

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.6, 153.9, 153.15, 153.20, 153.21

The Texas Appraiser Licensing and Certification Board (TALCB) adopts on an emergency basis new and amendments to 22 TAC §153.6, Military Service Member, Veteran, or Military Spouse Applications; §153.9, Applications; §153.15, Experience Required for Licensing; §153.20, Guidelines for Disciplinary Action, Denial of License; Probationary License; and §153.21, Appraiser Trainee and Supervisory Appraisers.

The TALCB adopts new §153.6 and amendments to §153.9 on an emergency basis to implement statutory changes enacted by the 88th Legislature in SB 422 and become effective on September 1, 2023. SB 422 expands out-of-state occupational license recognition to include military service members, as long as certain criteria are met. SB 422 also modifies the time period within which verification of good standing occurs, as well as issuance of a license after certain conditions are satisfied, from "as soon as practicable" to no later than 30 days. The bill also addresses the term of the license in situations of divorce or other events impacting the military spouse's status. The adopted rules reflect these statutory changes. Specifically, new rule 153.6 is intended to replace and consolidated language struck from §153.9 related specifically to applicants who are military service members, veterans, and military spouses for greater clarity and organization, in unison with the reciprocity process in Occupations Code 1103, requirements established by the Appraisal Qualifications Board, and Appraisal Subcommittee. The adoptions eliminate references to a residency requirement and references to alternative methods of demonstrating competency inapplicable to appraiser applicants. Finally, a statement of purpose is being added to the rule to make clear that this rule addresses the requirements provided under Chapter 55, Occupations Code, and is not intended to alter or modify licensure requirements governed by federal law.

The TALCB adopts the amendments to §§153.15, 153.20, and 153.21 on an emergency basis to implement statutory changes enacted by the 88th Legislature in SB 1222, which becomes effective on September 1, 2023, and which eliminates the requirement that experience required for licensing be submitted on an affidavit. As a result, references to this requirement are removed from TALCB rules, and replaced by a certification requirement.

The identical rules are also being proposed under §2001.023 and §2001.029, Texas Government Code.

The amendments are adopted on an emergency basis under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.6. Military Service Member, Veteran, or Military Spouse Applications.

(a) Definitions.

(1) "Military service member" means a person who is on current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 437.001, Government Code, or similar military service of another state.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Veteran" means a person who has served as a military service member and who was discharged or released from active duty.

(b) The purpose of this section is to establish procedures authorized or required by Texas Occupations Code Chapter 55 and is not intended to modify or alter rights or legal requirements that may be provided under federal law, Chapter 1103 of the Occupations Code, or requirements established by the AQB.

(c) Expedited application.

(1) The Board will process an application for a military service member, veteran, or military spouse on an expedited basis.

(2) If an applicant under this section holds a current license issued by another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license or certification issued in this state, the Board will issue the license not later than the 30th day after receipt of the application.

(d) Waiver of fees.

(1) The Board will waive the license application fee and examination fees for an applicant who is:

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

(B) a military service member, 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 same license in this state.

(2) The executive director or his or her designee may waive the application fee of a military service member, veteran, or military spouse who is not currently licensed, but within the five years preceding the application date held a license in this state and applies for reinstatement in accordance with subsection (f)(2) of this section.

(e) Credit for military experience.

(1) For an applicant who is a military service member or veteran, the Board shall credit any verifiable military service, training, or education toward the licensing requirements, other than an examination requirement.

(2) The Board shall award credit under this subsection consistent with the criteria adopted by the AQB and any exceptions to those criteria as authorized by the AQB.

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

(f) Reciprocity and reinstatement.

(1) For a military service member, 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 may apply by submitting an application for license by reciprocity and any required supplemental documents for military service members, military veterans, or military spouses.

(2) For a military service member, veteran, or military spouse who is not currently licensed, but within the five years preceding the application date held a license in this state may submit an application for reinstatement and any required supplemental documents for military service members, military veterans, or military spouses.

(3) For a military service member and military spouse who wants to practice in Texas in accordance with 55.0041, Occupations Code:

(A) the Board will issue a license by reciprocity if:

(i) the applicant submits:

(I) notice to the Board of the applicant's intent to practice in Texas by submitting an application for reciprocity and any supplemental document for military service members or military spouses; and

(II) a copy of the member's military identification card; and

(ii) no later than 30 days upon receipt of the documents required under paragraph (3)(A) of this subsection, the Board verifies that the member or spouse is currently licensed and in good standing with the other state or jurisdiction.

(B) a person authorized to practice in this state under this subsection must comply with all other laws and regulations applicable to the license.

(C) The event of a divorce or similar event that affects a person's status as a military spouse shall not affect the validity of a license issued under this subsection.

§153.9. Applications.

(a) A person desiring to be licensed as an appraiser or appraiser trainee shall file an application using forms prescribed by the Board or the Board's online application system, if available. The Board may

decline to accept for filing an application that is materially incomplete or that is not accompanied by the appropriate fee. Except as provided by the Act, the Board may not grant a license to an applicant who has not:

(1) paid the required fees;

(2) submitted a complete and legible set of fingerprints as required in §153.12 of this title (relating to Criminal History Checks);

(3) satisfied any experience and education requirements established by the Act, Board rules, and the AQB;

(4) successfully completed any qualifying examination prescribed by the Board;

(5) provided all supporting documentation or information requested by the Board in connection with the application;

(6) satisfied all unresolved enforcement matters and requirements with the Board; and

(7) met any additional or superseding requirements established by the Appraisal Qualifications Board.

(b) Termination of application. An application is subject to no further evaluation or processing if within one year from the date an application is filed, an applicant fails to satisfy:

(1) a current education, experience or exam requirement;

(2) the fingerprint and criminal history check requirements in §153.12 of this title.

(c) A license is valid for the term for which it is issued by the Board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to License Renewal).

(d) The Board may deny a license to an applicant who fails to satisfy the Board as to the applicant's honesty, trustworthiness, and integrity.

(e) The Board may deny a license to an applicant who submits incomplete, false, or misleading information on the application or supporting documentation.

(f) When an application is denied by the Board, no subsequent application will be accepted within two years after the date of the Board's notice of denial as required in §157.7 of this title (Denial of a License, Renewal or Reinstatement; Adverse Action Against a License Holder).

~~[(g) The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:]~~

~~[(1) "Military service member" means a person who is on current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 437.001, Government Code, or similar military service of another state.]~~

~~[(2) "Military spouse" means a person who is married to a military service member.]~~

~~[(3) "Veteran" means a person who has served as a military service member and who was discharged or released from active duty.]~~

~~[(h) This subsection applies to an applicant who is a military service member, veteran, or military spouse.]~~

~~[(1) The Board will process an application under this subsection on an expedited basis.]~~

{(2) If an applicant under this subsection holds a current license issued by another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license issued in this state, the Board will:}

{(A) Waive the license application and examination fees; and}

{(B) Issue the license as soon as practicable after receipt of the application.}

{(3) The Board may reinstate a license previously held by an applicant, if the applicant satisfies the requirements in §153.16 of this chapter (relating to License Reinstatement).}

{(4) The Board may allow an applicant to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Board. 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 Board:}

{(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 commissioner.}

{(i) This subsection applies to an applicant who is a military service member or veteran.}

{(1) The Board will waive the license application and examination fees for an applicant under this subsection whose military service, training or education substantially meets all of the requirements for a license.}

{(2) The Board will credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.}

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

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

{(5) The Board will evaluate applications filed under this subsection consistent with the criteria adopted by the AQB and any exceptions to those criteria as authorized by the AQB.}

{(j) This subsection applies to an applicant who is a military spouse. The Board will waive the license application fee and issue a license by reciprocity to an applicant who wants to practice in Texas in accordance with 55.0041, Occupations Code, if:}

{(1) the applicant submits:}

{(A) an application to practice in Texas on a form approved by the Board;}

{(B) proof of the applicant's Texas residency; and}

{(C) a copy of the applicant's military identification card; and}

{(2) the Board verifies that the military spouse is currently licensed and in good standing with the other state or jurisdiction.}

{(k) Except as otherwise provided in this section, a person applying for license under subsection (h), (i) or (j) of this section must also:}

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

{(2) pay the required fee for that application; and}

{(3) submit the supplemental form approved by the Board applicable to subsection (h), (i) or (j) of this section.}

{(l) The commissioner may waive any prerequisite to obtaining a license for an applicant as allowed by the AQB.}

§153.15. Experience Required for Licensing.

(a) - (c) (No change.)

(d) Public Information Act. All information and documentation submitted to the Board in support of an application for license or application to upgrade an existing license, including an applicant's experience log, experience certification [affidavit], copies of appraisals and work files, may be subject to disclosure under the Public Information Act, Chapter 552, Texas Government Code, unless an exception to disclosure applies.

(e) Applicants claiming experience credit under subsection (b)(1) - (4) of this section must submit a Board-approved Appraisal Experience Log that lists each appraisal assignment or other work for which the applicant is seeking credit and an Appraisal Experience Certification [Affidavit]. The Experience Log must include:

{(1) The Experience Log must include:}

(1) [(A)] the full amount of experience hours required for the license type sought, as required by the AQB;

(2) [(B)] the required number of hours of experience required for each property type as required by the AQB; and

(3) [(C)] the minimum length of time over which the experience is claimed, as required by the AQB.

{(2) The Experience Log must also include Recent Experience.}

{(A) The Log must include a minimum of 10 appraisal reports representing at least 10 percent of the hours and property type of experience required for each license category and for which an applicant seeks experience credit that have been performed within 5 years before the date an application is accepted for filing by the Board.}

{(B) This requirement does not eliminate an applicant's responsibility to comply with the 5-year records retention requirement in USPAP.}

(f) The Board may grant experience credit for work listed on an applicant's Appraisal Experience Log that:

(1) complies with the USPAP edition in effect at the time of the appraisal;

(2) is verifiable and supported by:

(A) work files in which the applicant is identified as participating in the appraisal process; or

(B) appraisal reports that:

(i) name the applicant in the certification as providing significant real property appraisal assistance; or

(ii) the applicant has signed;

(3) was performed when the applicant had legal authority to do so; and

(4) complies with the acceptable categories of experience established by the AQB and stated in subsection (b) of this section.

(g) Consistent with this chapter, upon review of the applicant's real estate appraisal experience, the Board may grant a license or certification contingent upon completion of additional education, experience or mentorship.

(h) Upon review of an applicant's Appraisal Experience Log, the Board may, at its sole discretion, grant experience credit for the hours shown on an applicant's log even if some work files have been destroyed because of the 5-year records retention period in USPAP has passed.

(i) The Board may grant experience credit for applicants claiming experience credit under subsection (b)(5) of this section that submit a valid certificate of completion from an AQB approved PAREA program.

(j) The Board may, at its sole discretion, accept evidence other than an applicant's Appraisal Experience Log and Appraisal Experience Certification [Affidavit] to demonstrate experience claimed by an applicant.

(k) The Board must verify the experience claimed by each applicant generally complies with USPAP.

(1) Verification may be obtained by:

(A) requesting copies of appraisals and all supporting documentation, including the work files; and

(B) engaging in other investigative research determined to be appropriate by the Board.

(2) If the Board requests documentation from an applicant to verify experience claimed by an applicant, the applicant has 60 days to provide the requested documentation to the Board.

(A) In response to an initial request for documentation to verify experience, an applicant must submit a copy of the relevant appraisals, but is not required to submit the associated work files at that time.

(B) If in the course of reviewing the submitted appraisals, the Board determines additional documentation is necessary to verify general compliance with USPAP, the Board may make additional requests for supporting documentation.

(3) Experience involved in pending litigation.

(A) The Board will not request work files from an applicant to verify claimed experience if the appraisal assignments are identified on the experience log submitted to the Board as being involved in pending litigation.

(B) If all appraisal assignments listed on an applicant's experience log are identified as being involved in pending litigation, the Board may audit any of the appraisal assignments on the applicant's experience log, regardless of litigation status, with the written consent of the applicant and the applicant's supervisory appraiser.

(4) Failure to comply with a request for documentation to verify experience, or submission of experience that is found not to com-

ply with the requirements for experience credit, may result in denial of a license application.

(5) A license holder who applies to upgrade an existing license and submits experience that does not comply with USPAP may also be subject to disciplinary action up to and including revocation.

(l) Unless prohibited by Tex. Occ. Code §1103.460, applicable confidentiality statutes, privacy laws, or other legal requirements, or in matters involving alleged fraud, Board staff shall use reasonable means to inform supervisory appraisers of Board communications with their respective trainees.

§153.20. *Guidelines for Disciplinary Action, Denial of License; Probationary License.*

(a) The Board may take disciplinary action or deny issuing a license to an applicant at any time the Board determines that the applicant or license holder:

(1) disregards or violates a provision of the Act or the Board rules;

(2) is convicted of a felony;

(3) fails to notify the Board not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud or moral turpitude;

(4) fails to notify the Board not later than the 30th day after the date of incarceration if the person, in this or another state, has been incarcerated for a criminal offense involving fraud or moral turpitude;

(5) fails to notify the Board not later than the 30th day after the date disciplinary action becomes final against the person with regard to any occupational license the person holds in Texas or any other jurisdiction;

(6) fails to comply with the USPAP edition in effect at the time of the appraiser service;

(7) acts or holds himself or herself or any other person out as a person licensed under the Act or by another jurisdiction when not so licensed;

(8) accepts payment for appraiser services but fails to deliver the agreed service in the agreed upon manner;

(9) refuses to refund payment received for appraiser services when he or she has failed to deliver the appraiser service in the agreed upon manner;

(10) accepts payment for services contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made in writing to the client;

(11) offers to perform appraiser services or agrees to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made in writing to the client;

(12) makes a material misrepresentation or omission of material fact;

(13) has had a license as an appraiser revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is a crime under Texas law;

(14) procures, or attempts to procure, a license by making false, misleading, or fraudulent representation;

(15) fails to actively, personally, and diligently supervise an appraiser trainee or any person not licensed under the Act who assists the license holder in performing real estate appraiser services;

(16) has had a final civil judgment entered against him or her on any one of the following grounds:

(A) fraud;

(B) intentional or knowing misrepresentation;

(C) grossly negligent misrepresentation in the performance of appraiser services;

(17) fails to make good on a payment issued to the Board within thirty days after the Board has mailed a request for payment by certified mail to the license holder's last known business address as reflected by the Board's records;

(18) knowingly or willfully engages in false or misleading conduct or advertising with respect to client solicitation;

(19) misuses or misrepresents the type of classification or category of license number;

(20) engages in any other act relating to the business of appraising that the Board, in its discretion, believes warrants a suspension or revocation;

(21) uses any title, designation, initial or other insignia or identification that would mislead the public as to that person's credentials, qualifications, competency, or ability to perform licensed appraisal services;

(22) fails to comply with an agreed order or a final order of the Board;

(23) fails to answer all inquiries concerning matters under the jurisdiction of the Board within 20 days of notice to said individual's address of record, or within the time period allowed if granted a written extension by the Board; or

(24) after conducting reasonable due diligence, knowingly accepts an assignment from an appraisal management company that is not exempt from registration under the Act which:

(A) has not registered with the Board; or

(B) is registered with the Board but has not placed the appraiser on its panel of appraisers maintained with the Board; or

(25) fails to approve, sign, and deliver to their appraiser trainee the appraisal experience log and certification [affidavit] required by §153.15[§153.15(f)(1) and §153.17(e)(1)] of this title for all experience actually and lawfully acquired by the trainee while under the appraiser's sponsorship.

(b) - (k) (No change.)

§153.21. *Appraiser Trainee and Supervisory Appraisers.*

(a) - (c) (No change.)

(d) Maintaining eligibility to act as an appraiser trainee.

(1) Appraiser trainees must maintain an appraisal log and appraisal experience certifications [affidavits] on forms approved by the Board, for the license period being renewed. It is the responsibility of both the appraiser trainee and the supervisory appraiser to ensure the appraisal log is accurate, complete and signed by both parties at least quarterly or upon change in supervisory appraiser. The ap-

praiser trainee will promptly provide copies of the experience logs and certifications [affidavits] to the Board upon request.

(2) An appraiser trainee must complete an approved Appraiser Trainee/Supervisory Appraiser course within four years before the expiration date of the appraiser trainee's current license and provide proof of completion to the Board.

(3) If an appraiser trainee has not provided proof of course completion at the time of renewal, but has met all other requirements for renewing the license:

(A) the Board will renew the appraiser trainee's license on inactive status;

(B) the appraiser trainee will no longer be eligible to perform appraisals or appraisal services; and

(C) the appraiser trainee's relationship with any supervisory appraiser will be terminated.

(4) An appraiser trainee may return the appraiser trainee's license to active status by:

(A) completing the course required by this section;

(B) submitting proof of course completion to the Board;

(C) submitting an application to return to active status, including an application to add a supervisory appraiser; and

(D) paying any required fees.

(e) Duties of the supervisory appraiser.

(1) Supervisory appraisers are responsible to the public and to the Board for the conduct of the appraiser trainee under the Act.

(2) The supervisory appraiser assumes all the duties, responsibilities, and obligations of a supervisory appraiser as specified in these rules and must diligently supervise the appraiser trainee. Diligent supervision includes, but is not limited to, the following:

(A) direct supervision and training as necessary;

(B) ongoing training and supervision as necessary after the supervisory appraiser determines that the appraiser trainee no longer requires direct supervision;

(C) communication with and accessibility to the appraiser trainee; and

(D) review and quality control of the appraiser trainee's work.

(3) Supervisory appraisers must approve and sign the appraiser trainee's appraisal log [and experience affidavit] at least quarterly and provide appraiser trainees with access to any appraisals and work files completed under the supervisory appraiser.

(4) After notice and hearing, the Board may reprimand a supervisory appraiser or may suspend or revoke a supervisory appraiser's license based on conduct by the appraiser trainee constituting a violation of the Act or Board rules.

(f) Termination of supervision.

(1) Supervision may be terminated by the supervisory appraiser or the appraiser trainee.

(2) If supervision is terminated, the terminating party must:

(A) immediately notify the Board on a form approved by the Board; and

(B) notify the non-terminating party in writing no later than the 10th day after the date of termination; and

(C) pay any applicable fees no later than the 10th day after the date of termination.

(3) If an appraiser trainee is no longer under the supervision of a supervisory appraiser:

(A) the appraiser trainee may no longer perform the duties of an appraiser trainee; and

(B) is not eligible to perform those duties until:

(i) an application to supervise the trainee has been filed;

(ii) any required fees have been paid; and

(iii) the Board has approved the application.

(g) Course approval.

(1) To obtain Board approval of an Appraiser Trainee/Supervisory Appraiser course, a course provider must:

(A) submit form ATS-0, Appraiser Trainee/Supervisory Appraiser Course Approval, adopted herein by reference; and

(B) satisfy the Board that all required content set out in form ATS-0 is adequately covered.

(2) Approval of an Appraiser Trainee/Supervisory Appraiser course shall expire two years from the date of Board approval.

(3) An Appraiser Trainee/Supervisory Appraiser course may be delivered through:

(A) classroom delivery; or

(B) synchronous, asynchronous or hybrid distance education delivery. The course design and delivery mechanism for asynchronous distance education courses, including the asynchronous portion of hybrid courses must be approved by an AQB approved organization.

(h) ACE credit.

(1) Supervisory appraisers who complete the Appraiser Trainee/Supervisory Appraiser course may receive ACE credit for the course.

(2) Appraiser Trainees may not receive qualifying or ACE credit for completing the Appraiser Trainee/Supervisory Appraiser course.

The agency certifies that legal counsel has reviewed the emergency adoption and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2023.

TRD-202303065

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: September 1, 2023

Expiration date: December 29, 2023

For further information, please call: (512) 936-3652

