder is bound.

(c) Unless the order granting a probationary license specifies otherwise, a probationary license holder 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 before the completion of a probationary term and the license holder files a late renewal application as authorized by §535.93 of this subchapter, any remaining probationary period shall be reinstated effective as of the day following the renewal of the previous license.

§535.55 Education and Sponsorship Requirements for a Salesperson License

(a) Education requirements for an initial salesperson license. An applicant for an initial salesperson license must provide the Commission with satisfactory evidence of completion of 180 hours of qualifying real estate courses as required under the Act as follows:

- (1) 60 hours of Principles of Real Estate;
- (2) 30 hours of Law of Agency;
- (3) 30 hours of Law of Contracts;
- (4) 30 hours of Promulgated Contracts Forms; and
- (5) 30 hours of Real Estate Finance.

(b) Additional education requirements. A salesperson must complete an additional 90 classroom hours in qualifying courses by the expiration date of the salesperson's initial licensing period and report those hours in accordance with the requirements of §535.91 of this title.

(c) 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 before the filing of the application; and

(2) completed any qualifying 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 qualifying real estate courses or real estate related courses, completed at least 15 hours of courses within the two-year period before filing an application for an active license.

(d) The Commission will issue an applicant an inactive salesperson license upon satisfaction of subsection (a) of this section. An inactive salesperson may not practice as a licensed salesperson until sponsored by an active Texas licensed broker.

§535.56 Education and Experience Requirements for a Broker License

(a) Education requirements.

(1) An applicant for a broker license must provide the Commission with satisfactory evidence of completion of:

(A) 270 hours of qualifying real estate courses as required under §535.55, which must include the 30 hour qualifying real estate brokerage course; and

(B) an additional 630 classroom hours in related qualifying courses in the subject areas defined under §535.64 or approved continuing education courses.

(2) An applicant who has earned a bachelor's degree or higher from an accredited college or university will be deemed to have satisfied the related qualifying education requirements for a broker license. A copy of the college transcript awarding the degree must be submitted as evidence of completion of the degree.

(b) Experience Requirements.

(1) An applicant for a broker license must have four years of experience actively practicing as a broker or salesperson in Texas during the five years preceding the date the application is filed. For purposes of this section:

(A) 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.

(B) 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. 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.

(C) An applicant must have performed at least one transaction described in subsection (c) for four of the five years preceding the date the application is filed.

(2) 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)(1) 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.

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

(B) 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.

(C) 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.

(c) Credit for experience. 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) and apartment unit leases:

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

(D) Exclusive Right to Sell Listings--10 points per transaction.

(E) Buyer or Tenant Representation Agreements--10 points per transaction.

(F) Closed purchase or sale of an unimproved residential lot--50 points per transaction.

(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--500 points per transaction.

(B) An executed lease, renewal or extension for a landlord or tenant--100 points per year of the lease, renewal or extension up to a five year maximum per transaction.

(C) rental property management rent collection--150 points per property per year.

(D) Listings--20 points per transaction.

(E) Buyer or Tenant Representation Agreements--20 points per transaction.

(3) Farm and Ranch and unimproved land transactions:

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

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

(C) Rental property management rent collection--50 points per property per year.

(D) Listings--10 points per transaction.

(E) Buyer or Tenant Representation Agreements--10 points per transaction.

(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.

(d) Documentation of applicable experience.

(1) 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.

(2) 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.

(3) 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.

(e) Waiver of education and experience requirements. 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 continuing education courses within the two-year period prior to the filing of an application for an active license, including all applicable current non-elective courses.

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

(f) Experience forms. 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 Examinations

(a) Administration of licensing examinations.

(1) An examination 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.

(A) The testing service shall schedule and conduct the examinations in the manner required by the contract between the Commission and the testing service.

(B) The examination fee must be paid each time the examination is taken.

(2) 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 an accommodation. The testing service shall determine the method of examination, whether oral or written, based on the particular circumstances of each case.

(3) To be authorized for admittance to an examination, the applicant must present to the testing service administering the examinations appropriate documentation required by the testing service under contract with the Commission. The testing service shall require official photo-bearing personal identification of individuals appearing for an examination and shall deny entrance to anyone who cannot provide adequate identification. 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.

(4) An applicant are permitted to use hand-held calculators. If a calculator has printout capability, the testing service must approve use of such calculator before the examination. No other electronic devices

are permitted.

(b) Conduct during examination.

(1) The following conduct with respect to licensing examinations is prohibited and is grounds to impose disciplinary action against any applicant, license holder, 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:

(A) 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;

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

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

(2) The Commission, or the testing service under contract with the Commission, may file theft charges against any person who removes or attempts to remove an examination or any portion thereof or any written material furnished with the examination whether by actual physical removal or by transcription.

(c) Passing Scores. A broker applicant must attain a passing score of at least 75% in each portion of the broker licensing examination. A salesperson applicant must attain a passing score of at least 70% in each portion of the salesperson licensing examination.

(d) Waiver of examination requirement for licensure.

(1) 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 before 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 before the filing of the application.

(2) 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.

SUBCHAPTER F REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

§535.60 Definitions

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

(1) Alternative delivery--A method of course delivery other than classroom delivery where the course has been certified by a distance learning certification center acceptable to the Commission.

(2) Applicant--A person seeking approval to be an education provider or instructor of qualifying courses.

(3) Classroom delivery--A method of course delivery where the instructor and students interact face to face and in real time, in either the same physical location, or through the use of technology.

(4) Correspondence delivery--A method of course delivery other than classroom delivery where the course has not been certified by a distance learning certification center acceptable to the Commission.

(5) Instructor--A person approved by the Commission to teach qualifying courses.

(6) Mandatory qualifying course--A qualifying course that an applicant is required to take to fulfill licensing requirements as mandated by §1101.358 of the Act.

(7) Other qualifying course--A qualifying course, other than a mandatory qualifying course, for which the subject matter of the course is specified by the Act or Commission rule, that an applicant is required to take to fulfill licensing requirements.

(8) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or

governmental subdivision.

(9) Provider--Any person approved by the Commission; or specifically exempt by the Act, Chapter 1102, or Commission rule; that offers a course for which qualifying credit may be granted by the Commission to a license holder or applicant.

§535.61 Approval of Providers of Qualifying Courses

(a) Application for approval.

(1) Unless otherwise exempt under subsection (b), a person desiring to be approved by the Commission to offer real estate or real estate inspection qualifying courses shall:

(A) file an application on the appropriate form approved by the Commission, with all required documentation;

(B) submit the required fee under §535.101 or §535.210 of this title;

(C) submit the statutory bond or other security acceptable to the Commission under §1101.302 of the Act; and

(D) maintain a fixed office in the state of Texas or 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 this Subchapter.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(3) An approved provider is permitted to offer courses in both real estate and real estate inspection that have been approved by the Commission.

(b) Exempt Providers.

(1) The following persons may submit real estate qualifying courses for approval for credit under

§535.62(i) of this subchapter without becoming an approved provider of qualifying courses:

(A) a person approved by a real estate regulatory agency to offer qualifying real estate courses in another state;

(B) an accredited college or university in accordance with §535.66 of this subchapter;

(C) a post-secondary educational institution established in and offering qualifying real estate courses in another state;

(D) a United States armed forces institute; and

(E) a nationally recognized professional designation institute or council in the real estate industry.

(2) The following persons may submit real estate inspector qualifying courses for approval for credit under §535.62(i) of this subchapter without becoming an approved provider of qualifying courses:

(A) a provider approved by an inspector regulatory agency of another state;

(B) an accredited college or university in accordance with §535.66 of this subchapter;

(C) a United States armed forces institute;

(D) a unit of federal, state or local government;

(E) a nationally recognized building, electrical, plumbing, mechanical or fire code organization;

(F) a professional trade association in the inspection field or in a related technical field; or

(G) an entity whose courses are approved and regulated by an agency of this state.

(c) Standards for approval. To be approved as a provider by the Commission, the applicant must meet the following standards:

(1) 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 to manage the operation of the applicant, that person

must meet this standard as if that person were the applicant;

(2) the applicant must demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students taking courses from the approved provider; and

(3) that any proposed facilities will be adequate and safe for conducting courses

(d) Financial review. An applicant shall provide the following information to enable the Commission to determine if an applicant has sufficient financial resources to conduct its proposed operations:

(1) 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;

(2) a proposed budget for the first year of operation; and

(3) a market survey indicating the anticipated enrollment for the first year of operation.

(e) Insufficient financial condition. The existence of any of the following conditions shall constitute prima facie evidence that an applicant's financial condition is insufficient:

(1) nonpayment of a liability when due, if the balance due is greater than 5% of the approved provider'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 approved provider for nonpayment of a liability which remains unpaid more than 30 days after becoming final; or

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

(f) Approval notice. An applicant shall not act as or represent itself to be an approved provider until the applicant has received written notice of approval from the Commission.

(g) Period of initial approval. The initial approval of a provider of qualifying courses is valid for four years.

(h) Payment of annual operation fee.

(1) An approved provider shall pay an annual operation fee prescribed by §535.101 of this title no later than each anniversary of the date of the provider's approval.

(2) An approved provider who fails to pay the annual operation fee as prescribed shall be placed on inactive status and notified in writing by the Commission.

(3) The approved provider will remain on inactive status until the annual fee is paid.

(4) The Commission will not give credit for courses given by a provider on inactive status.

(i) Disapproval of application.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission will provide written notice of disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by 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 shall be in Travis County.

(j) Renewal.

(1) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for renewal for another four year period.

(2) Approval or disapproval of a renewal application shall be subject to:

(A) the standards for initial applications for approval set out in this section; and

(B) whether the approved provider has met or exceeded the exam passage rate benchmark established by the Commission under subsection (k).

(3) The Commission will not require a financial review for renewal if the applicant has provided a statutory bond or other security acceptable to the Commission under §1101.302 of the Act, and there are no unsatisfied final money judgments against the applicant.

(k) Exam passage rates.

(1) For purposes of this subsection, a student is affiliated with the approved provider where the student took his or her last qualifying course. The Commission will not count the student in calculating the approved provider's exam pass rate if the student's last qualifying course was taken more than two years before the date the approved provider or student submitted the course to the Commission.

(2) The exam passage rate of approved providers for each category of license will be calculated on a quarterly basis by dividing the number of students affiliated with that approved provider, 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 approved provider's

graduates who took the exam for the first time during that same period.

(3) If an approved provider offers courses to multiple license categories, the exam results for that approved provider will be calculated by license category. The passage rate for each license category that will be used to determine whether the approved provider has met or exceeded the established benchmark for the license category is the most current rate published by the Commission as of the date the Commission receives the timely application for renewal or, if the approval expired before being renewed, the most recent rate published by the Commission as of the expiration date of that provider's approval.

(4) Providers who do not meet the established benchmark for a license category may be denied renewal for that license category or placed on probation by the Commission under terms acceptable to the Commission.

(5) In determining whether an approved provider qualifies for renewal for a particular license category based on its examination passage rate, the Commission may consider a variety of factors, including:

(A) the overall passage rate for sales, broker, and inspector applicants; and

(B) any trends within the approved provider's passage rate over the four-year approval period.

(6) The Commission will publish the exam passage rate of providers by category of license on the Commission's website on a quarterly basis.

§535.62 Approval of Qualifying Courses

(a) Application for approval of a qualifying course.

(1) For each qualifying course a provider intends to offer, the provider must:

(A) submit the applicable course approval form(s);

(B) submit all materials listed on the applicable course approval form(s); and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(b) Standards for course approval.

(1) To be approved as a qualifying course by the Commission, a course must:

(A) cover all topic and unit areas for the specific course subject required by the Act, Chapter 1102 and this chapter;

(B) devote the time prescribed for each topic required by a course approval form adopted by the Commission;

(C) be presented in full hourly units;

(D) meet the requirements of §535.65 of this subchapter;

(E) be delivered by one of the following:

(i) classroom method;

(ii) alternative delivery method;

(iii) a combination of (i) and (ii), if:

(I) at least 50% of the combined course is offered by classroom method; and

(II) the portion of the combined course offered through alternative delivery is taken from a full course that has already been certified for alternative delivery by a distance learning certification center acceptable to the Commission;

(iv) a correspondence course that is offered by a provider in association with an accredited college or university if the course is offered in accordance with the college or university's accreditation association's curriculum accreditation standards; or

(v) a combination of (i) and (iv), if:

(I) at least 50% of the combined course is offered by classroom method; and

(II) the combined course is offered by a provider in association with an accredited college or university in accordance with the college or university's accreditation association's curriculum accreditation standards;

(2) Using the name of the provider "in association with" the name of the college or university on the course completion certificate constitutes certification to the Commission that the course was offered in compliance with the college or university's accreditation association's curriculum accreditation standards.

(3) The Commission may submit a proposed qualifying real estate inspector course to the Texas Real Estate Inspector Committee for review and recommendation prior to approval of the course.

(c) Approval of currently approved courses by a subsequent provider.

(1) If a subsequent provider wants to offer a course currently approved for another provider, the subsequent provider must:

(A) submit the applicable course approval form(s);

(B) submit written authorization to the Commission from the provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the previously approved course, the subsequent provider is required to:

(A) offer the course as originally approved, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.65 of this subchapter.

(d) Required revision of a currently approved qualifying course.

(1) Providers are responsible for keeping current on

changes to the Act and Commission Rules and must supplement materials for approved courses to present the current version of all applicable statutes and rules on or before the effective date of those statutes or rules.

(2) If the Commission adopts new requirements for a course, including but not limited to a course approval form that divides selected qualifying course subjects into topics and units, any provider currently offering a course on that subject must:

(A) revise and supplement any currently approved classroom qualifying course covering that subject no later than 12 months after the effective date of the new requirements;

(B) revise and supplement any currently approved qualifying course offered by alternative delivery covering that subject and obtain recertification of the course by a distance learning certification center acceptable to the Commission no later than 15 months after the effective date of the new requirements;

(3) For each revised qualifying course, a provider must:

(A) submit the applicable course approval form(s);

(B) submit all revised materials, and if applicable, recertification; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(4) A provider may not offer a currently approved course for qualifying credit after the deadlines established by this subsection following a required revision of a qualifying course.

(5) If a provider paid a fee for the initial course approval, the provider will receive a prorated credit on the fee paid under this subsection for the unexpired time remaining on that initial approval. The Commission will calculate the prorated credit by dividing the fee paid for the initial approval by 48 months and multiplying that amount by the number of full months remaining between the approval date of the revised course and the expiration date of the currently approved version of the course.

(6) A revised course approved under this subsection expires four years from the date of approval of the

revision.

(7) No later than 90 days before the effective date of a revised course, a provider shall send written notice to all students who have purchased the currently approved course and not completed it, that credit will no longer be given for the current course as of the effective date of the revised course.

(8) If an approved provider fails to give the notice set out in paragraph (6) of this subsection, the provider shall allow the student to take the revised course at no additional charge.

(e) Voluntary revision of a currently approved qualifying course.

(1) A provider who voluntarily revises a currently approved course, shall, prior to implementation of any course materials:

(A) file any updated course materials and revisions of the course outline with the Commission; and

(B) pay the fee required by §535.101 and §535.210 of this title.

(2) If after review the Commission is not satisfied with the updated course materials and revised course outline, the Commission may direct a provider to:

(A) further revise the materials;

(B) cease use of materials; or

(C) withdraw a course text.

(3) If a provider paid a fee for the initial course approval, the provider will receive a prorated credit on the fee paid under this subsection for the unexpired time remaining on that initial approval. The Commission will calculate the prorated credit by dividing the fee paid for the initial approval by 48 months and multiplying that amount by the number of full months remaining between the approval date of the revised course and the expiration date of the currently approved version of the course.

(4) A revised course approved under this subsection expires four years from the date of approval of the revision.

(5) No later than 90 days before the effective date of

a revised course, a provider shall send written notice to all students who have purchased the currently approved course and not completed it, that credit will no longer be given for the current course as of the effective date of the revised course.

(6) If an approved provider fails to give the notice set out in paragraph (5) of this subsection, the provider shall allow the student to take the revised course at no additional charge.

(f) Expiration of approval.

(1) Courses approved after January 1, 2011 are valid for four years from the date of approval.

(2) Courses approved before January 1, 2011 expire on December 31, 2015.

(3) Courses approved for use by a subsequent provider under subsection (c) expire on the same date that the originally approved course expires.

(4) Currently approved versions of a course expire 90 days after approval of a revised version of that course.

(g) Renewal of course approval. Not earlier than 90 days before the expiration of a course approval, a provider may obtain a renewal of course approval for another four year period by following the process and meeting the current standards for an initial course approval.

(h) Timeframe for course approval. The Commission will approve a course as soon as reasonably practicable after a provider meets all the requirements set out in this section. For the purposes of this section, "reasonably practicable" means no sooner than the 30th day after the Commission receives all required documentation for approval as set out in this section.

(i) Course preapproval for exempt providers.

(1) Providers exempt from approval by the Commission may submit courses to the Commission for preapproval by meeting the standards for course approval under this section, including submitting all applicable forms and fees.

(2) Any course offered by an exempt provider without preapproval by the Commission will be

evaluated by the Commission to determine whether it qualifies for credit at such time as a student submits a course completion certificate to the Commission for credit.

(3) The Commission will determine whether or not a course offered by an exempt provider without preapproval by the Commission qualifies for credit using the standards set out under this section.

(4) An exempt provider may not represent that a course qualifies for credit by the Commission unless the exempt provider receives written confirmation from the Commission that the course has been preapproved for credit.

§535.63 Approval of Instructors of Qualifying and Non-Elective CE Courses

(a) Application for approval.

(1) A person desiring to be approved by the Commission to teach real estate or real estate inspection qualifying courses shall:

(A) file an application on the appropriate form approved by the Commission; and

(B) submit the required fee required by §535.101 or §535.210 of this title.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(b) Standards for instructor approval. To be approved as an instructor by the Commission to teach real estate or real estate inspection qualifying courses, the applicant must meet the following standards:

(1) The applicant must satisfy the Commission as to:

(A) the applicant's honesty, trustworthiness, and integrity; and

(B) the person's competency in the subject matter to be taught and ability to teach effectively.

(2) Except as provided by paragraph (3) of this subsection, the applicant must possess the following qualifications:

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

(B) beginning January 1, 2016, a completion certificate from an adult education instructor training course of at least 8 hours that is acceptable to the Commission and dated within 5 years of the date of the application; or

(C) the equivalent of paragraphs (2)(A) and (B) of this subsection as determined by the Commission after consideration of the applicant's professional experience, research, authorship, or other significant endeavors in the subject area.

(3) To be approved as an instructor of Texas Standards of Practice, Standards of Practice/Legal/Ethics Update, or as an instructor of a ride along inspection course as defined in §535.218 of this title, an applicant must have five years of active licensure as a Texas professional inspector, and have:

(A) performed a minimum of 200 real estate inspections as a Texas professional inspector; or

(B) three years of experience in teaching and/or sponsoring trainees or inspectors.

(c) Approval notice. An applicant shall not act as or represent itself to be an approved instructor until the applicant has received written notice of the approval from the Commission.

(d) Certification required to teach real estate non-elective CE courses.

(1) An applicant may not teach a real estate non-elective CE course until the applicant has:

(A) been approved as an instructor of qualifying courses; and

(B) received written certification from the Commission to teach a specific non-elective continuing education course.

(2) To obtain certification to teach a real estate non-

elective continuing education course, the applicant must:

(A) be currently approved by the Commission as an instructor for qualifying courses in the subject areas of Principles of Real Estate, Law of Agency and Law of Contracts to teach Legal or Ethics Update; or

(B) be currently approved by the Commission as an instructor of qualifying courses in the subject areas of Principles of Real Estate, Law of Agency, Law of Contracts and Real Estate Brokerage to teach Broker Responsibility; and

(C) successfully complete an instructor training program approved by the Commission for the non-elective continuing education course for which certification is sought.

(3) A previously certified instructor must be recertified to teach a non-elective course whenever the previous course has expired and a new course has been approved.

(4) An instructor's certification to teach a legal or ethics update course expires on December 31 of every odd-numbered year.

(5) An instructor's certification to teach the broker responsibility course expires on December 31 of every even-numbered year.

(e) Period of initial approval. The initial approval of an instructor is valid for two years.

(f) Disapproval of an application.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission shall disapprove the application and provide written notice of the disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by 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 shall be in Travis County.

(g) Renewal.

(1) Not earlier than 90 days before the expiration of its current approval, an approved instructor may apply for renewal for another two year period.

(2) Approval or disapproval of a renewal shall be subject to the standards for initial applications set out in the section.

§535.64 Content Requirements for Qualifying Real Estate Courses

(a) Mandatory qualifying courses. To be approved by the Commission, the following mandatory qualifying courses must contain the content outlined below:

(1) Principles of Real Estate I, which shall contain the following topics, the units of which are outlined in the PRINS 1-0, Qualifying Real Estate Course Approval Form, Principles of Real Estate I, hereby adopted by reference:

(A) Introduction to Modern Real Estate Practice - 200 minutes;

(B) Real Property - 60 minutes;

(C) Concepts and Responsibilities of Home Ownership - 95 minutes;

(D) Real Estate Brokerage and the Law of Agency - 180 minutes;

(E) Fair Housing Laws - 150 minutes;

(F) Ethics of Practice as a License Holder - 30 minutes;

(G) Texas Real Estate License Act - 180 minutes;

(H) Legal Descriptions - 100 minutes;

(I) Real Estate Contracts - 135 minutes;

(J) Interests in Real Estate - 180 minutes;

(K) How Home Ownership is Held - 70 minutes; and

(L) Listing Agreements - 120 minutes.

(2) Principles of Real Estate II, which shall contain the following topics, the units of which are outlined in the PRINS 2-0, Qualifying Real Estate Course Approval Form, Principles of Real Estate II, hereby

adopted by reference:

(A) Real Estate Math - 200 minutes;

(B) Real Estate Appraisal - 200 minutes;

(C) Real Estate Financing Principles - 210 minutes;

(D) Control of Land Use - 115 minutes;

(E) Specializations - 50 minutes;

(F) Real Estate Investments - 110 minutes;

(G) Leases - 95 minutes;

(H) Property Management - 120 minutes;

(I) Estates, Transfers, and Titles - 200 minutes; and

(J) Closing Procedures/Closing the Real Estate Transaction - 200 minutes.

(3) A combined 60 hour course approved by the Commission, consisting of both Principles of Real Estate I and II, which includes the topics for each course as outlined by this section.

(4) Law of Agency, which shall contain the following topics, the units of which are outlined in the LOA-0, Qualifying Real Estate Course Approval Form, Law of, hereby adopted by reference:

(A) Agency Concepts - 130 minutes;

(B) Basic Agency Relationships, Disclosure & Duties to Client - 125 minutes;

(C) Duties and Disclosures to Third Parties - 125 minutes;

(D) Seller Agency - 120 minutes;

(E) Buyer Agency - 150 minutes;

(F) Representing More than one Party in a Transaction: Intermediary Brokerage - 165 minutes;

(G) Creation and Termination of Agency - 85 minutes;

(H) Clarifying Agency Relationships - 45 minutes;

- (I) Employment Issues - 120 minutes;
- (J) Agency, Ethics and the Law - 155 minutes;
- (K) Deceptive Trade Practices & Consumer Protection Act - 140 minutes; and
- (L) Implementation and Presentation - 140 minutes.

(5) Law of Contracts, which shall contain the following topics, the units of which are outlined in the LOC-0, Qualifying Real Estate Course Approval Form, Law of Contracts, hereby adopted by reference:

- (A) Texas Contract Law - 155 minutes;
- (B) Basics of Real Estate Law - 115 minutes;
- (C) Introduction to Contracts - 75 minutes;
- (D) Ownership Rights and Limitations - 120 minutes;
- (E) Contracts Used in Real Estate - 275 minutes;
- (F) The Sales Contract - 135 minutes;
- (G) Contingencies, Addenda and Amendments - 105 minutes;
- (H) Financing Real Estate - 235 minutes;
- (I) Conveyance of Title - 90 minutes;
- (J) Transaction Process and Closing - 135 minutes; and
- (K) Common Contract Mistakes - 60 minutes.

(6) Promulgated Contract Forms, which shall contain the following topics, the units of which are outlined in the PCF-0, Qualifying Real Estate Course Approval Form, Promulgated Contract Forms, hereby adopted by reference:

- (A) Contract Law Overview - 155 minutes;
- (B) Laws, Rules and Regulations - 150 minutes;
- (C) Parties, Properties and Financing - 155 minutes;
- (D) Covenants, Commitments and Notices - 160 minutes;

(E) Closing, Possession and More - 220 minutes;

(F) The Remaining Promulgated Forms - 205 minutes;

(G) Promulgated Addenda, Notices and Other Forms - 205 minutes;

(H) Other Real Estate Matters - 115 minutes; and

(I) Practice Makes Perfect - 135 minutes.

(7) A combined 60 hour course approved by the Commission, consisting of both Law of Contracts and Promulgated Contract Forms, which includes the topics for each course as outlined by this section.

(8) Real Estate Finance, which shall contain the following topics, the units of which are outlined in the REF-0, Qualifying Real Estate Course Approval Form, Real Estate Finance, hereby adopted by reference:

- (A) The Nature & Cycle of Real Estate Finance - 105 minutes;
- (B) Money & the Monetary System - 100 minutes;
- (C) Additional Government Influence - 200 minutes;
- (D) The Secondary Mortgage Market - 95 minutes;
- (E) Sources of Funds - 110 minutes;
- (F) Instruments of Real Estate Finance - 170 minutes;
- (G) Loan Types, Terms & Issues - 200 minutes;
- (H) Government Loans - 215 minutes;
- (I) Lender Loan Processes - 220 minutes;
- (J) Defaults & Foreclosures - 85 minutes.

(b) Other qualifying courses. Other acceptable qualifying courses are those courses approved by the Commission that meet:

- (1) the requirements of §1101.003 of the Act; or
- (2) Residential Inspection for Real Estate Agents (or equivalent), which shall include but is not limited to:

- (A) repair-related contract forms and addenda;
 - (B) inspector and client agreements;
 - (C) inspection standards of practice and standard inspection report form;
 - (D) tools and procedures;
 - (E) electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations); and
 - (F) structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).
- (c) Related qualifying course. Acceptable related qualifying courses are those courses taken for credit from an accredited college or university, or course approved by the Commission for continuing education credit, that a broker is required to take to fulfill licensing requirements, in any one of the following areas:
- (1) accounting;
 - (2) advertising;
 - (3) architecture;
 - (4) business or management;
 - (5) construction;
 - (6) finance;
 - (7) investments;
 - (8) law;
 - (9) marketing; and
 - (10) real estate.
- (d) Course Approval forms. All forms adopted by this section are available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§535.65 Responsibilities and Operations of Providers of Qualifying Courses

(a) Responsibility of Providers.

(1) A provider is responsible for:

(A) the administration of each course, including, but not limited to, compliance with any prescribed period of time for any required course topics required by the Act, Chapter 1102, and Commission rules;

(B) student attendance records;

(C) instructor performance and attendance;

(D) examination administration;

(E) validation of student identity;

(F) maintaining student course completion records;

(G) ensuring all advertising complies with subsection (c);

(H) ensuring that instructors or other persons do not recruit or solicit prospective salespersons, brokers or inspectors during course presentation;

(I) ensuring staff is reasonably available for public inquiry and assistance;

(J) ensuring that its classroom facilities are adequate for class size and pose no threat to the health or safety of students;

(K) ensuring that each student is present for the course for the hours of time for which credit is awarded.

(2) A provider may not promote the sale of goods or services during the presentation of a course.

(3) A provider may remove a student and not award credit if a student does not participate in class, or disrupts the orderly conduct of a class, after being warned by the provider or the instructor.

(4) If a provider approved by the Commission does not maintain a fixed office in Texas 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 that the provider is required to maintain by this section. A power-of-attorney designating the resident must be filed with the Commission in a form acceptable to the Commission.

(b) Use of approved Instructor.

(1) Except as provided by this subsection, a provider must use an instructor that is currently approved by the Commission;

(2) Each instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor;

(3) A provider shall require specialized training or work experience for instructors teaching specialized subjects such as law, appraisal, investments, taxation or home inspection;

(4) 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 form; and

(5) A provider may use the services of a guest instructor who is not approved as an instructor by the Commission for qualifying real estate or inspector courses provided that person instructs for no more than 10% of the total course time.

(c) Advertising.

(1) The following practices are prohibited:

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

(B) representing that the provider's program is the only vehicle by which a person may satisfy educational requirements;

(C) conveying a false impression of the provider's size, superiority, importance, location, equipment or facilities, except that a provider may use objective information published by the Commission regarding pass rates;

(D) promoting the provider directly or indirectly as a job placement agency, unless the provider 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

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

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

(3) The provider shall advertise a course for the full clock hours of time for which credit is awarded.

(d) Pre-enrollment agreements for approved providers.

(1) Prior to a student enrolling in a course, a provider approved by the Commission shall provide the student with a pre-enrollment agreement that includes all of the following information:

(A) the tuition for the course;

(B) an itemized list of any fees charged by the provider for supplies, materials, or books needed in course work;

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

(D) the attendance requirements;

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

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

(2) A pre-enrollment agreement must be signed by a representative of the provider.

(e) Refund of fees by approved provider.

(1) A provider shall establish written policies governing refunds and contingency plans in the event of course cancellation.

(2) If a provider approved by the Commission cancels a course, the provider shall:

(A) fully refund all fees collected from students within a reasonable time; or

(B) at the student's option, credit the student for another course.

(3) The provider 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.

(f) Course materials.

(1) Before the course starts, a provider shall give each student copies of any materials to be used for the course.

(2) A provider shall update course materials to ensure that current and accurate information is provided to students as provided for under §535.62 of this subchapter.

(g) Presentation of courses.

(1) Classroom:

(A) The course must be offered in a location conducive to instruction, such as a classroom, training room, conference room, or assembly hall that is separate and apart from work areas;

(B) The course must be scheduled for the full clock hours of time for which credit is awarded;

(C) Course presentation per day cannot exceed 10 hours;

(D) A 10 minute break per hour must be given at least every two hours.

(2) Alternative Delivery and Correspondence:

(A) the provider must ensure:

(i) that a qualified person is available to answer students' questions or provide assistance as necessary in a timely manner; and

(ii) that a student has completed all instructional modules and attended any hours of live instruction

required for a given course; and

(B) an approved instructor or the provider's coordinator or director must be responsible for grading the written course work.

(3) A provider is not required to present topics and units in the order outlined for a course on the corresponding course approval form.

(4) The periods of time prescribed to each unit of a topic for a qualifying course as outlined on the corresponding course approval form are recommendations and may be altered to allow instructors flexibility to meet the particular needs of their students.

(h) Makeup Session.

(1) A provider may permit a student who attends at least two-thirds of a originally scheduled qualifying course to complete a makeup session to satisfy attendance requirements.

(2) A member of the provider's staff must approve the makeup procedure to be followed. Acceptable makeup procedures are:

(A) attendance in corresponding class sessions in a subsequent offering of the same course; or

(B) the supervised presentation by audio or video recording of the class sessions actually missed.

(3) A student shall complete all class makeup sessions no later than the 90th day after the date of the completion of the original course.

(4) Dropped status may not be changed by makeup sessions, and any hours accumulated by a student may not be transferred to any other course, prior to being dropped from a course.

(5) A student who attends less than two-thirds of the originally scheduled qualifying course is not eligible to complete a makeup session. The student shall be automatically dropped from the course with no credit and the provider shall report the student's status to the Commission.

(i) Course examinations.

(1) The final examination given at the end of each

course must be the examination that was submitted to the Commission with the course approval form.

(2) Each topic required by the Act or Rules for a qualifying course must be covered in the final examination for that course.

(3) Unless otherwise provided for in this section, a provider shall use final course examinations consisting of at least 60 questions with an unweighted passing score of 70%.

(4) Real estate math qualifying course examinations may consist of a minimum of 20 questions with an unweighted passing score of 70%.

(5) Final examination questions must be kept confidential and be significantly different from any questions used for diagnostic assessment of units in the course.

(6) A provider shall not permit a student to take a final examination before the completion of regular course work and any makeup sessions required by this section.

(7) Examinations must be:

(A) proctored by a member of the provider faculty or staff who is present at the test site and has positively identified that the students taking the examination are the students who took the course; or

(B) administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student who took the course.

(8) A provider shall revise final course examinations for all active qualifying courses at least annually.

(9) A provider may not give credit to a student who fails a final examination and makeup final examination.

(j) Makeup final course examination.

(1) If a student fails a final course examination, a provider may permit the student to retake the final examination only once and only after the student has:

(A) waited at least seven calendar days; and

(B) completed any additional course work prescribed

by the provider.

(2) A student shall complete a makeup final examination no later than the 90th day after the date the original class concludes.

(3) If a student fails to timely complete the makeup final examination as required by this subsection, the student shall be automatically dropped from the course with no credit.

(4) A student who fails the final course examination a second time is required to retake the course prior to retaking the final course examination.

(k) Course completion certificate.

(1) Upon successful completion of a core course, a provider shall issue a course completion certificate that a student can submit to the Commission. The course completion certificate shall show:

(A) the provider's name;

(B) the instructor's name and approval number assigned by the Commission;

(C) the course title;

(D) course numbers, including any Commission pre-approval number received;

(E) the number of classroom hours;

(F) the dates the student began and completed the course; and

(G) printed name and signature of an official of the provider on record with the Commission.

(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(l) Instructor and course evaluations.

(1) A provider shall provide each student enrolled in a course with an instructor and course evaluation

form and provide a link to an online version of the form that a student can complete and submit any time after course completion.

(2) An instructor may not be present when a student is completing the evaluation form and may not be involved in any manner with the evaluation process.

(3) At a minimum, when evaluating an instructor or course, a provider shall use an evaluation form approved by the Commission.

(4) A provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(5) At the Commission's request, a provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(m) Maintenance of records for a provider of qualifying courses.

(1) A provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) A provider shall maintain financial records sufficient to reflect at any time the financial condition of the school.

(3) A school's financial statement and balance sheets must be available for audit by Commission staff, and the Commission may require presentation of financial statements or other financial records.

(4) All records may be maintained electronically but must be in a common format that is legibly and easily printed or viewed without additional manipulation or special software.

(n) Changes in Ownership or Operation of an approved provider of qualifying courses.

(1) An approved provider shall obtain the approval of the Commission in advance of any material change in the operation of the provider, including but not limited to changes in:

(A) ownership;

(B) management; and

(C) the location of main office and any other locations where courses are offered.

(2) An approved provider, upon transfer to the new owner, must meet the financial review standards imposed by §535.61 of this subchapter.

(3) An approved provider requesting approval of a change in ownership shall provide all of the following information or documents to the Commission:

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

(B) an Education Provider Application reflecting all required information for each proposed new owner; and

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

§535.66 Credit for Courses Offered by Accredited Colleges or Universities

(a) For the purposes of this section, an "accredited college or university" is defined as 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 by a recognized national or international accrediting body.

(b) Exemption. Pursuant to §1101.301 of Tex. Occ. Code, the Commission does not approve qualifying educational programs or courses of study in real estate and real estate inspection offered by an accredited college or university; however, the Commission has the authority to determine whether a real estate or real estate inspection course satisfies the requirements of the Act and Chapter 1102.

(c) Credit for real estate courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university must meet the following requirements:

(1) cover the subject and topics set out in §1101.003 of Tex. Occ. Code as clarified by the Commission in §535.64; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association.

(d) Credit for real estate inspector courses offered by an accredited college or university. To be eligible to receive credit by the Commission, qualifying courses offered by an accredited college or university meet the following requirements:

(1) meet the subject and topic definitions set out in §1102.001(5) of Tex. Occ. Code as clarified by the Commission in §535.213; and

(2) comply with the curriculum accreditation standards required of the college or university by the applicable accreditation association.

(3) any courses offered to fulfill the substitute experience requirements allowed under §1102.111 must meet the requirements set out in §535.212 of this title, including instructor qualifications.

(e) Preapproval of a course offered under subsections (c) or (d).

(1) An accredited college and university may submit qualifying courses to the Commission for preapproval by filing a form approved by the Commission.

(2) Any course offered by an accredited college and university without preapproval by the Commission will be evaluated by the Commission, using the standards set out in this section, to determine whether it qualifies for credit at such time as a student submits a transcript with the course to the Commission for credit.

(3) An accredited college or university may not represent that a course qualifies for credit by the Commission unless the accredited college or university receives written confirmation from the Commission that the course has been preapproved for credit.

(f) Required approval of qualifying courses not offered under subsections (c) or (d).

(1) To be eligible for credit from the Commission, a qualifying course offered by an accredited college and university on its own or in association with a third party provider approved by the Commission that is not offered under subsections (c) or (d) is required to be submitted for approval by the Commission in accordance with §535.62 of this subchapter, including payment of any fee required.

(2) An accredited college or university may not represent that a course qualifies for credit by the Commission unless the accredited college or university receives written confirmation from the Commission that the course has been approved.

(g) Complaints and audits.

(1) If the Commission receives a complaint, or is presented with other evidence acceptable to the Commission, alleging that an accredited college or university is not in compliance with their accreditation association's curriculum accreditation standards for a real estate or real estate inspection course offered under subsections (c) or (d), or is not complying with the requirements of this Subchapter for a real estate or real estate inspection course not offered under subsections (c) or (d), the Commission may investigate the allegation and/or anonymously audit the course in question.

(2) If after an investigation and/or audit, the Commission determines that an accredited college or university is not in compliance with their accreditation association's curriculum accreditation standards for a real estate or real estate inspection course offered under subsections (c) or (d), or is not complying with the requirements of this Subchapter for a real estate or real estate inspection course not offered under subsections (c) or (d), the Commission will no longer issue credit to applicants for that course.

(3) If after investigation and/or audit, the Commission determines that multiple real estate or real estate inspection courses of an accredited college or university do not comply with their accreditation association's curriculum accreditation standards for a course offered under subsections (c) or (d), or do not comply with the requirements of this Subchapter for a course not offered under subsections (c) or (d), the Commission will no longer issue credit to applicants for any course from that college or university.

(h) Required approval of CE program and courses.

An accredited college or university is not exempt from approval for real estate and real estate inspection CE programs and courses and must comply with all requirements for approval for providers, courses and instructors required by Subchapter G of this chapter.

§535.67 Qualifying Education: Compliance and Enforcement

(a) Audits.

(1) The Commission staff may:

(A) conduct on-site audits without prior notice to an approved provider or instructor; and

(B) enroll and attend a course without identifying themselves as employees of the Commission for purposes of auditing a course.

(2) An audit report indicating noncompliance with the Act or Rules is treated as a written complaint against the accredited provider or instructor concerned.

(b) Complaints, investigations and hearings.

(1) The Commission shall investigate complaints against approved providers or instructors which allege acts constituting violations of the Act, Chapter 1102, Texas Occupations Code and Commission rules.

(2) Complaints must be in writing, and the Commission may not initiate an investigation, or take action against an approved provider or instructor, based on an anonymous complaint.

(3) Commission staff may initiate a complaint for any violation of the Act, Chapter 1102, Texas Occupations Code and Commission rules, including a complaint against an approved provider or instructor, if a course completion certificate or other document filed with the Commission provides reasonable cause to believe a violation of this subchapter has occurred.

(4) The Commission shall provide the approved provider or instructor named in the complaint a copy of the complaint.

(5) Proceedings against approved providers 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) Cooperation with audit or complaint investigation. An approved provider or instructor shall provide records in his or her possession for examination by the Commission or provide such information as is requested by the Commission not later than the 15th day after the date of receiving a request for examination of records or information.

(d) Grounds for disciplinary action against an approved provider or instructor.

(1) The following acts committed by an approved provider or instructor are grounds for disciplinary action by the Commission:

(A) 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;

(B) 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;

(C) 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;

(D) failing to provide, not later than the 15th day after the date of a request, information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(E) making a materially false statement to the Commission in response to a request from the Commission for information relating to a complaint against the approved provider or instructor;

(F) disregarding or violating a provision of this Chapter or the Act; or

(G) a provider of qualifying education failing to maintain sufficient financial resources to continue operation of the provider.

(2) If the Commission receives a complaint, or is presented with other evidence acceptable to the Commission alleging that a provider or instructor is not adequately teaching to the curriculum standards as required by this Chapter, the Commission may initiate a complaint against that provider or instructor.

(3) If after an investigation the Commission determines that a provider or instructor engaged in any of the acts listed in this subsection, or failed to teach to the curriculum standards as required by this Chapter, the Commission may take the following disciplinary action against a provider or instructor:

(A) reprimand;

(B) impose an administrative penalty;

(C) require additional education; or

(D) suspend or revoke approval.

(e) Probation. The Commission may probate an order of suspension or revocation issued under this section upon reasonable terms and conditions.

SUBCHAPTER G REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

§535.70 Definitions

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

(1) Alternative delivery--A method of course delivery other than classroom delivery where the course has been certified by a distance learning certification center acceptable to the Commission.

(2) Applicant--A person seeking accreditation or approval to be a continuing education provider or instructor.

(3) CE Instructor--A person approved by the Commission to teach continuing education courses.

(4) CE Provider--Any person approved by the Commission; or specifically exempt by the Act, Chapter 1102, Texas Occupation Code, or Commission rule; that offers a course for which continuing education credit may be granted by the Commission to a license holder or applicant.

(5) Classroom delivery--A method of course delivery where the instructor and students interact face to face and in real time, in either the same physical location, or through the use of technology.

(6) Correspondence delivery--A method of course delivery other than classroom delivery where the course has not been certified by a distance learning certification center acceptable to the Commission.

(7) Elective CE course--A continuing education course, other than a Non-elective CE course, approved by the Commission as acceptable to fulfil the continuing education hours needed to renew a license.

(8) Non-elective CE course--A continuing education course, for which the subject matter of the course is specifically mandated by the Act, Chapter 1102, or Commission rule, that a license holder is required to take prior to renewal of a license.

(9) Person--Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

§535.71 Approval of CE Providers

(a) Application for approval.

(1) Unless otherwise exempt under this subsection (b), a person desiring to be approved by the Commission to offer real estate or real estate inspection continuing education courses shall:

(A) file an application on the appropriate form approved by the Commission, with all required documentation;

(B) submit the required fee under §535.101 or §535.210 of this title; and

(C) maintain a fixed office in the state of Texas or 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 continuing education

provider is required to maintain by this subchapter.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the mails the request.

(3) A CE provider is permitted to offer continuing education courses in both real estate and real estate inspector that have been approved by the Commission.

(b) Exempt Providers. The following entities may offer real estate inspector continuing educational courses without being approved by the Commission:

(1) a unit of federal, state or local government; or

(2) a nationally recognized building, electrical, plumbing, mechanical or fire code organization.

(c) Standards for approval. To be approved by the Commission to offer real estate or real estate inspector continuing education courses, 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 to manage the operation of the applicant, that person must meet this standard as if that person were the applicant.

(d) Approval notice. An applicant shall not act as or represent itself to be an approved CE provider until the applicant has received written notice of the approval from the Commission.

(e) Period of initial approval. The initial approval of a CE provider is valid for two years.

(f) Disapproval.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission will provide written notice of disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are

governed by 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 shall be in Travis County.

(g) Renewal.

(1) Not earlier than 90 days before the expiration of its current approval, an approved provider may apply for renewal for another two year period.

(2) Approval or disapproval of a renewal application shall be subject to the standards for initial applications for approval set out in this section.

§535.72 Approval of Non-elective Continuing Education Courses

(a) General requirements.

(1) The non-elective continuing education courses must be conducted as prescribed by the rules in this Subchapter.

(2) Elective continuing education course are approved and regulated under §535.73 of this subchapter.

(b) Application for approval to offer non-elective real estate CE courses.

(1) A CE provider seeking to offer a specific non-elective real estate CE course as outlined in this section shall:

(A) submit a Non-Elective CE Course Application Supplement to the Commission; and

(B) pay the fee required by §535.101 of this title.

(2) A separate application is required for each course delivery method.

(3) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Real estate non-elective CE courses. Every two years, the Commission shall approve subject matter and course materials to be used for the following non-elective real estate continuing education courses as required by the Act:

(1) a three hour legal update course;

(2) a three hour ethics course; and

(3) a six hour broker responsibility course.

(d) Course expiration.

(1) Each legal update and ethics course expires on December 31 of each odd-numbered year.

(2) Each broker responsibility course expires on December 31 of each even-numbered year.

(3) A CE provider must use a CE instructor who has received certification to teach the version of the real estate non-elective CE course being offered.

(e) Application for approval to offer non-elective inspector CE courses.

(1) A CE provider seeking to offer a specific non-elective inspector CE course as outlined in this section shall:

(A) submit:

(i) ICE Course Application form and the Standards of Practice/Legal/Ethics Update Course approval form (PIEAC-SP_LEU-1); or

(ii) Qualifying Real Estate (or Inspector) Qualifying Course Application form and the Standards of Practice/Legal/Ethics Update course approval form (PIEAC-SP_LEU-1); and

(B) pay the fee required by §535.210 of this title.

(2) A separate application is required for each course delivery method.

(f) Requirements for inspector non-elective CE courses.

(1) A Texas Standards of Practice/Legal/Ethics Update course shall contain the following topics, the units of which are outlined the Texas Standards of

Practice/Legal/Ethics Update Course Approval form (PIEAC-SP_LEU-1), adopted herein by reference:

(A) 4 hours of Standards of Practice;

(B) 2 hours of Legal; and

(C) 2 hours of Ethics.

(2) A Texas Standards of Practice/Legal/Ethics Update course expires two years from the date of approval and providers must reapply and meet all current requirements of this section to offer the course for another two years.

(g) Delivery method.

(1) Non-elective CE courses must meet the requirements of §535.75 of this subchapter and be delivered by one of the following:

(A) classroom method;

(B) alternative delivery method;

(C) a combination of (A) and (B), if:

(i) at least 50% of the combined course is offered by classroom method; and

(ii) the portion of the combined course offered through alternative delivery is taken from a full course that has already been certified for alternative delivery by a distance learning certification center acceptable to the Commission;

(D) a correspondence course that is offered by a provider in association with an accredited college or university if the course is offered in accordance with the college or university's accreditation association's curriculum accreditation standards; or

(E) a combination of (A) and (D), if:

(i) at least 50% of the combined course is offered by classroom method; and

(ii) the combined course is offered by a provider in association with an accredited college or university in accordance with the college or university's accreditation association's curriculum accreditation standards.

(2) Using the name of the provider "in association with" the name of the college or university on the course completion certificate constitutes certification to the Commission that the course was offered in compliance with the college or university's accreditation association's curriculum accreditation standards.

(3) Non-elective CE courses meet the presentation requirements of §535.65 of this title; and

(4) Non-elective CE courses meet the examination requirements of §535.75 of this subchapter.

(h) Approval of currently approved courses by a subsequent provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that subsequent provider must:

(A) submit the applicable course approval form(s);

(B) submit written authorization to the Commission from the provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the currently approved course, the subsequent provider is required to:

(A) offer the course as originally approved, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

(i) Approval notice. A CE Provider shall not offer non-elective continuing education courses until the provider has received written notice of the approval from the Commission.

(j) Required revision of a currently approved non-elective CE course. Providers are responsible for keeping current on changes to the Act and Commission Rules and must supplement materials for approved non-elective CE courses to present the current version of all applicable statutes and rules on or before the effective date of those statutes or rules.

§535.73 Approval of Elective Continuing Education Courses

(a) General requirements.

(1) This subsection applies to continuing education providers seeking to offer an elective CE course approved by the Commission.

(2) Non-elective CE courses are approved and regulated under §535.72 of this subchapter.

(b) Application for approval of an elective CE course.

(1) For each continuing education course an applicant intends to offer, the applicant must:

(A) submit the appropriate CE Course Application form;

(B) pay the fee required by §535.101 and §535.210 of this title.

(2) The Commission may:

(A) request additional information be provided to the Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Standards for course approval of elective CE course.

(1) To be approved as a elective CE course by the Commission, the course must:

(A) cover subject matter appropriate for a continuing education course for real estate or real estate inspection license holders; and

(B) be current and accurate.

(2) A provider can demonstrate that a course meets the requirements under paragraph (1) of this subsection by submitting a statement describing the objective of the course and how the subject matter is related to activities a license holder is required to meet, including but not limited to relevant issues in the real estate market or topics which increase or

support the license holder's development of skill and competence.

(3) The course must be presented in full hourly units.

(4) The course must be delivered by one of the following:

(A) classroom method;

(B) alternative delivery method;

(C) a combination of (A) and (B), if:

(i) at least 50% of the combined course is offered by classroom method; and

(ii) the portion of the combined course offered through alternative delivery is taken from a full course that has already been certified for alternative delivery by a distance learning certification center acceptable to the Commission; or

(D) a correspondence course that is offered by a provider in association with an accredited college or university if the course is offered in accordance with the college or university's curriculum accreditation standards. Using the name of the provider "in association with" the name of the college or university on the course completion certificate constitutes certification to the Commission that the course was offered in compliance with the college or university's curriculum accreditation standards under this subsection.

(5) Elective CE courses meet the presentation requirements of §535.65 of this title; and

(6) Elective CE courses meet the examination requirements of §535.75 of this subchapter.

(d) Approval notice.

(1) A CE Provider shall not offer elective continuing education courses until the provider has received written notice of the approval from the Commission.

(2) An elective CE course expires two years from the date of approval and providers must reapply and meet all current requirements of this Section to offer the course for another two years.

(e) Approval of currently approved courses by a

subsequent provider.

(1) If a CE provider wants to offer a course currently approved for another provider, that subsequent provider must:

(A) submit the applicable course approval form(s);

(B) submit written authorization to the Commission from the provider for whom the course was initially approved granting permission for the subsequent provider to offer the course; and

(C) pay the fee required by §535.101 or §535.210 of this title.

(2) If approved to offer the currently approved course, the subsequent provider is required to:

(A) offer the course as originally approved, with any approved revisions, using all materials required for the course; and

(B) meet the requirements of §535.75 of this subchapter.

§535.74 Approval of Continuing Education Instructors for Elective Courses

(a) General requirements.

(1) This subsection applies to a person seeking approval from the Commission to be an elective CE course instructor.

(2) Non-elective CE course instructors are approved and regulated under §535.63 of this title.

(b) Application for approval.

(1) A person desiring to be approved by the Commission to be an instructor for elective real estate or real estate inspection CE courses shall:

(A) file an application on the appropriate form approved by the Commission; and

(B) pay the fee the required by §535.101 or §535.210 of this title.

(2) The Commission may:

(A) request additional information be provided to the

Commission relating to an application; and

(B) terminate an application without further notice if the applicant fails to provide the additional information not later than the 60th day after the Commission mails the request.

(c) Standards for instructor approval for continuing elective education courses. To be approved as an instructor by the Commission to teach real estate or real estate inspection continuing education courses, the applicant must satisfy the commission as to:

(1) the applicant's honesty, trustworthiness, and integrity; and

(2) the person's competency in the subject matter to be taught and ability to teach effectively.

(d) Approval notice. An applicant shall not act as or represent itself to be an approved elective CE instructor until the applicant has received written notice of the approval from the Commission.

(e) Period of initial approval. The initial approval of an elective CE instructor is valid for two years.

(f) Disapproval of an application.

(1) If the Commission determines that an applicant does not meet the standards for approval, the Commission shall disapprove the application and provide written notice of the disapproval to the applicant.

(2) The disapproval notice, applicant's request for a hearing on the disapproval, and any hearing are governed by 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 shall be in Travis County.

(g) Renewal.

(1) Not earlier than 90 days before the expiration of its current approval, a CE instructor may apply for renewal for another two year period.

(2) Approval or disapproval of a renewal application shall be subject to the standards for initial applications for approval set out in the section.

§535.75 Responsibilities and Operations of Continuing Education Providers

(a) Except as provided by this Section, CE providers must comply with the responsibilities and operations requirements of §535.65 of this title.

(b) Use of approved Instructor. The use of approved CE instructor is governed by this subsection.

(1) Except as provided by this subsection, a CE provider must use an instructor that is currently approved by the Commission.

(2) Each CE instructor shall be selected on the basis of expertise in the subject area of instruction and ability as an instructor;

(3) An CE 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 form;

(4) A CE provider may use the services of a guest instructor who is not approved as a CE instructor by the Commission for real estate or inspector elective CE courses provided that:

(A) that guest instructor instructs for no more than a total of 50% of the course; and

(B) a commission approved CE instructor remains in the classroom during the guest instructor's presentation.

(5) A CE provider may use the services of a guest instructor who is not approved as a CE instructor by the Commission for 100% of a real estate or inspector elective CE courses provided that

(A) the CE provider is:

(i) an accredited college or university;

(ii) a professional trade association that is approved by the Commission as a CE provider under §535.71 of this subchapter; or

(iii) an entity exempt under §535.71 of this subchapter; and

(B) the course is supervised and coordinated by a

Commission approved CE instructor who is responsible for verifying the attendance of all who request CE credit.

(c) CE course examinations. Examinations are only required for CE courses offered through alternative delivery or correspondence delivery and must comply with the requirements in §535.66 of title.

(d) Course completion roster. Instead of providing a course completion certificate, upon completion of a course, a CE provider shall submit a class roster to the Commission as outlined by this subsection.

(1) Classroom:

(A) A provider shall submit to the Commission a class roster in a format approved by the Commission not later than the 10th day after the date a course is completed.

(B) A course completion roster shall include:

(i) the provider's name;

(ii) a list of all instructors whose services were used in the course;

(iii) the course title;

(iv) course numbers, including any Commission pre-approval number received;

(v) the number of classroom hours, or other recognized educational unit involved in the course;

(vi) the date of issuance;

(vii) the dates the student began and completed the course; and

(viii) the signature of an authorized representative of the provider who was in attendance and for whom an authorized signature is on file with the Commission.

(C) The Commission shall not accept signature stamps or unsigned course completion rosters.

(2) Alternative or correspondence delivery methods. A provider shall submit an Alternative/Correspondence Instructional Methods Reporting form, or information contained in that form by electronic means acceptable to the

Commission, for each student completing the course not earlier than 24 hours after the student starts the course and not later than the 10th day after the student completed the course.

(3) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(4) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(e) Maintenance of records. Maintenance of CE provider's records is governed by this subsection.

(1) A CE provider shall maintain records of each student enrolled in a course for a minimum of four years following completion of the course, including course and instructor evaluations and student enrollment agreements.

(2) All records may be maintained electronically but must be in a common format that is legibly and easily printed or viewed without additional manipulation or special software.

(3) A CE provider shall maintain any comments made by the provider's management relevant to instructor or course evaluations with the provider's records.

(4) Upon request, a CE provider shall produce instructor and course evaluation forms for inspection by Commission staff.

(f) Changes in Ownership or Operation of an approved CE Provider. Changes in Ownership or Operation of an approved CE Provider are governed by this subsection.

(1) An approved provider shall obtain the approval of the Commission in advance of any material change in the operation of the provider, including but not limited to changes in:

(A) ownership;

(B) management; and

(C) the location of main office and any other locations where courses are offered.

(2) An approved provider requesting approval of a change in ownership shall provide a Principal Information Form for each proposed new owner who would hold at least a 10% interest in the provider to the Commission.

§535.77 CE Providers: Compliance and Enforcement Compliance and enforcement of CE Providers is governed by §535.67 of this title.

SUBCHAPTER H RECOVERY FUND

§535.82 Proration of Payments from the Recovery Trust Account

In the event of multiple valid pending claims against a license 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.

SUBCHAPTER I LICENSE RENEWAL

§535.91 Renewal of a Real Estate License

(a) Renewal application.

(1) A real estate license expires on the date shown on the face of the license issued to the license holder.

(2) If a license holder intends to renew an unexpired license, the license holder must, on or before the expiration date of the current license:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) submit the appropriate fee required by §535.101 of this title;

(C) comply with the fingerprinting requirements under the Act;

(D) comply with the policies established by the Texas Education Code, §57.491 regarding default of a student loan; and

(E) except as provided for by this subsection (g) of this section, satisfy the continuing education requirements applicable to that license.

(3) The Commission may request additional information be provided to the Commission in connection with an renewal application.

(4) A license holder is required to provide information requested by the Commission not later than the 30 day after the date the commission requests the information. Failure to provide information is grounds for disciplinary action.

(b) Renewal Notice.

(1) The Commission will deliver a license renewal notice to a license holder three months before the expiration of the license holder's current license.

(2) If a license holder intends to renew a license, failure to receive a license renewal notice from the Commission does not relieve a license holder from the requirements of this subsection.

(3) The Commission has no obligation to notify any license holder who has failed to provide 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.

(c) Timely renewal of a license.

(1) A renewal application is considered to be filed timely if it is received by the Commission, or postmarked, on or before the expiration date of the license.

(2) If the license expires on a Saturday, Sunday or any other day on which the Commission is not open for business, a renewal application is considered to be filed timely if the application is received or postmarked no later than the first business day after the expiration date of the license.

(d) Initial renewal of salespersons license. A salesperson applying for the first renewal of a salesperson license must submit documentation to the Commission showing successful completion of the additional educational requirements of §535.55 no later than 10 business days before the day the salesperson files the renewal application.

(e) Renewal of license issued to a business entity. The Commission will not renew a license issued to a business entity unless the business entity:

(1) has designated an officer, manager, or partner who:

(A) is a licensed broker in active status and good standing with the Commission;

(B) completes any applicable continuing education required under of §535.92; and

(2) maintains errors and omissions insurance with a minimum annual limit of \$1 million per occurrence if the designated person owns less than 10 percent of the business entity.

(f) Renewal and pending complaints.

(1) The Commission may renew the current license of a license holder that has a complaint pending with the Commission, provided the license holder meets all other applicable requirements of this section.

(2) Upon completion of the investigation of the pending complaint, the Commission may suspend or revoke the license, after notice and hearing in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(g) Renewal with deferred continuing education.

(1) A license holder may renew an active license without completion of required continuing education and may defer completion of any outstanding continuing education requirements for an addition 60 days from the expiration date of the current license if the license holder:

(A) meets all other applicable requirements of this section; and

(B) pays the continuing education deferral fee required by §535.101 of this title at the time the license holder files the renewal application with the Commission.

(2) If after expiration of the 60 day period set out in paragraph (1) of this subsection, the Commission has not been provided with evidence that the license holder has completed all outstanding continuing education requirements, the license holder's license will be placed on inactive status.

(3) To activate an inactive license, the license holder must meet the requirements of Subchapter L of this Chapter.

(4) Credit for continuing education courses for a subsequent licensing period does not accrue until after all deferred continuing education has been completed for the current licensing period.

(h) Student loan default. The Commission will advise a license holder in renewal notices and license application forms that default on a student loan guaranteed by an entity designated by the state of Texas may prevent a renewal of a license. Before the Commission disapproves a license renewal due to a default on a guaranteed student loan, a default on a repayment agreement, or a failure to enter a repayment agreement, the Commission will 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.

(i) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty during the license holder's last renewal period; and

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

§535.92 Continuing Education Requirements

(a) Required continuing education. 15 hours of continuing education are required for each renewal of a real estate salesperson or broker license and must include:

(1) a three hour legal update course;

(2) a three hour ethics course; and

(3) a six hour broker responsibility course, if the license holder:

(A) sponsors one or more salespersons; or

(B) is a designated broker of a business entity or a delegated supervisor of one or more license holders for a period of six months or more during the supervisors current license period.

(b) Legislator waiver. A license holder who is a current member of the Texas Legislature is not required to take the three hour ethics course required under subsection (a) of this section.

(c) Awarding continuing education credit. The Commission will award credit to a license holder for an approved continuing education course upon receipt of a course completion roster from a CE provider as required under §535.75 of this title.

(d) Continuing education credit for qualifying courses. Real estate license holders may receive continuing education elective credit for qualifying real estate courses or qualifying real estate inspection courses that have been approved by the Commission or that are accepted by the Commission for satisfying educational requirements for obtaining or renewing a license. Qualifying real estate courses must be at least 30 classroom hours in length to be accepted for continuing education elective credit.

(e) Continuing education credit for course taken outside of Texas. A course taken by a Texas license

holder to satisfy continuing education requirements of a country, territory, or state other than Texas may be approved on an individual basis for continuing education elective credit in Texas upon the Commission's determination that:

(1) the Texas license holder held an active real estate license in the a country, territory, or state other than Texas at the time the course was taken;

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

(3) the Texas license holder'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 continuing education credit in Texas; and

(5) the Texas license holder has filed a Credit Request for an Out of State Course Credit Request, with the Commission.

(f) Continuing education credit for courses offered by the State Bar. To request continuing education elective credit for real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit, a license holder is required to file an Individual Credit Request for State Bar Course.

(g) Continuing education credit for courses required for a professional designation. A course taken by a license holder 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 continuing education elective credit if the license holder files for credit for the course using Individual 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

(h) Limitations. The Commission will not award credit to a license holder who attends the same course more than once during:

- (1) the term of the current license period; or
- (2) the two-year period preceding the filing of an renewal application for a license after the license expiration date as provided for under §535.93 of this section or return to active status as provided for under Subchapter L of this Chapter.

§535.93 Late Renewal Applications

(a) Subject to the requirements of this section and §1101.451(e) of the Act, a license holder may late renew a license after the expiration date of that license if:

- (1) the license has been expired for less than six months;
- (2) the license holder files the application to renew on a form approved by the Commission for that purpose;
- (3) completes all required continuing education for renewal of the license; and
- (4) the license holder submits the required fees under §535.101, including:

(A) application fees for late renewal;

(B) a continuing education deferral fee if continuing education for the previous active license period was not completed by the expiration date of the previous active license period; and

(C) a continuing education late reporting fee if continuing education for the previous active license period was not completed by the 60th day after the expiration date of the previous active license period.

(b) Provided the license holder meets all the requirements of this subsection, the Commission will renew the license in an active status.

(c) To renew a salesperson license on active status after the expiration date of the license without any lapse in active licensure, a license holder must submit a Salesperson Sponsorship Form certifying that the license holder:

(1) was continuously sponsored by a Texas licensed broker from the date after the previous license expired to the date the renewal of that license will be issued; and

(2) will continued to be sponsored from the date immediately after the date the renewal of that license will be issued.

(d) The same broker may be the sponsor the salesperson for both periods under subsection (c) of this section.

(e) If the license holder is unable to certify that the license holder was sponsored for the periods under subsection (c) of this section, the Commission will renew the salesperson license on inactive status for the period(s) in which the license holder was not sponsored.

(f) A license renewed under this section is effective the day following the expiration of the previous license.

(g) A license holder may file an application to renew a license on inactive status under this section. Reactivation of a license on inactive status is governed by Subchapter L of this Chapter.

SUBCHAPTER J FEES

§535.101 Fees

(a) The Commission shall charge and collect the following fees:

(1) a fee of \$150 for filing an original or reinstatement application for a real estate broker

license, which includes a fee for transcript evaluation;

(2) a fee of \$72 for the timely renewal of a real estate broker license;

(3) a fee of \$120 for filing an application to step down from a real estate broker license to a real estate salesperson license;

(4) a fee of \$150 for filing an original or reinstatement application for a real estate salesperson license, which includes a fee for transcript evaluation;

(5) a fee of \$72 for the timely renewal of a real estate salesperson license;

(6) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(7) a fee equal to 2 times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(8) 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;

(9) a fee of \$54 for taking a license examination;

(10) a fee of \$10 for deposit into the real estate recovery trust account upon the filing of an original salesperson or broker application;

(11) a fee of \$20 for filing a request for a license certificate due to a change of place of business, change of a license holder name, or to establish a relationship with a sponsoring broker;

(A) 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

(B) The Commission may require written proof of a license holder's right to use a different name before issuing a license certificate reflecting a change of name.

(12) a fee of \$50 to request an inactive broker license be returned to active status;

(13) a fee of \$40 for preparing a certificate of license history, active licensure, or sponsorship;

(14) a fee of \$50 for filing a moral character determination;

(15) a fee of \$400 for filing an application for accreditation of a qualifying education program for a period of four years;

(16) after initial approval of accreditation, a fee of \$200 a year for operation of a qualifying real estate education program;

(17) a fee of \$50 plus \$20 per classroom hour approved by the Commission for each qualifying education course for a period of four years;

(18) a fee of \$400 for filing an application for accreditation as a Continuing Education provider for a period of two years;

(19) a fee of \$50 plus \$10 per classroom hour approved by the Commission for each continuing education course for a period of two years;

(20) a fee of \$150 for filing an application for approval as an instructor for a two-year period for real estate qualifying or continuing education courses;

(21) 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;

(22) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(23) a continuing education deferral fee of \$200;

(24) a late reporting fee of \$250 to reactivate a license under §535.93 of this title (25) a fee of \$30 for processing a check or other equivalent instrument returned by a bank or depository as dishonored for insufficient funds; and

(26) 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.

(b) Fees established by this section must be paid when an application is filed and are not refundable once an application has been accepted for filing.

(c) If the Commission receives an application that requires payment of a fee, and a sufficient fee was not submitted with the application, the Commission will return the application and notify the person filing the application that the person must pay the fee before the application will be processed.

SUBCHAPTER K PLACE OF BUSINESS

§535.112 Branch Office

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 license holder 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.

SUBCHAPTER L INACTIVE LICENSE STATUS

§535.121 Inactive Salesperson License

(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;
- (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, or the death of the designated broker;
- (5) termination of sponsorship by the salesperson or sponsoring broker;

(6) failure to timely complete continuing education required under the Act and this Chapter; or

(7) receipt by the Commission of an application for inactive status.

(b) If the broker intends to terminate the sponsorship, the broker must immediately:

- (1) notify the salesperson in writing; and
- (2) terminate the sponsorship:

(A) through the online process approved by the Commission; or

(B) on the appropriate form delivered to the Commission.

(c) If the salesperson intends to terminate the sponsorship, the salesperson must immediately:

- (1) notify the broker in writing; and
- (2) terminate the sponsorship:

(A) through the online process approved by the Commission; or

(B) on the appropriate form delivered to the Commission.

(d) If a sponsorship is terminated on a form under this section, the effective date of the termination of the sponsorship is the date the Commission receives the completed form and any applicable fee.

(e) It is the responsibility of the salesperson on inactive status to pay all required license renewal fees timely to prevent the inactive license from expiring.

§535.122 Reactivation of Salesperson License

In order to reactivate a license on inactive status, the license holder must:

- (1) provide the Commission with documentation that the license holder has satisfied all continuing education requirements under the Act and this chapter;
- (2) certify, on a form acceptable to the Commission,

that the license holder has not engaged in activity requiring a license at any time after the license became inactive;

(3) establish a sponsorship relationship with a broker:

(A) through the online process approved by the Commission; or

(B) following receipt by the Commission of the applicable salesperson sponsorship form signed by the salesperson and the sponsoring broker; and

(4) pay the appropriate fee.

§535.123 Inactive Broker Status

(a) The license of an individual broker immediately becomes inactive when:

(1) the Commission receives an application for inactive status from the broker; or

(2) the broker is placed on inactive status by the Commission for failure to comply with a requirement of the Act or this chapter.

(b) The license of a business entity broker immediately becomes inactive when:

(1) the Commission receives an application for inactive status from the broker;

(2) the entity forfeits its charter;

(3) the designated broker's license:

(A) expires;

(B) is suspended;

(C) or revoked; or

(4) the designated broker dies or resigns as designated broker.

(c) The broker must confirm to the Commission in writing that the broker has given all salespersons sponsored by the broker written notice of termination of sponsorship at least 30 days before filing the application for inactive status.

(d) It is the responsibility of the broker on inactive

status to pay all required license renewal fees timely to prevent the inactive license from expiring.

(e) To return to active status, a broker 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 any continuing education requirements under the Act and this chapter.

SUBCHAPTER M NONRESIDENTS

§535.131 Unlawful Conduct; Splitting Fees

(a) A broker licensed in Texas may cooperate with a foreign broker and share earned commissions with a foreign broker.

(b) Only Texas license holders may handle negotiations physically conducted within Texas.

(c) A resident of a foreign country or territory that does not require a person to be licensed to act as a real estate broker is considered to be licensed as a foreign broker for the purposes of §1101.651 of the Act, if the person practices as a real estate broker in compliance with the law of the foreign country or territory.

§535.132 Eligibility for Licensure

(a) A person residing outside of Texas may apply for a license under this section if the person:

(1) is licensed as a foreign broker; or

(2) was licensed as a Texas real estate salesperson or broker no more than two years before filing of the application.

(3) The commission may waive education and experience requirements if the applicant satisfies the conditions established by §535.56 or §535.55 of this title.

(b) A business entity created or chartered under the laws of a state other than Texas may apply for a Texas real estate broker license if the entity:

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

(2) 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; or

(3) was created or chartered in a state that does not license business entities and the entity is lawfully engaged in the practice of real estate brokerage in that state and meets all other requirements for applications for a license in Texas.

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

(d) To be eligible to receive a license and maintain an active license, a business entity created or chartered in a state other than Texas must designate a person to act for it who meets the requirements of §1101.355 of the Act, although the designated broker is not required to be a resident of Texas. Foreign business entities must also be permitted to engage in business in Texas to receive a Texas real estate broker license.

§535.133 Consent To Be Sued; Exception to Requirements

A broker or salesperson who moves to a state other than Texas must file a consent to service of legal process with the Commission. A consent to service is not required when the broker or salesperson's place of business is in Texas.

SUBCHAPTER N SUSPENSION AND REVOCATION OF LICENSURE

§535.141 Initiation of Investigation

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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 rules, no additional authorization shall be required to investigate and take action based upon the information.

(f) If the Commission suspends or revokes a license or probates an order of suspension or revocation against a license holder, 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.

(g) A person whose license has been suspended may not during the period of any suspension perform, attempt to perform, or advertise to perform any act for which a license is required by the Act or Rules

(h) A person whose license is subject to an order suspending the license must provide notice in writing not later than the third day before the date of the suspension as follows:

(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 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 no longer be authorized to engage in real estate brokerage unless:

(i) the salesperson is sponsored by another broker and files a change of sponsorship with the Commission; or

(ii) 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 that his or her license will be suspended;

(4) if the person is a professional inspector notify 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 no longer 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 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 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.

(i) If, in conjunction with an application or disciplinary matter, an applicant or license holder 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.

(j) A broker may not assign to another broker a listing agreement, buyer's representation agreement or other personal service agreement to which the broker is a party and which obligates the broker 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

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

(a) For purposes of §1101.652(a)(3) of the Act:

(1) "a person related to the license holder within the first degree by consanguinity" means a license holder's parent or child; and

(2) "license holder" includes a license holder acting on behalf of:

- (A) the license holder's spouse;
 - (B) a business entity in which the license holder is more than a 10% owner; or
 - (C) a trust for which the license holder acts as trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary..
- (b) A license holder engaging in a real estate transaction on his or her own behalf or in a capacity defined in subsection (a), is obligated to disclose in writing that he or she is a licensed real estate broker or salesperson in any contract of sale or rental agreement or in any other writing given before entering into any contract of sale or rental agreement.
- (c) A license holder acting on his or her own behalf or in a capacity described under subsection (a) or §1101.652(a)(3) of the Act shall not use the license holder's expertise to the disadvantage of a person with whom the license holder deals.

§535.145 False Promise

For purposes of §1101.652(b)(5) of the Act "false promise" includes both oral and written promises. The fact that a written agreement between the parties to a real estate transaction does not recite a promise made by a real estate license holder 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 license holder.

§535.146 Maintaining Trust Money

(a) Definitions. In this section:

- (1) "Trust money" means client's money, earnest money, rent, unearned fees, security deposits, or any money held on behalf of another person.
- (2) "Trust account" means an account managed by one party for the benefit of another in a banking institution authorized to do business in Texas.

(b) Acceptance of Trust Money

(1) Any trust money accepted by a broker is held in a fiduciary capacity and must be maintained in a designated trust account maintained by the broker or delivered to an escrow agent authorized in Texas in accordance with the agreement of the principals of the transaction.

(2) A salesperson shall not maintain a trust account. Any trust money received by a salesperson must be immediately delivered to the salesperson's sponsoring broker.

(3) Unless a different time to deposit trust money is expressly agreed upon in writing by the principals to the transaction, any trust money received by the broker must be deposited in a trust account or delivered to an authorized escrow agent within a reasonable time, which the Commission has determined to be not later than the close of business of the second working day after the date the broker receives the trust money.

(4) The broker shall not:

(A) commingle trust money with the broker's personal money or other non-trust money; or

(B) deposit or maintain trust money in a personal account or any kind of business account.

(5) The following is prima facie evidence of commingling trust money with the broker's own money:

(A) placing trust money in a broker's personal or operating account; or

(B) paying operating expenses or making withdrawals from a trust account for any purpose other than proper disbursement of trust money.

(c) Trust account requirements.

(1) The trust account must be clearly identified as a trust account;

(2) The broker may, but is not required to, maintain separate trust accounts for each client or type of trust money maintained by the broker, such as earnest money deposits or security deposits received for the management of rental property.

(3) If trust money held by a broker is deposited in an

interest bearing account:

(A) the money must be available for disbursement at the appropriate time; and

(B) unless otherwise provided for by an agreement signed by the party depositing the money with the broker, any interest earned on the money must be distributed to any parties to whom the money is disbursed.

(4) A broker may deposit and maintain a reasonable amount of money 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.

(5) If a broker acquires ownership of trust money held in a trust account, including entitlement to compensation, such money must be removed from the trust account not later than the 30th day after the date the broker acquires ownership of the money.

(6) The broker must retain a documentary record of each deposit or withdrawal from the trust account.

(7) A broker may only authorize another license holder to withdraw or transfer money from any trust account but the broker remains responsible and accountable for all trust money received by that broker and all deposits to or disbursements from the trust account.

(8) If a broker deposits trust money in the form of a check in a trust account and the check is dishonored by the financial institution on which it was drawn, the broker shall immediately notify all parties to the transaction in writing.

(d) Disbursement of trust money.

(1) A broker may only disburse money from the broker's trust account in accordance with the agreement under which the money was received.

(2) If any or all of the parties to a real estate transaction make a written demand for trust money, the broker must pay the trust money to the party or parties entitled to the money within a reasonable time, which the Commission has determined to be not later than the 30th day after the date the demand is made.

(3) If by a subsequent written agreement, all parties to a real estate transaction authorize the broker maintaining trust money to disburse the trust money in a manner not in accordance with the agreement under which the money was received, the broker must pay the trust money to the party or parties entitled to the money under the subsequent written agreement within a reasonable time, which the Commission has determined to be not later than the 30th day after the date the broker receives the subsequent written agreement.

(4) The broker must immediately notify all parties in writing of any disbursement of trust money.

(5) If the broker cannot reasonably determine to which party or parties the trust money should be paid, the broker may pay the trust money into the registry of a court and interplead the parties.

(e) Records. A broker must maintain all documentation regarding a trust account for four years from the date the document is received or created by the broker.

§535.147 Splitting Fee with Unlicensed Person

(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 business entity created by a license holder for the purpose of collecting a commission or fees on behalf of the license holder.

(d) A license holder may rebate or pay a portion of the license holder's fee or commission to a party in the transaction when the salesperson has the written consent of the salesperson's sponsoring broker and the party represented by the license holder. A commission or fee may not be paid to any party to the transaction in a manner that misleads a broker,

lender, title company, or governmental agency regarding the real estate transaction or the financial resources or obligations of the buyer. A license holder who intends to pay a portion of the license holder's fee or commission to a party the license holder does not represent must obtain the written consent of the party represented by the license holder before making the payment.

§535.148 Receiving an Undisclosed Commission or Rebate

(a) A license holder may not receive a commission, rebate, or fee in a transaction from a person other than the person the license holder represents without first disclosing to the license holder's client that the license holder intends to receive the commission, rebate or fee, and obtaining the consent of the license holder's client. This subsection does not apply to referral fees paid by one licensed real estate broker or salesperson to another active licensed broker or salesperson.

(b) If a party the license holder does not represent agrees to pay a service provider in the transaction, the license holder 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 license holder may not enter into a contract or agreement with a service provider to a real estate transaction in which the license holder represents one or both of the parties if, pursuant to the contract or agreement:

(1) the license holder provides services for or on behalf of the service provider; and

(2) the contract or agreement prohibits the license holder from offering similar services for or on behalf of a competing service provider.

(d) A license holder 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) A license holder 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 license holder 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 resident 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.texas.gov.

§535.149 Lottery or Deceptive Trade Practice

(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 license holders when procuring prospects must otherwise comply with the provisions of §535.20 of this title.

(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

Although a license holder, 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, the Act does not prohibit a license holder from soliciting a listing from the owner while the owner's property is subject to an exclusive listing with another broker.

§535.154 Advertising

(a) For the purposes of this section, an "advertisement" is a written or oral statement or communication by or on behalf of a license holder which induces or attempts to induce a member of the public to use the services of the license holder 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 license holder 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 license holder to a member of the public after the member of the public agreed for the license holder to provide services, provided the first communication from the license holder contains the information required by this section; or

(2) real estate information, including listings, available to the public on a license holder'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 the 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 broker'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 10 days 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 broker, of a business entity licensed as a broker, shall notify the Commission in writing not later than the 30th day after the date 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 license holder 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 license holder may not use a copyrighted trade name unless the license holder has legal authority to use the name.

(j) A real estate license holder placing an advertisement on the Internet, electronic bulletin board, or the like must include on each page on

which the license holder'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 license holder 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 license holder 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. If the site does not allow a hyperlink, the link may be spelled out with the words "TREC DISCLOSURE" stated before the link.

(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 license holder's commission must disclose that payment of the rebate is subject to the consent of the party the license holder 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 license holder and the license holder expects to receive compensation if a party uses those services, the advertisement must contain a disclosure that the license holder may receive

compensation from the service provider.

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

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

§535.156 Dishonesty; Bad Faith; Untrustworthiness

(a) A license holder's relationship with the license holder's principal is that of a fiduciary. A license holder 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 license holder shall have no duty to submit offers to the principal after the principal has accepted an offer.

(b) The license holder must put the interest of the license holder's principal above the license holder's own interest. A license holder must deal honestly and fairly with all parties; however, the license holder represents only the principal and owes a duty of fidelity to such principal.

(c) A license holder has an affirmative duty to keep the principal informed at all times of significant information applicable to the transaction or transactions in which the license holder is acting as agent for the principal.

(d) A license holder has a duty to convey accurate information to members of the public with whom the license holder deals.

§535.161 Failing to Provide Information

For the purposes of §1101.652(a)(6) of the Act, "reasonable time" means 10 working days from receipt of a request made by the Commission.

SUBCHAPTER O HEARING ON SUSPENSION OR REVOCATION OF LICENSURE

§535.171 Hearing: Subpoenas and Fees

(a) In addition to the provisions of the Texas Government Code §2001.089, process may be served by an employee of the 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.

SUBCHAPTER P PENALTY FOR UNLICENSED ACTIVITY

§535.181 Penalty

If the 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.

SUBCHAPTER Q ADMINISTRATIVE PENALTIES

§535.191 Schedule of Administrative Penalties

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by 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);

(16) §1101.652(b)(24) - (27);

(17) §1101.652(b)(32) - (33);

(18) 22 TAC §§535.145 - 535.148; and

(19) 22 TAC §535.156;

(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.

SUBCHAPTER R REAL ESTATE INSPECTORS

§535.201 Definitions

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) Committee--The Texas Real Estate Inspector Committee.

(3) Texas Standards of Practice/Legal/Ethics Update--Course addressing developments related to the inspection field, including the requirements of Chapter 1102, rules of the Commission, case law, and agency enforcement actions.

(4) 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

(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) Inspector members of the Committee serve staggered six-year terms, with the terms of two inspector members expiring on February 1 of each odd-numbered year. Public members of the Committee serve staggered two year terms, with the term of one public member expiring on February 1 of each even-numbered year and the terms of two public members expiring on February 1 of each odd-numbered year. Initial appointments may be made for terms shorter than six or two years, respectively, 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 chair, shall prepare written minutes for each meeting and submit the minutes to the Committee for approval.

(m) At least twice a year, the Committee Chair shall report on the activities of the Committee to the Commission. 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 chair of the Committee or the chair's designee 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

(a) Application.

(1) A person who intends to be licensed by the Commission must file an application for the license:

(A) through the online process approved by the Commission; or

(B) on a form approved by the Commission for that purpose; and

(C) submit the required fee under §535.210 of this title.

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) General Requirements for Licensure.

(1) To be eligible for a real estate license, an applicant must:

(A) meet the following requirements at the time of the application:

(i) be 18 years of age;

(ii) meet any applicable residency requirement;

(iii) be a citizen of the United States or a lawfully admitted alien;

(B) comply with the fingerprinting, education, experience and examination requirements of the Act, Chapter 1102, or the rules of the Commission;

(C) meet the honesty, trustworthiness, and integrity requirements under the Act;

(D) provide proof of financial responsibility as required by of Chapter 1102; and

(E) An applicant for an apprentice inspector license must provide the Commission with the applicant's photograph prior to issuance of a license certificate.

(2) 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.

(3) 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.

(c) License for military service members, military veterans, or military spouses. This subsection applies to an applicant who is a military service member, a military veteran, or the spouse of a person serving on active duty as a member of the armed forces of the United States.

(1) The Commission shall waive the license application and examination fees for an applicant who is:

(A) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(B) a military service member, military veteran, or military spouse who holds a current license issued by

another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(2) The Commission shall issue on an expedited basis a license to an applicant who holds a current certificate or license issued by a country, territory, or state other than Texas for other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas.

(d) Credit for military service. This subsection applies to an applicant who is serving on active duty as a member of the armed forces of the United States.

(1) The Commission shall credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.

(2) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.

(3) The applicant must pass the qualifying examination for the type of license sought.

(e) A person applying for license under subsections (c) or (d) of this section must also:

(1) submit the Commission's approved application form for the type of license sought;

(2) submit the appropriate fee for that application;

(3) submit the supplemental form approved by the Commission applicable to subsections (c) or (d) of this section;

(4) provide proof of financial responsibility as required by of Chapter 1102; and

(5) comply with fingerprinting requirements for all license applicants and satisfy the Commission as to the applicant's honesty, trustworthiness and integrity.

(f) The administrator may waive any prerequisite to obtaining a license for an applicant issued under subsections (c) or (d) of this section.

(g) Terminated application. An application will be terminated and subject to no further evaluation or processing if the applicant fails to satisfy the

requirements of subsection (b)(1) of this section within one year from the date the application is filed.

(h) Denial of application.

(1) 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. 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.

(2) 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

(a) Examinations for licensure.

(1) The examination for a real estate inspector license and for a professional inspector license consists of a national part and a state part.

(2) The Commission adopts the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors for the national portion of the examination. For the state portion 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.

(3) Each real estate inspector applicant must achieve a score of at least 70% on the state portion of the examination. Each professional inspector applicant must achieve a score of at least 75% on the state portion of the examination.

(b) Administration of examination. Except as otherwise required by Chapter 1102 or this section, examinations shall be conducted as provided by §535.57 of this title. An applicant is not eligible to

take a qualifying examination for a license until the Commission has received evidence of completion of all education and experience required by this subchapter.

(c) Waiver of national portion of examination requirement. The Commission may waive the national portion 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) If the applicant has not satisfied all requirements within one year from the time the commission accepted an application for filing, including passing both parts of the examination, the application is terminated and a new application is required.

(e) Examination results are valid for a period of one year from the date the examination is passed. An examination is considered passed when an applicant has received a passing grade on both parts of the examination.

(f) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the commission that the applicant has completed additional core education as follows, after the date the applicant failed the examination for the third time:

(1) for an applicant who failed the national part of the examination, 32 hours;

(2) for an applicant who failed the state part of the examination, 8 hours; and

(3) for an applicant who failed both parts of the examination, 40 hours.

§535.210 Fees

(a) The Commission shall charge and collect the following fees:

(1) a fee of \$60 for filing an original or reinstatement application for a license as an apprentice inspector;

(2) a fee of \$100 for filing an original or

reinstatement application for a license as a real estate inspector, which includes a fee for transcript evaluation;

(3) a fee of \$120 for filing an original or reinstatement application for a license as a professional inspector, which includes a fee for transcript evaluation;

(4) a fee of \$30 for the timely renewal of the license of an apprentice inspector;

(5) a fee of \$50 for the timely renewal of the license of a real estate inspector;

(6) a fee of \$60 for the timely renewal of the license of a professional inspector;

(7) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(8) a fee equal to 2 times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(9) a fee of \$220 for taking a license examination consisting of a national portion and a state portion or retaking the national part of the license examination;

(10) a fee of \$60 for taking a license examination without a national portion or retaking the state part of the license examination;

(11) a fee of \$20 for requesting a change of a license holder name, or to establish a relationship with a sponsoring professional inspector;

(12) a fee of \$50 to request an inactive professional inspector license be returned to active status;

(13) a fee of \$40 for preparing a certificate of license history, active licensure, or sponsorship;

(14) a fee of \$50 for the filing of a moral character determination;

(15) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;

(16) a fee of \$400 for filing an application for accreditation of a qualifying inspector education

program for a period of four years;

(17) after initial approval of accreditation, a fee of \$200 a year for operation of a qualifying inspector education program;

(18) a fee of \$50 plus \$10 per classroom hour approved by the Commission for each qualifying inspector education course for a period of four years;

(19) a fee of \$400 for filing an application for accreditation as a continuing inspector education provider for a period of two years;

(20) a fee of \$50 plus \$5 per classroom hour approved by the Commission for each continuing inspector education course for a period of two years;

(21) a fee of \$50 for the filing of an application for approval as an instructor for a two-year period for qualifying or continuing inspector education courses;

(22) a fee of \$30 for processing a check or other equivalent instrument returned by a bank or depository as dishonored for insufficient funds;

(23) a fee of \$10 for deposit in the real estate inspection recovery fund upon an applicant's successful completion of an examination;

(24) 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; and

(25) 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.

(b) Fees established by this section must be paid when an application is filed and are not refundable once an application has been accepted for filing.

(c) If the Commission receives an application that requires payment of a fee, and a sufficient fee was not submitted with the application, the Commission will return the application and notify the person filing the application that the person must pay the fee before the application will be processed.

§535.211 Professional Liability Insurance, or Any Other Insurance that Provides Coverage for Violations of Subchapter G of Chapter 1102

(a) When an applicant for a license issued under 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 Chapter 1102, before the license will be issued.

(b) An inspector must maintain financial responsibility 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 financial responsibility 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

(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 education requirements outlined in §1102.108 and §1102.109 of Chapter 1102 and the substitute experience requirements established by the Commission pursuant to §1102.111 in subsection (f)

or (g) of this section.

(b) A person may satisfy the 90-hour education requirement for licensure as a real estate inspector pursuant to subsection (a)(1) or (2) 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;

(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, 2013, a person may satisfy the 130-hour education requirement for licensure as a professional inspector pursuant to subsection (a)(1) or (2) 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) 8 additional hours in Texas Standards of Practice/Legal/Ethics Update as defined in §535.218 of this title (relating to Continuing Education); 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:

(1) An inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

(2) Half credit will be given for an inspection limited to structural components only or to equipment/systems only.

(3) 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.

(4) A report addressing two or more improvements is considered a single inspection.

(5) 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) Effective January 1, 2014, a person may satisfy the substitute experience requirements for licensure as a real estate inspector pursuant to subsection (a)(2) of this section 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 32 additional hours of core

inspection coursework, which must include the following:

(i) 8 hours in Texas Standard Report Form/Report Writing;

(ii) 8 hours in Texas Standards of Practice/Legal/Ethics Update as defined in §535.218 of this title;

(iii) 16 hours in any core inspection subject(s); and

(B) either:

(i) complete 20 hours of field work through ride along inspection course sessions as defined in §535.218 of this title, except there may be up to 10 students per session and 12 hours of an approved interactive experience training module;

(ii) complete 8 hours of field work through ride along inspection course sessions as defined in §535.218 of this title, except there may be up to 10 students per session and 30 hours of an approved interactive experience training module;

(iii) upon delivery of a Commission approved affidavit form that the applicant is unable to reasonably complete clause (i) or (ii) of this subparagraph, complete 60 hours of an approved interactive experience training module presented by a licensed professional inspector; or

(iv) have three years of 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 provide 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 16 additional hours of core inspection coursework, which must include the following:

(i) 8 hours in Texas Standard Report Form/Report Writing; and

(ii) 8 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.

(3) Subsection (f)(1)(B)(iii) of this section will only be accepted to satisfy the substitute experience requirement if completed prior to March 1, 2015.

(g) Effective January 1, 2014, a person may satisfy the substitute experience requirements for licensure as a professional inspector pursuant to subsection (a)(2) of this section 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 200 additional hours of core inspection coursework, which must include the following:

(i) 30 hours in foundations;

(ii) 30 hours in framing;

(iii) 24 hours in building enclosure;

(iv) 24 hours in roof systems;

(v) 16 hours in plumbing systems;

(vi) 24 hours in electrical systems;

(vii) 24 hours in heating, ventilation, and air conditioning systems;

(viii) 6 hours in appliances;

(ix) 8 hours in Standards of Practice/Legal/Ethics Update as defined in §535.218 of this title;

(x) 8 hours in Standard Report Form/Report writing; and

(xi) 6 hours in any core inspection subject(s); and

(B) either:

(i) complete 40 hours of field work through ride along inspection course sessions as defined in §535.218 of this title, except there may be up to 10 students per session and 24 hours of an approved interactive experience training module;

(ii) complete 16 hours of field work through ride along inspection course sessions as defined in §535.218 of this title, except there may be up to 10 students per session and 60 hours of an approved interactive experience training module;

(iii) upon delivery of a Commission approved affidavit form that the applicant is unable to reasonably complete clause (i) or (ii) of this subparagraph, complete 120 hours of an approved interactive experience training module presented by a licensed professional inspector; or

(iv) have five years of 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 provide 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 16 additional hours of core inspection coursework, which must include the following:

(i) 8 hours in Texas Standard Report Form/Report Writing; and

(ii) 8 hours in Texas Standards of Practice/Legal/Ethics Update as defined in §535.218 of this title; 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.

(3) Subsection (g)(1)(B)(iii) of this section will only be accepted to satisfy the substitute experience requirement if completed prior to March 1, 2016.

(h) For purposes of this section:

(1) "core inspection coursework" means course work on the subject matters listed in §535.213(e) of this title; and

(2) "interactive experience training module" means education that provides regular and substantive interaction between the students and the instructor, either synchronously or asynchronously, and is delivered:

(A) in-person to students in the classroom; or

(B) through the use of one or more of the following technologies:

(i) the internet;

(ii) one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite or wireless communications devices;

(iii) audio conferencing; or

(iv) video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in subparagraphs (B)(i) through (B)(iii) of this paragraph.

§535.213 Qualifying Real Estate Inspector Instructors and Courses

(a) Approval of Qualifying Real Estate Inspection Instructors. Qualifying real estate inspector instructors are approved and regulated as required by §535.63 of this title.

(b) Approval of Qualifying Real Estate Inspection Courses. Qualifying real estate inspector courses are approved and regulated as required by §535.62 of this title.

(c) A classroom course may include up to 50% of total course time for appropriate field trips relevant to the course topic. Field trips may not be included as part of correspondence or alternative delivery courses.

(d) A course approved to satisfy a specific subject matter requirement under §535.212 of this title must

address each part of the subject as described by this section.

(e) Approved Qualifying Courses of Study. The subjects approved for credit for qualifying inspector courses are those courses prescribed by §1102.001(5), Texas Occupations Code and the following:

(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;
 - (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) rules of the Commission 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) Composite Courses.

(1) A course that combines more than one subject into a composite course may be approved by the Commission to satisfy real estate inspector core course education requirements.

(2) 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.

§535.215 Inactive Inspector Status

(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.

(b) The Commission may place an inspector on inactive status for any of the following reasons:

(1) the written request of the inspector to be placed on inactive status as provided for under subsection (c); or

(2) the inspector's failure to satisfy continuing education requirements. In addition, the inspector's license is inactive when the following occurs:

(A) termination of sponsorship by a professional inspector;

(B) the death of the inspector's sponsoring professional inspector;

(C) the expiration, suspension, or revocation of the license of the inspector's sponsoring professional inspector;

(D) the failure of the license holder to provide to the Commission proof of financial responsibility as required by Chapter 1102 and on a form approved by the Commission for that purpose; or

(E) the expiration or non-renewal of the inspector's financial responsibility as required by Chapter 1102.

(c) 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.

(d) A professional inspector on inactive status may apply to the Commission for return to active status by:

(1) filing a request online or on a form approved by the Commission;

(2) providing the Commission with documentation that the inspector has satisfied all continuing education requirements under Chapter 1102 and this chapter; and

(3) submitting any required fee.

(e) An apprentice inspector or real estate inspector who has been placed on inactive status may return to status if:

(1) the inspector has completed all applicable continuing education requirements; and

(2) the inspector's sponsoring professional inspector has requested that the apprentice inspector or real estate inspector be returned to active status on a form approved by the Commission.

(f) 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.

(g) If a professional inspector terminates the sponsorship of an apprentice inspector or real estate inspector, the license of the apprentice inspector or real estate inspector immediately becomes inactive.

(h) Inactive inspectors may not perform inspections. Performance of inspections while on inactive status is grounds for disciplinary action against the inactive license holder. A professional inspector who has been placed on inactive status may not return to practice or sponsor apprentices or inspectors until the professional inspector has met the requirements to be returned to active status under 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

(a) A person licensed by the Commission under Chapter 1102 may renew the license by timely filing the prescribed application for renewal, complying with the fingerprinting and TGSLC requirements in §535.95 of this title, paying the appropriate fee to the Commission and satisfying applicable continuing education requirements as required by Chapter 1102 and this subchapter, and providing to the Commission proof of financial responsibility as required by Chapter 1102 using a form approved by the Commission for that purpose.

(b) A license holder also may renew an unexpired license by accessing the Commission's website, 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 license holder 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 license holder to apply for renewal, and failure to receive a renewal notice does not relieve the license holder of the responsibility of applying for renewal.

(d) A license holder 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 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 license holder 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.

(g) To renew a license on active status without any lapse in active licensure, an apprentice or real estate inspector must also submit a Real Estate Apprentice and Inspector 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 inspector may be the sponsor for both periods. The Commission shall renew the license on inactive status for the period(s) in which the apprentice or real estate inspector was not sponsored.

(h) If the license has been expired for six months or more, 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.

(i) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty

during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the pre-vious license expired.

§535.217 Mailing Address and Other Contact Information

Each license holder shall provide a mailing address, phone number, and email address, if available, to the Commission and shall report all subsequent changes not later than the 30th day after the date of a change of any of the listed contact information. If a license holder fails to update the contact information, the last known contact information provided to the Commission is the license holder's contact information.

§535.218 Continuing Education Required for Renewal

(a) Continuing education required for renewal.

(1) Prior to renewal of a real estate inspector or professional inspector license, a license holder must take the 32 hours of continuing education which shall include the following:

(A) 24 hours of qualifying course subjects as described in §535.213(e)(1) - (8), (11) and (12) of this title, with a maximum of 16 hours on any one single subject; and

(B) eight hours of Texas Standards of Practice/Legal/Ethics Update. The Texas Standards of Practice/Legal/Ethics Update is a non-elective course and must consist of the following coursework:

(i) 4 hours of Standards of Practice;

(ii) 2 hours of Legal; and

(iii) 2 hours of Ethics.

(2) A real estate inspector or professional inspector who files an application for reinstatement of a expired license within two years of the expiration date of the previous license, must provide evidence satisfactory to the Commission that the applicant has completed any continuing education that would have been otherwise required for timely renewal of the previous license had that license not expired.

(b) Ride-along inspection course.

(1) Up to eight hours of continuing education credit per two year license period can be given to a license holder for completion of ride-along inspection course.

(2) At a minimum, a ride-along inspection course must:

(A) consist of one full residential property inspection; and

(B) review applicable standards of practice and departure provisions contained in §§535.227 - 535.233 of this title.

(3) In order to qualify for real estate inspector continuing education credit, a ride-along inspection course shall consist of no more than two students per session.

(4) The instructor of a ride-along inspection course may:

(A) review report writing;

(B) deliver a notice regarding the ride along session on a form approved by the Commission to the prospective buyer or seller of the home being inspected.

(c) Continuing education credit for students.

(1) Courses submitted for inspector continuing education credit must be successfully completed during the term of the current license.

(2) The Commission may not grant continuing education credit twice for a course with the same course content taken by a licensee within a two year period.

(3) Unless a real estate inspection continuing education course is offered by alternative delivery methods, completion of a final examination is not required for a license holder to receive continuing education credit for a course.

(4) The commission will not grant partial credit to an inspector who attends a portion of a course.

(d) Continuing education credit for instructors.

(1) Providers may request continuing education credit be given to instructors of real estate inspection courses subject to the following guidelines:

(A) instructors may receive credit for only those portions of the course which they teach; and

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

(2) An Instructor of ride along inspection course is eligible to receive continuing education credit for a ride-along inspection course conducted by the instructor if the Commission is provided a certification of course completion within one week of completion of the course, on a form approved by the Commission.

(3) Instructors of ride along inspection course sessions may only receive up to 8 hours of continuing education credit for teaching the course per two year license renewal period.

§535.219 Schedule of Administrative Penalties

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

(b) The administrative penalties set forth in this section consider 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 Chapter 1102 and this subchapter:

(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 Chapter 1102 and this subchapter:

(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 - 535.233.

(e) An administrative penalty of \$1,000 - \$5,000 per violation per day may be assessed for violations of the following sections of Chapter 1102 and this subchapter:

(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, if a person has a history of previous violations Act.

§535.220 Professional Conduct and Ethics

(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 license holder 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.

(1) In accepting employment as an inspector, the inspector should protect and promote the interest of the client to the best of the inspector's ability and knowledge, recognizing that the client has placed trust and confidence in the inspector.

(2) In the interest of the client and the inspector's profession, the inspector should endeavor always to maintain and increase the inspector's level of knowledge regarding new developments in the field of inspection.

(3) The inspector should conduct the inspector's business in a manner that will assure the client of the inspector's independence from outside influence and interests that might compromise the inspector's 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 the inspector's, the inspector's 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 Commission or Chapter 1102, the inspector should report the possible violation to the Commission.

(e) An inspector shall comply with the following requirements.

(1) An inspector shall not inspect a property when any compensation or future referrals depend on reported findings or on the closing or settlement of a property.

(2) In this section, "settlement service" means a 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 the inspector, the inspector's business, and the inspection industry.

§535.221 Advertisements

(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 license holder. 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 license holders 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

(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 Standard Inspection Report Form

The Commission adopts by reference Property Inspection Report Form REI 7-4, approved by the Commission for use in reporting inspections results. This document is published by and available from the Commission website: www.trec.texas.gov, or by writing to the Commission at 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 substantially complete one-to-four family residential property shall be reported on Form REI 7-

4 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, 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) delete the line for name and license number, of the sponsoring inspector, if the inspection was performed solely by a professional inspector;

(B) change the typeface; provided that it is no smaller than a 10 point font;

(C) change the color of the typeface and checkboxes;

(D) use legal sized (8-1/2" by 14") paper;

(E) add a cover page to the report form;

(F) add footers to each page of the report except the first page and may add headers to each page of the report;

(G) place the property identification and page number at either the top or bottom of the page;

(H) add subheadings under items, provided that the numbering of the standard items remains consistent with the standard form;

(I) list other items in the corresponding appropriate section of the report form and additional captions, letters, and check boxes for those items;

(J) delete inapplicable subsections of Section VI., Optional Systems, and re-letter any remaining subsections;

(K) delete Subsection L., Other, of Section I., Structural Systems; Subsection E., Other of Section IV, Plumbing Supply, Distribution Systems and Fixtures and Subsection I., Other of Section V., Appliances;

(L) as the inspector deems necessary:

- (i) allocate such space for comments in:
 - (I) the "Additional Information Provided by the Inspector" section; and
 - (II) each section provided for comments for each inspected item;
- (ii) attach additional pages of comments; or
- (iii) both;
- (M) include a service agreement/inspection contract or contractual terms between the inspector and a client with the standard form under the "Additional Information Provided by the Inspector" section or as an attachment to the standard form; and
- (N) attach additional pages to the form if:
 - (i) it is necessary to report the inspection of a component, or system not contained in the standard form; or
 - (ii) the space provided on the form is inadequate for a complete reporting of the Inspection.
- (4) The inspector shall renumber the pages of the standard 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, or deficient and explain the findings in the corresponding section in the body of the report form.
- (6) This section does not apply to the following:
 - (A) re-inspections of a property performed for the same client;
 - (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;
 - (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 license holder and reported on 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;

(E) an inspection of a building or addition that is not substantially complete; or

(F) inspections of a single system or component as outlined in clause (ii) of this subparagraph, provided that 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 buyer or seller in accordance with the client's requirements. The report addresses a single system or component and is not intended as a substitute for a complete standard inspection of the property. Standard inspections performed by a license holder and reported on a Commission promulgated report form may contain additional information a buyer should consider in making a decision to purchase."

(i) If the client requires the use of a report form that 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.

(ii) An inspection is considered to be of a single system or component if the inspection only addresses one of the following or a portion thereof:

(I) foundation;

(II) framing/structure, as outlined in §535.213(e)(2) of this title;

(III) building enclosure;

- (IV) roof system;
- (V) plumbing system;
- (VI) electrical system;
- (VII) HVAC system;
- (VIII) a single appliance; or
- (IX) a single optional system as stated in the Standards of Practice.

§535.224 Practice and Procedure

(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 and with the Texas Government Code, Chapter 2001, et seq.

(b) In addition to the grounds for disciplinary action provided in Chapter 1102, a license of an inspector may be suspended or revoked by the Commission if the inspector:

(1) fails to make good a payment issued to the Commission not later than the 15th day after the date the Commission mails a request for payment by certified mail to the inspector's last known mailing 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

(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.

(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

(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

(a) Definitions.

(1) Accessible--In the reasonable judgment of the inspector, capable of being approached, entered, or viewed without:

(A) hazard to the inspector;

(B) having to climb over obstacles, moving furnishings or large, heavy, or fragile objects;

(C) using specialized equipment or procedures;

(D) disassembling items other than covers or panels intended to be removed for inspection;

(E) damaging property, permanent construction or building finish; 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) Component--A part of a system.

(4) Cosmetic--Related only to appearance or aesthetics, and not related to performance, operability, or water penetration.

(5) Deficiency--In the reasonable judgment of the inspector, a condition that:

(A) adversely and materially affects the performance of a system, or component; or

(B) constitutes a hazard to life, limb, or property as specified by these standards of practice.

(6) Deficient--Reported as having one or more deficiencies.

(7) Inspect--To operate in normal ranges using ordinary controls at typical settings, look at and examine accessible systems or components and report observed deficiencies as specified by these standards of practice.

(8) Performance--Achievement of an operation, function or configuration relative to accepted industry standard practices with consideration of age and normal wear and tear from ordinary use.

(9) Report--To provide the inspector's opinions and findings on the standard inspection report form as required by §535.222 and §535.223 of this title.

(10) Specialized equipment--Equipment such as thermal imaging equipment, moisture meters, gas or carbon monoxide detection equipment, environmental testing equipment and devices, elevation determination devices, and ladders capable of reaching surfaces over one story above ground surfaces.

(11) Specialized procedures--Procedures such as environmental testing, elevation measurement, calculations and any method employing destructive testing that damages otherwise sound materials or finishes.

(12) Standards of practice--§§535.227 - 535.233 of this title.

(13) Substantially completed--The stage of construction when a new building, addition, improvement, or alteration to an existing building is sufficiently complete that the building, addition, improvement or alteration can be occupied or used for its intended purpose.

(14) Technically Exhaustive--A comprehensive investigation beyond the scope of a real estate inspection which would involve determining the cause or effect of deficiencies, exploratory probing or discovery, the use of specialized knowledge, equipment or procedures.

(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 non-technically exhaustive, limited visual survey and basic performance evaluation of the systems and components of a building using normal controls and does not require the use of specialized equipment 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 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 within these standards of practice;

(ii) elevators;

(iii) detached buildings, decks, docks, fences, or waterfront structures or equipment;

(iv) anything buried, hidden, latent, or concealed;

(v) sub-surface drainage systems;

(vi) 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, solar panels or smart home

automation components; or

(vii) concrete flatwork such as driveways, sidewalks, walkways, paving stones or patios;

(B) report:

(i) past repairs that appear to be effective and workmanlike except as specifically required by these standards;

(ii) cosmetic or aesthetic conditions; or

(iii) wear and tear from ordinary use;

(C) determine:

(i) insurability, warrantability, suitability, adequacy, compatibility, capacity, reliability, marketability, operating costs, recalls, counterfeit products, product lawsuits, life expectancy, age, energy efficiency, vapor barriers, thermostatic performance, compliance with any code, listing, testing or protocol authority, 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, corrosive or contaminated drywall "Chinese Drywall" or any other environmental hazard, environmental pathogen, carcinogen, toxin, mycotoxin, pollutant, fungal presence or activity, or poison;

(iv) types of wood or preservative treatment and fastener compatibility; or

(v) the cause or source of a condition;

(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 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 penetrations; 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) verify sizing, efficiency, or adequacy of the gutter and downspout system;

(K) operate recirculation or sump pumps;

(L) remedy conditions preventing inspection of any item;

(M) apply open flame or light a pilot to operate any appliance;

(N) turn on decommissioned equipment, systems or utility services; or

(O) 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 inspection of a component or system required by the standards of practice only if:

(i) the inspector and client agree the item is not to be inspected;

(ii) the inspector is not qualified to inspect the item;

(iii) in the reasonable judgment of the inspector, conditions exist that 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

(vi) in the reasonable judgment of the inspector, the actions of the inspector may cause damage to the property.

(B) If an inspector departs from the inspection of a component or system required by the standards of practice, the inspector shall:

(i) notify the client at the earliest practical opportunity that the component or system will not be inspected; and

(ii) make an appropriate notation on the inspection report form, stating the reason the component or system was not inspected.

(C) If the inspector routinely departs from inspection of a component or system required by the standards of practice, and the inspector has reason to believe that the property being inspected includes that component or system, the earliest practical opportunity for the notice required by this subsection is the first contact the inspector makes with the prospective client.

(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

(a) Foundations. The inspector shall:

(1) render a written opinion as to the performance of

the foundation; and

(2) report:

(A) the type of foundations;

(B) the vantage point from which the crawl space was inspected;

(3) generally report present and visible indications used to render the opinion of adverse performance, such as:

(A) binding, out-of-square, non-latching doors;

(B) framing or frieze board separations;

(C) sloping floors;

(D) window, wall, floor, or ceiling cracks or separations; and

(E) rotating, buckling, cracking, or deflecting masonry cladding.

(4) report as Deficient:

(A) deteriorated materials;

(B) deficiencies in foundation components such as; beams, joists, bridging, blocking, piers, posts, pilings, columns, sills or subfloor;

(C) deficiencies in retaining walls related to foundation performance;

(D) exposed or damaged reinforcement;

(E) crawl space ventilation that is not performing; and

(F) crawl space drainage that is not performing.

(5) The inspector is not required to:

(A) enter a crawl space or any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high;

(B) provide an exhaustive list of indicators of possible adverse performance; or

(C) inspect retaining walls not related to foundation

performance.

(b) Grading and drainage. The inspector shall:

(1) report as Deficient:

(A) drainage around the foundation that is not performing;

(B) deficiencies in grade levels around the foundation; and

(C) deficiencies in installed gutter and downspout systems.

(2) The inspector is not required to:

(A) inspect flatwork or detention/retention ponds (except as related to slope and drainage);

(B) determine area hydrology or the presence of underground water; or

(C) determine the efficiency or performance of underground or surface drainage systems.

(c) Roof covering materials. The inspector shall:

(1) inspect the roof covering materials from the surface of the roof;

(2) report:

(A) type of roof coverings;

(B) vantage point from where the roof was inspected;

(C) evidence of water penetration;

(D) evidence of previous repairs to the roof covering material, flashing details, skylights and other roof penetrations; and

(3) report as Deficient deficiencies in:

(A) fasteners;

(B) adhesion;

(C) roof covering materials;

(D) flashing details;

(E) skylights; and

(F) other roof penetrations.

(4) The inspector is not required to:

(A) determine the remaining life expectancy of the roof covering;

(B) 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;

(C) determine the number of layers of roof covering material;

(D) identify latent hail damage;

(E) exhaustively examine all fasteners and adhesion, or

(F) provide an exhaustive list of locations of deficiencies and water penetrations.

(d) Roof structures and attics. The inspector shall:

(1) report:

(A) the vantage point from which the attic space was inspected;

(B) approximate average depth of attic insulation;

(C) evidence of water penetration;

(2) report as Deficient:

(A) attic space ventilation that is not performing;

(B) deflections or depressions in the roof surface as related to adverse performance of the framing and decking;

(C) missing insulation;

(D) deficiencies in

(i) installed framing members and decking;

(ii) attic access ladders and access openings; and

(iii) attic ventilators.

(3) The inspector is not required to:

(A) enter attics or unfinished spaces where openings are less than 22 inches by 30 inches or headroom is less than 30 inches;

(B) operate powered ventilators; or

(C) provide an exhaustive list of locations of deficiencies and water penetrations.

(e) Interior walls, ceilings, floors, and doors. The inspector shall:

(1) report evidence of water penetration;

(2) report as Deficient:

(A) deficiencies in the condition and performance of doors and hardware;

(B) deficiencies related to structural performance or water penetration; and

(C) the absence of or deficiencies in fire separation between the garage and the living space and between the garage and its attic.

(3) The inspector is not required to:

(A) report cosmetic damage or the condition of floor, wall, or ceiling coverings; paints, stains, or other surface coatings; cabinets; or countertops, or

(B) provide an exhaustive list of locations of deficiencies and water penetrations.

(f) Exterior walls, doors, and windows. The inspector shall:

(1) report evidence of water penetration;

(2) report as Deficient:

(A) the absence of performing emergency escape and rescue openings in all sleeping rooms;

(B) a solid wood door less than 1-3/8 inches in thickness, a solid or honeycomb core steel door 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;
- (E) deficiencies in:
 - (i) weather stripping, gaskets or other air barrier materials;
 - (ii) claddings;
 - (iii) water resistant materials and coatings;
 - (iv) flashing details and terminations;
 - (v) the condition and performance of exterior doors, garage doors and hardware; and
 - (vi) the condition and performance of windows and components.
- (3) The inspector is not required to:
 - (A) report the condition of awnings, blinds, shutters, security devices, or other non-structural systems;
 - (B) determine the cosmetic condition of paints, stains, or other surface coatings; or
 - (C) operate a lock if the key is not available.
 - (D) provide an exhaustive list of locations of deficiencies and water penetrations.
- (g) Exterior and interior glazing. The inspector shall:
 - (1) 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 doors; and
 - (C) the absence of safety glass in hazardous locations.
 - (2) The inspector is not required to:
 - (A) exhaustively inspect insulated windows for evidence of broken seals;

- (B) exhaustively inspect glazing for identifying labels; or
- (C) identify specific locations of damage.
- (h) Interior and exterior stairways. The inspector shall:
 - (1) report as Deficient:
 - (A) 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
 - (B) deficiencies in steps, stairways, landings, guardrails, and handrails.
 - (2) The inspector is not required to exhaustively measure every stairway component.
- (i) Fireplaces and chimneys. The inspector shall:
 - (1) report as Deficient:
 - (A) built-up creosote in accessible areas of the firebox and flue;
 - (B) the presence of combustible materials in near proximity to the firebox opening;
 - (C) the absence of fireblocking at the attic penetration of the chimney flue, where accessible; and
 - (D) deficiencies in the:
 - (i) damper;
 - (ii) lintel, hearth, hearth extension, and firebox;
 - (iii) gas valve and location;
 - (iv) circulating fan;
 - (v) combustion air vents; and
 - (vi) chimney structure, termination, coping, crown, caps, and spark arrestor.

(2) The inspector is not required to:

(A) verify the integrity of the flue;

(B) perform a chimney smoke test; or

(C) determine the adequacy of the draft.

(j) Porches, Balconies, Decks, and Carports. The inspector shall:

(1) inspect:

(A) attached balconies, carports, and porches;

(B) 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; and

(B) deficiencies in accessible components.

(3) The inspector is not required to:

(A) exhaustively measure every porch, balcony, deck, or attached carport components; or

(B) 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

(a) Service entrance and panels. The inspector shall:

(1) report as Deficient:

(A) a drop, weatherhead or mast that is not securely fastened to the building;

(B) the absence of or deficiencies in the grounding electrode system;

(C) missing or damaged dead fronts or covers plates;

(D) conductors not protected from the edges of electrical cabinets, gutters, or cutout boxes;

(E) electrical cabinets and panel boards not appropriate for their location; such as a clothes closet, bathrooms or where they are exposed to physical damage;

(F) electrical cabinets and panel boards that are not accessible or do not have a minimum of 36-inches of clearance in front of them;

(G) deficiencies in:

(i) electrical cabinets, gutters, cutout boxes, and panel boards;

(ii) the insulation of the service entrance conductors, drip loop, separation of conductors at weatherheads, and clearances;

(iii) the compatibility of overcurrent devices and conductors;

(iv) the overcurrent device and circuit for labeled and listed 240 volt appliances;

(v) bonding and grounding;

(vi) conductors;

(vii) the operation of installed ground-fault or arc-fault circuit interrupter devices; and

(H) the absence of:

(i) trip ties on 240 volt overcurrent devices or multi-wire branch circuit;

(ii) appropriate connections;

(iii) anti-oxidants on aluminum conductor terminations;

(iv) a main disconnecting means.

(2) The inspector is not required to:

(A) determine present or future sufficiency of service capacity amperage, voltage, or the capacity of the electrical system;

(B) test arc-fault circuit interrupter devices when the property is occupied or damage to personal property may result, in the inspector's reasonable judgment;

- (C) conduct voltage drop calculations;
- (D) determine the accuracy of overcurrent device labeling;
- (E) remove covers where hazardous as judged by the inspector;
- (F) verify the effectiveness of overcurrent devices; or
- (G) operate overcurrent devices.

(b) Branch circuits, connected devices, and fixtures. The inspector shall:

- (1) manually test the installed and accessible smoke and carbon monoxide alarms;
- (2) report the type of branch circuit conductors;
- (3) report as Deficient:

(A) the absence 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) receptacles that are located within six feet of the outside edge of a sink;

(B) the failure of operation of ground-fault circuit interrupter protection devices;

(C) missing or damaged receptacle, switch or junction box covers;

(D) the absence of:

- (i) equipment disconnects;
- (ii) 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;

(E) deficiencies in:

- (i) receptacles;
- (ii) switches;
- (iii) bonding or grounding;
- (iv) wiring, wiring terminations, junction boxes, devices, and fixtures, including improper location;

(v) doorbell and chime components;

(vi) smoke and carbon monoxide alarms;

(F) improper use of extension cords;

(G) deficiencies in or absences of conduit, where applicable; and

(H) the absence of smoke alarms:

- (i) in each sleeping room;
- (ii) outside each separate sleeping area in the immediate vicinity of the sleeping rooms; and
- (iii) in the living space of each story of the dwelling.

(4) The inspector is not required to:

(A) inspect low voltage wiring;

(B) disassemble mechanical appliances;

(C) verify the effectiveness of smoke alarms;

(D) verify interconnectivity of smoke alarms;

(E) activate smoke or carbon monoxide alarms that are or may be monitored or require the use of codes;

(F) verify that smoke alarms are suitable for the hearing-impaired;

(G) remove the covers of junction, fixture, receptacle or switch boxes unless specifically required by these standards.

§535.230 Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems

(a) Heating equipment. The inspector shall:

(1) report:

(A) the type of heating systems;

(B) the energy sources;

(2) report as Deficient:

(A) inoperative units;

(B) deficiencies in the thermostats;

(C) inappropriate location;

(D) the lack of protection from physical damage;

(E) 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;

(F) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(G) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(H) deficiencies in mounting and performance of window and wall units;

(I) in electric units, deficiencies in:

(i) performance of heat pumps;

(ii) performance of heating elements; and

(iii) condition of conductors; and

(J) in gas units:

(i) gas leaks;

(ii) flame impingement, uplifting flame, improper

flame color, or excessive scale buildup;

(iii) the absence of a gas shut-off valve within six feet of the appliance;

(iv) the absence of a gas appliance connector or one that exceeds six feet in length;

(v) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings; and

(vi) deficiencies in:

(I) combustion, and dilution air;

(II) gas shut-off valves;

(III) access to a gas shutoff valves that prohibits full operation;

(IV) gas appliance connector materials; and

(V) the vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances; and

(b) Cooling equipment other than evaporative coolers. The inspector shall:

(1) report the type of systems;

(2) report as Deficient:

(A) inoperative units;

(B) inadequate cooling as demonstrated by its performance;

(C) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(D) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(E) noticeable vibration of blowers or fans;

(F) water in the auxiliary/secondary drain pan;

(G) a primary drain pipe that discharges in a sewer

vent;

(H) missing or deficient refrigerant pipe insulation;

(I) dirty coils, where accessible;

(J) condensing units lacking adequate clearances or air circulation or that has deficiencies in the fins, location, levelness, or elevation above grade surfaces;

(K) deficiencies in:

(i) the condensate drain and auxiliary/secondary pan and drain system;

(ii) mounting and performance of window or wall units; and

(iii) thermostats.

(c) Evaporative coolers. The inspector shall:

(1) report:

(A) type of systems;

(B) the type of water supply line;

(2) report as Deficient:

(A) inoperative units;

(B) inadequate access and clearances;

(C) deficiencies in performance or mounting;

(D) missing or damaged components;

(E) the presence of active water leaks; and

(F) the absence of backflow prevention.

(d) Duct systems, chases, and vents. The inspector shall report as Deficient:

(1) damaged duct systems or improper material;

(2) damaged or missing duct insulation;

(3) the absence of air flow at accessible supply registers;

(4) the presence of gas piping and sewer vents concealed in ducts, plenums and chases;

(5) ducts or plenums in contact with earth; and

(6) deficiencies in:

(A) filters;

(B) grills or registers; and

(C) the location of return air openings.

(e) 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 or decommissioned equipment; or

(C) duct fans, 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, in the heat pump mode, when the outdoor temperature is above 70 degrees;

(4) verify:

(A) compatibility of components;

(B) tonnage match of indoor coils and outside coils or condensing units;

(C) the accuracy of thermostats; or

(D) the integrity of the heat exchanger; or

(5) determine:

(A) sizing, efficiency, or adequacy of the system;

(B) balanced air flow of the conditioned air to the various parts of the building; or

(C) types of materials contained in insulation.

§535.231 Standards of Practice: Minimum Inspection Requirements for Plumbing Systems

(a) Plumbing systems. The inspector shall:

(1) report:

(A) location of water meter;

(B) location of homeowners main water supply shutoff valve; and

(C) static water pressure;

(2) report as Deficient:

(A) the presence of active leaks;

(B) the lack of a pressure reducing valve when the water pressure exceeds 80 PSI;

(C) 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;

(D) the absence of:

(i) fixture shut-off valves;

(ii) dielectric unions, when applicable;

(iii) back-flow devices, anti-siphon devices, or air gaps at the flow end of fixtures; and

(E) deficiencies in:

(i) water supply pipes and waste pipes;

(ii) the installation and termination of the vent system;

(iii) the performance of fixtures and faucets not connected to an appliance;

(iv) water supply, as determined by viewing functional flow in two fixtures operated simultaneously;

(v) fixture drain performance;

(vi) orientation of hot and cold faucets;

(vii) installed mechanical drain stops;

(viii) commodes, fixtures, showers, tubs, and enclosures; and

(ix) the condition of the gas distribution system.

(3) The inspector is not required to:

(A) operate any main, branch, or shut-off valves;

(B) operate or inspect sump pumps or waste ejector pumps;

(C) verify the performance of:

(i) the bathtub overflow;

(ii) clothes washing machine drains or hose bibbs; or

(iii) floor drains;

(D) inspect:

(i) any system that has been winterized, shut down or otherwise secured;

(ii) 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;

(iii) inaccessible gas supply system components for leaks;

(iv) for sewer clean-outs; or

(v) for the presence or performance of private sewage disposal systems; or

(E) determine:

(i) quality, potability, or volume of the water supply;
or

(ii) effectiveness of backflow or anti-siphon devices.

(b) Water heaters. The inspector shall:

(1) report:

(A) the energy source;

(B) the capacity of the units;

(2) report as Deficient:

(A) inoperative units;

(B) leaking or corroded fittings or tanks;

(C) damaged or missing components;

(D) the absence of a cold water shut-off valve;

(E) if applicable, the absence of a pan or a pan drain system that does not terminate over a waste receptor or to the exterior of the building above the ground surface;

(F) inappropriate locations;

(G) the lack of protection from physical damage;

(H) 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;

(I) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(J) when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(K) the absence of or deficiencies in the temperature and pressure relief valve and discharge piping;

(L) a temperature and pressure relief valve that failed to operate, when tested manually;

(M) in electric units, deficiencies in:

(i) performance of heating elements; and

(ii) condition of conductors; and

(N) in gas units:

(i) gas leaks;

(ii) flame impingement, uplifting flame, improper flame color, or excessive scale build-up;

(iii) the absence of a gas shut-off valve within six feet of the appliance;

(iv) the absence of a gas appliance connector or one that exceeds six feet in length;

(v) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings;

(vi) deficiencies in:

(I) combustion and dilution air;

(II) gas shut-off valves;

(III) access to a gas shutoff valves that prohibit full operation;

(IV) gas appliance connector materials; and

(V) vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

(3) The inspector is not required to:

(A) verify the effectiveness of the temperature and pressure relief valve, discharge piping, or pan drain pipes;

(B) 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

(C) determine the efficiency or adequacy of the unit.

(c) Hydro-massage therapy equipment. The inspector shall:

(1) report as Deficient:

(A) inoperative units;

(B) the presence of active leaks;

(C) deficiencies in components and performance;

(D) missing and damaged components;

(E) the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish; and

(F) the absence or failure of operation of ground-fault circuit interrupter protection devices; and

(2) 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

(a) Dishwashers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) rusted, missing or damaged components;

(4) the presence of active water leaks; and

(5) the absence of backflow prevention.

(b) Food waste disposers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components; and

(4) the presence of active water leaks.

(c) Range hoods and exhaust systems. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) ducts that do not terminate outside the building, if the unit is not of a re-circulating type or configuration; and

(5) improper duct material.

(d) Electric or gas ranges, cooktops, and ovens. The inspector shall report as Deficient:

(1) inoperative units;

(2) missing or damaged components;

(3) combustible material within thirty inches above the cook top burners;

(4) absence of an anti-tip device, if applicable;

(5) gas leaks;

(6) the absence of a gas shutoff valve within six feet of the appliance;

(7) the absence of a gas appliance connector or one that exceeds six feet in length;

(8) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings;

(9) deficiencies in:

(A) thermostat accuracy (within 25 degrees at a setting of 350° F);

(B) mounting and performance;

(C) gas shut-off valves;

(D) access to a gas shutoff valves that prohibits full operation; and

(E) gas appliance connector materials.

(e) Microwave ovens. The inspector shall inspect built-in units and report as Deficient:

- (1) inoperative units;
- (2) deficiencies in performance or mounting; and
- (3) missing or damaged components.

(f) Mechanical exhaust systems and bathroom heaters. The inspector shall report as Deficient:

- (1) inoperative units;
- (2) deficiencies in performance or mounting;
- (3) missing or damaged components;
- (4) ducts that do not terminate outside the building; and
- (5) a gas heater that is not vented to the exterior of the building unless the unit is listed as an unvented type.

(g) Garage door operators. The inspector shall report as Deficient:

- (1) inoperative units;
- (2) deficiencies in performance or mounting;
- (3) missing or damaged components;
- (4) installed photoelectric sensors located more than six inches above the garage floor; and
- (5) door locks or side ropes that have not been removed or disabled.

(h) Dryer exhaust systems. The inspector shall report as Deficient:

- (1) missing or damaged components;
- (2) the absence of a dryer exhaust system when provisions are present for a dryer;
- (3) ducts that do not terminate to the outside of the building;
- (4) screened terminations; and
- (5) ducts that are not made of metal with a smooth interior finish.

(i) 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) disassemble appliances;
- (5) determine the adequacy of venting systems; or
- (6) determine proper routing and lengths of duct systems.

§535.233 Standards of Practice: Minimum Inspection Requirements for Optional Systems

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 of this section apply.

(1) Landscape irrigation (sprinkler) systems. The inspector shall:

(A) manually operate all zones or stations on the system through the controller;

(B) report as Deficient:

- (i) the absence of a rain or moisture sensor,
- (ii) inoperative zone valves;
- (iii) surface water leaks;
- (iv) the absence of a backflow prevention device;
- (v) the absence of shut-off valves between the water meter and backflow device;
- (vi) deficiencies in the performance and mounting of the controller;
- (vii) missing or damaged components; and
- (viii) deficiencies in the performance of the water emission devices; such as, sprayer heads, rotary sprinkler heads, bubblers or drip lines.

(C) The inspector is not required to inspect:

- (i) for effective coverage of the irrigation system;
- (ii) the automatic function of the controller;
- (iii) the effectiveness of the sensors; such as, rain, moisture, wind, flow or freeze sensors; or
- (iv) sizing and effectiveness of backflow prevention device.

(2) Swimming pools, spas, hot tubs, and equipment. The inspector shall:

(A) report the type of construction;

(B) report as Deficient:

(i) the presence of a single blockable main drain (potential entrapment hazard);

(ii) a pump motor, blower, or other electrical equipment that lacks bonding;

(iii) the absence of or deficiencies in safety barriers;

(iv) water leaks in above-ground pipes and equipment;

(v) the absence or failure in performance of ground-fault circuit interrupter protection devices; 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;

(V) filters, gauges, pumps, motors, controls, and sweeps;

(VI) lighting fixtures; and

(VII) the pool heater that these standards of practice require to be reported for the heating system.

(C) The inspector is not required to:

(i) disassemble filters or dismantle or otherwise open any components or lines;

(ii) operate valves;

(iii) uncover or excavate any lines or concealed components of the system;

(iv) fill the pool, spa, or hot tub with water;

(v) inspect any system that has been winterized, shut down, or otherwise secured;

(vi) determine the presence of sub-surface water tables;

(vii) determine the effectiveness of entrapment covers;

(viii) determine the presence of pool shell or sub-surface leaks; or

(ix) 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.

(3) Outbuildings. The inspector shall report as Deficient:

(A) the absence or failure in performance of ground-fault circuit interrupter protection devices 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 building.

(4) Private water wells. The inspector shall:

(A) operate at least two fixtures simultaneously;

(B) recommend or arrange to have performed coliform testing;

(C) report:

(i) the type of pump and storage equipment;

(ii) the proximity of any known septic system;

(D) report as Deficient deficiencies in:

(i) water pressure and flow and performance of pressure switches;

(ii) the condition of accessible equipment and components; and

(iii) the well head, including improper site drainage and clearances.

(E) The inspector is not required to:

(i) open, uncover, or remove the pump, heads, screens, lines, or other components of the system;

(ii) determine the reliability of the water supply or source; or

(iii) locate or verify underground water leaks.

(5) Private sewage disposal (septic) systems. The inspector shall:

(A) report:

(i) the type of system;

(ii) the location of the drain or distribution field;

(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;

(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 components;

(II) functional flow;

(III) site drainage and clearances around or adjacent to the system; and

(IV) the aerobic discharge system.

(C) The inspector is not required to:

(i) excavate or uncover the system or its components;

(ii) determine the size, adequacy, or efficiency of the system; or

(iii) determine the type of construction used.

§535.240 Proration of Payments from the Real Estate Inspection Recovery Fund

In the event of multiple and valid pending claims against a license holder or certificate holder in excess of the limitations in §1102.359, the claims are 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 are prorated, and no interest, attorney fees, or court costs are paid.

(2) If, after allocating the actual damages as provided by paragraph (1) of this section, the limitations in §1102.359 of Chapter 1102, interest on actual damages (pre-judgment and post-judgment) are 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 are prorated, and no other interest, attorney fees, or court costs are paid.

(3) If, after allocating the actual damages and interest thereon as provided by paragraph (1) and (2) of this section, the limitations in §1102.359 of Chapter 1102, are not reached, other interest, attorney fees, and court costs are 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 are prorated.

SUBCHAPTER S RESIDENTIAL RENTAL LOCATORS

§535.300 Advertising by Residential Rental Locators

(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" has the meaning provided by §1101.002(6) of the Act. For the purposes of this section, the term "advertisement" has the same meaning provided by §535.154(a) of this chapter.

(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) "Not all units 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 comply with 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, (512) 936-3000 or (512) 936-3005). 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 not later than the 30th day after the date the advertisement is submitted for publication if no time is stated. Before offering a unit for rent or lease, the locator must also obtain the consent of the unit's owner or of the owner's authorized agent.

(e) Advertising by locators must comply with §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 license holder, to suspend or revoke a license, to take other disciplinary action, and to impose an administrative penalty in accordance with §1101.701 of the Act.

SUBCHAPTER T EASEMENT OR RIGHT-OF-WAY AGENTS

§535.400 Registration of Easement or Right-of-Way Agents

(a) A person who intends to be registered by the Commission as an easement or right-of-way agent must:

(1) file an application for the registration:

(A) through the online process approved by the Commission; or

(B) on the form prescribed by the Commission for that purpose; and

(C) submit the required fee under §535.404 of this subchapter.

(2) The Commission will reject an application submitted without a sufficient filing fee.

(3) The Commission may request additional information be provided to the Commission relating to an application.

(b) To be eligible for registration, an applicant must:

(1) meet the following requirements at the time of the application:

(A) be 18 years of age;

(B) meet any applicable residency requirement;

(C) be a citizen of the United States or a lawfully admitted alien;

(2) comply with the fingerprinting requirements of the Act;

(3) meet the honesty, trustworthiness, and integrity requirements under the Act;

(4) If the applicant is an individual, the applicant must provide the Commission with the individual's photograph not older than two years and signature before issuance of a registration certificate. The person may provide the photograph before the submission of an electronic application; and

(5) If the applicant is a business entity, the applicant must designate one of its managing officers who is registered under this title as agent for the business entity.

(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.

(e) The Commission will assign a registration number to each registrant and provide each registrant with a certificate of registration. Each registration issued by the Commission is valid until the last day of the month two years after the date the registration was issued.

(f) Termination of application. An application is terminated and is subject to no further evaluation or processing if the applicant fails to satisfy the requirements of subsection (b)(1) of this section within one year from the date the application is filed.

(g) 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 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, 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 §1101.364 of the Act and Chapter 533 of this title.

(h) 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 §1101.507 of the Act. 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.

(i) Each registrant shall provide a mailing address, phone number, and email address used in business, if available, to the Commission and shall report all subsequent changes not later than the 10th day after the date of a change of any of the listed contact information. If a registrant fails to update the contact information, the last known contact information provided to the Commission is the registrant's contact information.

§535.401 Required Notices

(a) The Commission adopts by reference Form ERW 4-1, Notice Regarding Easements and Rights-of-Way, which is published by and available from the Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) Each registrant shall display form CIC 1-1, Consumer Information Notice 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 4-1 completed by the registrant.

§535.402 Complaints, Disciplinary Action and Appeals

(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. 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:

(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 to provide information requested by the Commission or its authorized agent in course of an investigation of a complaint by the 10th working day after the date of the request.

(b) Appeals from disciplinary orders against a registrant are governed by §1101.658 of the Act and by Chapter 533 of this title.

§535.403 Renewal of Registration

(a) Renewal application.

(1) A registration expires on the date shown on the face of the registration issued to the license holder.

(2) If a license holder intends to renew an unexpired registration, the license holder must, on or before the expiration date of the current registration:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) submit the appropriate fee required by §535.404 of this title;

(C) comply with the fingerprinting requirements under the Act; and

(D) comply with the policies established by the Texas Education Code, §57.491 regarding default of a student loan.

(b) Failure to provide information requested by the Commission in connection with a renewal application is grounds for disciplinary action under §1101.653 of the Act.

(c) 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.

(d) The Commission will deliver a registration renewal notice to a license holder three months before the expiration of the license holder's current registration. Failure to receive the certificate renewal notice does not relieve a certificate holder of the obligation to renew a certificate.

(e) The Commission is not required to notify a business entity such as a corporation, limited liability

company, or partnership that has failed to designate an officer, manager, or general partner who meets the requirements of §1101.502 of the Act. The Commission may not renew a registration issued to a business entity that has not designated an officer, manager, or general partner who meets the requirements of the Act.

(f) When the last day of the renewal period falls on a non-business day, a renewal application is timely filed when the application is received not 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.

§535.404 Fees

The Commission shall charge and collect the following fees:

(1) a fee of \$200 for the application or renewal of a registration for a two-year period; and

(2) a fee of \$50 for deposit into the real estate recovery trust account upon the filing of an original or renewal application for a certificate of registration.

§535.405 Employee of Owner or Purchaser

(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 or purchaser means a person employed and directly compensated by an owner or purchaser. An independent contractor is not an employee.

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

(d) An employee of a business easement or right-of-way registrant is required to have an individual easement or right-of-way registration to sell, buy, lease, or transfer an easement or right-of-way.

TITLE 22 EXAMINING BOARDS

PART 23 TEXAS REAL ESTATE COMMISSION

CHAPTER 537 PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

§537.11 Use of Standard Contract Forms

(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 license holder 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 license holder 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 license holders with the consent of the Commission.

(b) A license holder 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) This section does not limit a license holder's fiduciary obligation to disclose to the license holder's principals all pertinent facts which are within the knowledge of the license holder, including such facts which might affect the status of or title to real estate.

(d) A license holder 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, a license holder may prepare forms using only forms that 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 license holder may only fill in the blanks provided and may not add to or strike matter from such form, except that a license holder 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 license holder 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) This section does not prevent the license holder from explaining to the principals the meaning of the factual statements and business details contained in an instrument so long as the license holder does not offer or give legal advice.

(i) It is not the practice of law as defined in this Act for a real estate license holder to complete a contract form which is either promulgated by the Commission or prepared by the committee and made available for trial use by license holder 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) A contract form prepared by the committee and approved by the Commission to replace a previously

promulgated form may be used by license holders on a voluntary basis before the effective date of rules requiring use of the replacement form.

(l) When a transaction involves unusual matters that should be reviewed by legal counsel before an instrument is executed, or if the instrument must be acknowledged and filed of record, the license holder shall advise the principals that each should consult a lawyer of the principal's choice before executing the instrument.

(m) A license holder 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 license holder is acting as an agent. The license holder may employ and pay for the services of a lawyer to represent only the license holder 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 license holder 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 website;

(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. Blanks may be scalable to accommodate the inserted language. The Commission may approve the use of a computer file or program that permits a principal of a license holder to strike through language of the form text. The program must be:

(i) limited to use only by a principal of a transaction; and

(ii) in a format and authenticated in manner acceptable to the Commission.

(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 order of the text must be identical to that used by the Commission in printed copies of the particular form.

(D) 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.

(q) Standard Contract Forms adopted by the Commission are published by and available from the Commission at P.O. Box 12188, Austin, Texas 78711-2188 or www.trec.texas.gov.

§537.20 Standard Contract Form TREC No. 9-11

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 9-11 approved by the Commission in 2014 for use in the sale of unimproved property where intended use is for one to four family residences.

§537.21 Standard Contract Form TREC No. 10-6

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 10-6 approved by the Commission in 2012 for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts.

§537.22 Standard Contract Form TREC No. 11-7

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 11-7 approved by the Commission in 2012 for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts.

§537.23 Standard Contract Form TREC No. 12-3

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 12-3 approved by the 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.

§537.26 Standard Contract Form TREC No. 15-5

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 15-5 approved by the Commission in 2012 for use as a residential lease when a seller temporarily occupies property after closing.

§537.27 Standard Contract Form TREC No. 16-5

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 16-5 approved by the Commission in 2012 for use as a residential lease when a buyer temporarily occupies property before closing.

§537.28 Standard Contract Form TREC No. 20-12

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 20-12 approved by the Commission in 2014 for use in the resale of residential real estate.

§537.30 Standard Contract Form TREC No. 23-13

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 23-13 approved by the Commission in 2014 for use in the sale of a new home where construction is incomplete.

§537.31 Standard Contract Form TREC No. 24-13

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 24-13 approved by the Commission in 2014 for use in the sale of a new home where construction is completed.

§537.32 Standard Contract Form TREC No. 25-10

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 25-10 approved by the Commission in 2014 for use in the sale of a farm or ranch.

§537.33 Standard Contract Form TREC No. 26-6

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 26-6 approved by the Commission in 2012 for use as an addendum concerning seller financing.

§537.35 Standard Contract Form TREC No. 28-2

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 28-2 approved by the 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.

§537.37 Standard Contract Form TREC No. 30-11

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 30-11 approved by the Commission in 2014 for use in the resale of a residential condominium unit.

§537.39 Standard Contract Form TREC No. 32-4

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 32-4 approved by the Commission in 2015 for use as a condominium resale certificate.

§537.40 Standard Contract Form TREC No. 33-2

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC

No. 33-2 approved by the 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.

§537.41 Standard Contract Form TREC No. 34-4

The Texas Real Estate Commission (Commission) adopts by reference standard contract form, TREC No. 34-4 approved by the 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.

§537.43 Standard Contract Form TREC No. 36-8

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 36-8 approved by the Commission in 2014 for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association.

§537.44 Standard Contract Form TREC No. 37-5

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 37-5 approved by the Commission in 2014 for use as a resale certificate when the property is subject to mandatory membership in an owners' association.

§537.45 Standard Contract Form TREC No. 38-4

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 38-4 approved by the Commission in 2012 for use as a notice of termination of contract.

§537.46 Standard Contract Form TREC No. 39-7

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 39-7 approved by the Commission in 2012 for use as an amendment to promulgated forms of contracts.

§537.47 Standard Contract Form TREC No. 40-6

The Texas Real Estate Commission (Commission) adopts by reference standard contract form, TREC No. 40-6 approved by the Commission in 2014 for use as an addendum to be added to promulgated

forms of contracts when there is a condition for third party financing.

§537.48 Standard Contract Form TREC No. 41-2

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 41-2 approved by the Commission in 2012 for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan.

§537.51 Standard Contract Form TREC No. 44-2

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 44-2 approved by the Commission in 2014 for use as an addendum to be added to promulgated forms of contracts for the reservation of oil, gas, and other minerals.

§537.52 Standard Contract Form TREC No. 45-1

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 45-1 approved by the Commission in 2012 for use as an addendum to be added to promulgated forms of contracts in the short sale of property.

§537.54 Standard Contract Form TREC No. 47-0

The Texas Real Estate Commission adopts by reference standard contract Form TREC No. 47-0 approved by the Commission in 2014 for use when a property is located in a propane gas system service area.

TITLE 22 EXAMINING BOARDS

PART 23 TEXAS REAL ESTATE COMMISSION

CHAPTER 539 RULES RELATING TO THE RESIDENTIAL SERVICE COMPANY ACT

SUBCHAPTER D DEFINITIONS

§539.31 Definitions

(a) Act--Chapter 1303, Texas Occupation Code.

(b) Commission--The Texas Real Estate Commission.

(c) Residential Service Contract--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 the Residential Service Company Act, Texas Occupations Code, Chapter 1303, §1303.002(5).

SUBCHAPTER E DISCLOSURES

§539.41 Disclosures

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.

SUBCHAPTER F AUTHORIZED PERSONNEL

§539.51 "Employed By" Defined

For the purposes of §1303.101(b) of the Act, 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.

SUBCHAPTER G APPLICATIONS AND MAINTENANCE OF LICENSE

§539.61 Application for Residential Service Company License

(a) The Commission adopts by reference Application Form RSC 1-3 approved by the commission. This document is published by and available from the Commission at P.O. Box 12188, Austin, Texas 78711-2188, or www.trec.texas.gov.

(b) The Commission shall assign a license number to each residential service company licensed by the Commission.

§539.62 Application to Approve Evidence of Coverage/ Schedule of Charges

(a) The Commission adopts by reference Application to Approve Evidence of Coverage/Schedule of Charges, Form RSC 3-2 approved by the Commission. This document is published by and available from the Commission at P.O. Box 12188, Austin, Texas 78711-2188, or www.trec.texas.gov.

(b) Each approved evidence of coverage shall be designated by a unique form number and include the Commission's approval date.

(c) A discount or any other change in any amount to be charged a consumer by a residential service company for coverage under a residential service contract is a change to a schedule of charges previously approved by the Commission. A residential service company must obtain the Commission's prior approval of a revised schedule of

charges before offering the discount or other price reduction.

§539.63 Termination of Application

An application for residential service company license or an application to approve evidence of coverage/schedule of charges will be terminated and the Commission shall take no further action if the applicant fails to submit a response within three months after the date the Commission mails a request to the applicant for curative action.

§539.64 Mailing Address and Other Contact Information

Each residential service company shall furnish a mailing address, telephone number and email address to the Commission and shall report all subsequent changes not later than the 10th day after the date of a change of any of the listed contact information on the form Notice of Modification, RSC 8-0. If the residential service company fails to update the mailing address, the last known mailing address provided to the Commission is the address of the residential service company. Failure to provide the information in a timely manner violates §1303.352(a)(7) of the Act.

§539.65 Change in Company Ownership or Officers

A residential service company shall report changes in its ownership or officers to the Commission on the form Notice of Modification, RSC 8-0. Failure to provide the information in a timely manner violates §1303.352(a)(7) of the Act.

§539.66 Change in Operation

If a residential service company wishes to begin issuing and administering contracts in affiliation with another company, the residential service company shall give the Commission no less than 30 days written notice before commencing such action. The residential service company shall also provide the Commission with copies of any contract and any advertising to be issued or administered by the affiliate. All contracts issued or administered by an affiliate must clearly indicate the relationship between the residential service company and the affiliate. Failure to provide to the Commission in a timely manner written notice of affiliation with another company, any contract or any advertising to

be issued by the affiliate violates §1303.352(a)(7) of the Act.

SUBCHAPTER H MISCELLANEOUS FORMS

§539.71 Miscellaneous Forms

The Commission adopts by reference the following forms approved by the Commission. These forms are published and available from the Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

(1) Residential Service Company Bond, Form RSC 2-4;

(2) Notice of Modification, Form RSC 8-0; and

(3) Consent to Service of Process, Form RSC 9-0.

SUBCHAPTER I FINANCIAL ASSURANCES

§539.81 Funded Reserves

(a) Each residential service company licensed by the Commission shall maintain funded reserves in the amount required by Subchapter D of the Act. Accounts containing funded reserves must be identified as such and may not be encumbered or commingled with funds that 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 based on all outstanding contracts. Each company shall maintain a level of liquidity equal to or greater than the amount of its funded reserve.

(b) Funded reserves may be maintained in the following liquid assets only:

(1) in cash or savings deposits, time deposits, certificates of deposit, 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;

(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; or

(3) in other governmentally backed financial instruments acceptable to the Commission, provided prior permission is obtained.

(c) If a residential service company reinsures the outstanding risk, as authorized under §1303.152 of the Act, through a captive insurance company as defined under §964.001, Insurance Code, the residential service company shall maintain at least 25% of the amount of the funded reserve required under subsection (a).

(d) Each residential service company shall complete a monthly reconciliation to confirm that it meets the minimum funded reserve requirements of the Act, Subchapter D. If the minimum reserve requirement has not been met, the residential service company shall take immediate steps to increase the amount of its funded reserve to meet the minimum funded reserve required.

(e) The Commission may suspend or revoke the license of a residential service company for failure to comply with this section.

§539.82 Security

Each residential service company licensed by the Commission shall maintain a security in the amount required by Subchapter D of the Act. Each residential service company shall confirm, by February 1 of each year, that the security required by §1303.154(b) of the Act is sufficient based on the amount of claims the residential service company paid in this state during the preceding calendar year. If the required amount of security is not sufficient, the residential service company shall take immediate steps to increase the amount of its security to meet the minimum security required and shall give the Commission written notice of the increase and documentation evidencing the increase.

SUBCHAPTER J ANNUAL REPORT

§539.91 Annual Report

(a) The Commission (Commission) adopts by reference the Annual Report Form RSC 6-5 approved by the Commission. This document is published by and available from the Commission, at P.O. Box 12188, Austin, Texas 78711-2188, or

www.trec.texas.gov.

(b) Each residential service company shall file an Annual Report no later than February 1 of each year for the preceding calendar year, with the financial statements filed no later than April 1.

SUBCHAPTER M EXAMINATIONS

§539.121 Examinations

The Commission shall examine the affairs of each licensed residential service company as the Commission deems necessary, but no less than once every five years. A company's failure to provide access to the Commission to the books and records of the company is a violation of §1303.053 of the Act, and may subject the company to the penalties provided in the Act.

SUBCHAPTER N MID-YEAR REPORT

§539.137 Mid-Year Report

(a) The Commission adopts by reference Mid-Year Report Form RSC 7-4 approved by the Commission. This document is published by and available from the Commission at P.O. Box 12188, Austin, Texas 78711-2188, or www.trec.texas.gov.

(b) Each residential service company shall file a Mid-Year Report no later than August 1 of each year for the preceding months of January through June.

SUBCHAPTER O ADMINISTRATIVE PENALTIES

§539.140 Schedule of Administrative Penalties

(a) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1303.355(c) of the Act.

(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) §1303.352(a)(1);

(3) §1303.352(a)(7);

(4) 22 TAC §539.64;

(5) 22 TAC §539.65;

(6) 22 TAC §539.66; and

(7) 22 TAC §539.82.

(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) §1303.052

(2) §1303.101;

(3) §1303.151;

(4) §1303.153;

(5) §1303.352(a)(2)-(6);

(6) §1303.202(a);

(7) §1303.202(b);

(8) §1303.052; and

(9) 22 TAC §539.81.

(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.

SUBCHAPTER P COMPLAINTS

§539.150 Complaints

(a) Complaints regarding licensed residential service companies and contracts issued by those companies shall be in writing and signed by the person filing the complaint.

(b) The Commission shall not investigate a complaint submitted more than four years after the date of the transaction that is the subject of the complaint.

(c) A residential service company shall provide information or documents requested by the Commission or a Commission representative in the

course of the investigation of a complaint not later than the 10th working day after the date the request is received.

SUBCHAPTER Q ISSUES AFFECTING CONSUMERS

§539.160 Copy of Residential Service Company Contract

A residential service company shall provide a contract holder a complete copy of each new or revised evidence of coverage not later than the 15th day after the date payment is made or the date the residential service contract is effective, whichever is later. Failure to provide the copy violates §1303.352(a)(7) of the Act. The residential service company may provide the copy of the evidence of coverage by U.S. mail, email, or other means of delivery acceptable to the Commission.

§539.161 Advertising

A residential service company violates §1303.352(a)(1) of the Act if it uses a side-by-side comparison in its advertising and the contracts being compared do not have substantially the same covered items and exclusions.

§539.162 Contract Requirements

(a) Each residential service contract issued shall contain a statement substantially similar to the following: "This contract is issued by a Residential Service Company licensed by the Texas Real Estate Commission. Complaints about this contract or company may be directed to the Texas Real Estate Commission at P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3049. The purchase of a residential service contract or home warranty contract is optional and similar coverage may be purchased from other residential service companies or insurance companies authorized to conduct business in Texas."

(b) A residential service company that limits its monetary liability of coverage in a residential service contract shall place the limiting language in a bold font.

SUBCHAPTER X FEES

§539.231 Fees

The Commission shall charge and collect the following fees:

- (1) a fee of \$3,500 for filing an application for license;
- (2) a fee of \$3,500 for filing an annual report;
- (3) a fee of \$250 for filing an application to approve an evidence of coverage or changes to an approved evidence of coverage; and
- (4) a fee of \$250 for filing an application to approve a schedule of charges or changes to an approved schedule of charges.

TITLE 22 EXAMINING BOARDS

PART 23 TEXAS REAL ESTATE COMMISSION

CHAPTER 541 RULES RELATING TO THE PROVISIONS OF TEXAS OCCUPATIONS CODE, CHAPTER 53

§541.1 Criminal Offense Guidelines

(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 offering, paying, or taking of bribes, kickbacks, or other illegal compensation;
- (4) offenses against real or personal property belonging to another;
- (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) felonies involving the manufacture, delivery, or intent to deliver controlled substances;

(12) offenses of attempting or conspiring to commit any of the foregoing offenses;

(13) offenses involving aiding and abetting the commission of an offense listed in this section;

(14) repeated or multiple violations of any criminal statute evidencing a disregard for or inability to comply with the law;

(15) felonies involving driving while intoxicated (DWI) or driving under the influence (DUI); and

(16) 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 before 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 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 is 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

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.

TITLE 22 EXAMINING BOARDS

PART 23 TEXAS REAL ESTATE COMMISSION

CHAPTER 543 RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

§543.1 Registration

(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 three months after the Commission mails a request to the applicant for curative action.

§543.2 Amendments

(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 before 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 Commission 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

(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

(a) The Commission adopts by reference the following forms to be used in connection with the registration, amendment, or renewal of a timeshare plan:

(1) Application to Register a Timeshare Plan, Form TSR 1-6;

(2) Application to Amend a Timeshare Registration, Form TSR 2-6;

(3) Application for Abbreviated Registration of a Timeshare Plan, Form TSR 3-4;

(4) Application for Pre-sale Authorization, Form TSR 4-0;

(5) Escrow Surety Bond, Form TSR 5-1;

(6) Construction Surety Bond, Form TSR 6-1;

(7) Consent to Service of Process, Form TSR 7-1; and

(8) Application to Renew the Registration of a Timeshare Plan, Form TSR 8-2.

(b) Forms approved or promulgated by the Commission must be submitted on copies obtained from the Commission, whether in printed format or electronically completed from the forms available on the Commission's website.

(c) Forms adopted by reference in this section are published by and available from the Texas Real Estate Commission at P.O. Box 12188, Austin, Texas 78711-2188, or www.trec.texas.gov.

§543.5 Violations

(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 one month 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 three months 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 one month after the Commission has mailed a request for payment by certified mail to the developer's last known mailing address as reflected by the Commission's records.

(g) It is a material violation of the Act for a developer to fail, not later than the 10th working day after the date of a request, 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 Texas Timeshare 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

(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 Contract Requirements

(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

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

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

(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, not later than the 10 day after the date 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

A developer shall give the Commission written notice of a change of the developer's mailing address not later than the 10th day after the date of the change.

§543.12 Renewal of Registration

(a) The registration of a timeshare plan expires on the last day of the month two years after the date the plan was registered.

(b) A developer of a timeshare plan may renew the registration for a two-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 before the expiration of a registration, the Commission shall mail a renewal application form to the developer's last known mailing address as shown in the Commission's 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 two months after the Commission makes written request for correct or additional information or documentation.

§543.13 Assumed Names

A developer who uses an assumed name under §221.037(b) of the Texas Timeshare Act instead of using the full name of the developer shall notify the Commission in writing at least 10 days before using the assumed name.