

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 22. EXAMINING BOARDS

### PART 23. TEXAS REAL ESTATE COMMISSION

#### CHAPTER 531. CANONS OF PROFESSIONAL ETHICS AND CONDUCT

##### 22 TAC §531.18

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §531.18, Consumer Information, in Chapter 531, Canons of Professional Ethics and Conduct.

The amendments to 22 TAC §531.18 are proposed to reflect statutory changes enacted by the 88th Legislature in HB 1363, which eliminated the real estate inspection recovery fund. As a result, references to that fund are removed from the Consumer Protection Notice form adopted by reference and the version number in the rule is updated.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

For each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151 and §1101.202. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.202 requires the Commission to prescribe a notice containing the name, mailing address, and telephone number of the Commission for the purpose of directing a complaint to the commission; and establish methods by which consumers and service recipients are provided the notice by a person regulated under Chapter 1101 or 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

##### §531.18. *Consumer Information.*

(a) The Commission adopts by reference the Consumer Protection Notice, TREC No. CN 1-5 [~~CN 1-4~~]. 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](http://www.trec.texas.gov).

(b) Each license holder shall provide the notice adopted under subsection (a) by:

(1) displaying it in a readily noticeable location in each place of business the broker maintains; and

(2) providing a link to it in a readily noticeable place on the homepage of each business website, labeled:

(A) "Texas Real Estate Commission Consumer Protection Notice", in at least 10 point font; or

(B) "TREC Consumer Protection Notice", in at least 12 point font.

(c) For purposes of this section, business website means a website on the internet that:

- (1) is accessible to the public;

(2) contains information about a license holder's real estate brokerage services; and

(3) the content of the website is controlled by the license holder.

(d) For purposes of providing the link required under subsection (b)(2) on a social media platform, the link may be located on:

(1) the account holder profile; or

(2) a separate page or website through a direct link from the social media platform or account holder profile.

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

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Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284



## CHAPTER 535. GENERAL PROVISIONS

### SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

#### 22 TAC §535.4, §535.5

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.4, License Required, and §535.5, License Not Required, in Chapter 535, General Provisions.

The amendments are proposed to implement statutory changes enacted by the 88th Legislature in SB 1577, which become effective January 1, 2024. Currently, Chapter 1101, Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. SB 1577 allows certain entities-limited liability companies and s-corporations (as that term is defined by federal law)-to register with the Commission in lieu of obtaining a license. In order to be eligible for registration, these exempted entities must: (i) perform no acts of a broker, other than receiving said compensation on behalf of a license holder; and (ii) be at least 51 percent owned by the license holder on whose behalf the business entity receives compensation. The proposed rule changes reflect this statutory change.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as noted below, for each year of the first five years the proposed amendments are in effect, the amendments will not:

-create or eliminate a government program;

-require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

SB 1577 limits an existing regulation by exempting certain business entities from licensure requirements as detailed above. By doing so, it decreases the number of individual license holders who must obtain licenses on behalf of these entities. However, the licensure requirement is replaced with a registration requirement.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

#### §535.4. License Required.

(a) The Act applies to any person acting as a real estate broker or sales agent 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 foreign brokers and Texas brokers pursuant to §1101.651(a)(2) of the Act and §535.131 of this chapter (relating to Unlawful Conduct; Splitting Fees).

(c) Unless otherwise exempted by the Act, a person must be licensed as a broker or sales agent to show a property. For purposes of this section, to "show" a property includes causing or permitting the property to be viewed by a prospective buyer or tenant, unlocking or providing access onto or into a property for a prospective buyer or tenant, and hosting an open house at the property.

(d) A license holder may permit a prospective tenant unescorted access to view a property available for rent or lease only if:

(1) the property is vacant, meaning no person lives at, and no personal property except property intended to remain or convey is stored at, the property;

(2) the license holder employs a method to control access and verify the identity of the prospective tenant; and

(3) the property owner has signed a written consent that sets out in bold print in at least 12-point font that:

(A) the property owner is aware that unescorted access may occur; and

(B) specifies whether the broker enabling unescorted access or the property owner will be responsible for any damage that results from such unescorted access.

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

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

(g) Unless otherwise exempted by §535.5 of this chapter (relating to License Not Required) and §1101.355(d) of the Act, a [A] business entity owned by a broker or sales agent which receives compensation on behalf of the license holder must be licensed as a broker under the Act.

(h) 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.

(i) For purposes of subsection (h) of this section, a single-family residential real property 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.

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

(k) 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.

(l) 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.

(m) 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.

(n) 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.

(o) A person must be licensed as a broker or sales agent 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 sales agent.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) An answering service or clerical or administrative 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.

(g) A business entity which receives compensation on behalf of a license holder that is earned by the license holder while engaged in real estate brokerage is not required to be licensed by the Commission if the business entity:

(1) performs no other acts of a broker;

(2) is:

(A) a limited liability company as defined by §101.001, Business Organizations Code; or

(B) an S corporation as defined by 26 U.S.C. Section 1361;

(3) is at least 51 percent owned by the license holder on whose behalf the business entity receives compensation; and

(4) is registered with the Commission as provided by §535.35 of this chapter (relating to Registration of Certain Business Entities).

The agency certifies that legal counsel has reviewed the proposal 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 9, 2023.

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Vanessa E. Burgess

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Texas Real Estate Commission

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For further information, please call: (512) 936-3284



## 22 TAC §535.6

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.6, Equitable Interests in Real Property, in Chapter 535, General Provisions.

Currently, a person may engage in "wholesaling"--that is, the practice of acquiring an option or entering into a contract to purchase real property and then selling or assigning the interest in the contract to another--without a real estate license, as long as certain disclosures are made to the buyer of the interest.

The amendments are proposed to implement statutory changes enacted by the 88th Legislature in SB 1577, which requires first, that disclosure also be made to the original seller, and second, that the disclosures be in writing. Subsection (c) is being removed to more closely align with the statutory language. Finally, a non-substantive change is made for consistency throughout the chapter.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as noted below, for each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;

-require an increase or decrease in future legislative appropriations to the agency;

-require an increase or decrease in fees paid to the agency;

-create a new regulation;

-expand, limit or repeal an existing regulation;

-increase or decrease the number of individuals subject to the rule's applicability; or

-positively or adversely affect the state's economy.

SB 1577 expands an existing regulation by requiring disclosure to sellers and that the disclosure be in writing.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under §1101.0045, Texas Occupations Code, which establishes the statutory basis for the rule.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

### §535.6. *Equitable Interests in Real Property.*

(a) A person may acquire an option or enter into a contract to purchase real property and then sell or offer to sell the option or assign or offer to assign the interest in the contract without having a real estate license if the person:

(1) does not use the option or contract to purchase to engage in real estate brokerage; and

(2) discloses in writing the nature of the [their] equitable interest to any seller or potential buyer.

(b) A person selling or offering to sell an option or assigning or offering to assign an interest in a contract to purchase real property without disclosing the nature of that interest as provided by subsection (a) of this section [to a potential buyer] is engaging in real estate brokerage.

~~(c) A license holder who is engaging in real estate brokerage by selling or buying or offering to sell or buy an option or assigning or offering to assign an interest in a contract to purchase real property must disclose to any potential seller or buyer that the principal is selling or buying an option or assigning an interest in a contract and does not have legal title to the real property.]~~

~~(c) [(4)] A license holder acting on his or her own behalf or in a capacity described by §535.144(a) of this chapter (relating to When Acquiring or Disposing of Own Property or Property of Spouse, Parent or Child) who is selling an option or assigning an interest in a contract to purchase real property must disclose in writing to any seller or potential buyer that the license holder is selling an option or assigning an interest in a contract and that the license holder does not have legal title to the real property.~~

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

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Vanessa E. Burgess

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## SUBCHAPTER C. EXEMPTIONS TO REQUIREMENTS OF LICENSURE

### 22 TAC §535.35

The Texas Real Estate Commission (TREC) proposes new 22 TAC §535.35, Registration of Certain Business Entities, in Chapter 535, General Provisions.

New §535.35 is proposed to implement statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective January 1, 2024. Currently, §1101.355(c), Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. Licensure requires certain conditions be satisfied, including, for instance, that the entity have a designated broker and payment of an initial license application fee of \$150 and a subsequent \$72 application fee to renew. SB 1577 amends §1101.355 by allowing certain entities-limited liability companies and s-corporations (as that term is defined by federal law)-to register with the Commission in lieu of obtaining a license and requires the Commission to adopt rules providing for this registration. The proposed new rule outlines the requirements these exempt business entities must follow to register the business entity with the Commission. The proposed changes also provide a term for the registration once issued, as well as an obligation to certify continuing compliance. Additionally, SB 1577 also amends §1101.152, Occupations Code, which specifically directs the Commission to adopt a rule to charge and collect fees in amounts reasonable and necessary to cover the costs of registering a business entity. Therefore, the changes set forth the fee obligations for such registration and certification of continued compliance. Finally, under the proposal, a license holder must also notify the Commission in writing not later than the 10th day after the date the business entity no longer qualifies for the exemption.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed new rule is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed new rule. There is no significant economic cost anticipated for persons who are required to comply with the proposed new rule. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed is in effect, the public benefit

anticipated as a result of enforcing the new rule will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as noted below, for each year of the first five years the proposed new rule is in effect the new rule will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

The proposed changes limit an existing regulation by exempting certain business entities from licensure requirements as detailed above. By doing so, it decreases the number of individual license holders who must obtain licenses on behalf of these entities. However, the licensure requirement is replaced with a registration requirement and decreased associated fees paid to the agency. Section 1101.152, as amended by SB 1577, also requires the Commission to charge and collect reasonable and necessary fees to cover the costs of the registration of certain business entities. However, entities that will ultimately be eligible for registration as of January 1, 2024, must currently be licensed and pay the fees for such licensure, including a \$150 initial application fee. Licensure also requires renewal and with that, a new set of fees, including a \$72 renewal fee. Therefore, while this creates new fees associated with registration and certification of compliance, these fees are lower than what individuals would be required to pay to obtain an original license and renew that license.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

The statutes affected by this proposal is Texas Occupations Code, Chapters 1101. No other statute, code or article is affected by the proposed new rule.

§535.35. Registration of Certain Business Entities.

(a) For purposes of this section, an "exempt business entity" means a business entity which is exempt from the requirements of being licensed under §535.5(g) of this chapter (relating to License Not Required) and §1101.355(d) of the Act.

(b) Before an exempt business entity may receive compensation on behalf of a license holder, the license holder must:

(1) register the business entity with the Commission on a form approved by the Commission;

(2) pay a \$140 fee to the Commission; and

(3) provide supporting documentation satisfactory to the Commission demonstrating the entity meets the requirements for exemption.

(c) Term of Registration; Certification.

(1) A registration issued under this section is valid for two years from the date of issuance.

(2) The Commission will deliver a notice regarding expiration of the registration to the license holder three months before the expiration of the registration.

(3) Failure to receive the notice from the Commission does not relieve a license holder from the requirements of this subsection.

(4) Prior to the expiration of the registration, a license holder must:

(A) certify on a form approved by the Commission that the exempt business entity continues to meet the requirements under this section;

(B) pay a \$70 fee to the Commission; and

(C) provide supporting documentation as provided in subsection (b)(3) of this section, if determined necessary by the Commission.

(5) Failure to timely certify will result in expiration of the registration and loss of the exemption under §535.5(g) of this chapter and §1101.355(d) of the Act.

(d) A license holder must notify the Commission not later than the 10th day after the date the business entity no longer satisfies the requirements of §535.5(g)(1)-(3) of this chapter and §1101.355(d) of the Act.

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

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Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284



## SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

### 22 TAC §535.58

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.58, License for Military Service Members,

Veterans, or Military Spouses, in Chapter 535, General Provisions.

The amendments are proposed, in part, to implement statutory changes enacted by the 88th Legislature in SB 422, which first, 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 proposed rule amendments reflect these statutory changes.

In addition, as a result of education requirements being added for easement and right-of-way agents (ERWs) during the 87th Legislative Session, language is added making clear that ERW applicants must otherwise comply with the requirements in 22 TAC §535.400, unless excepted by §535.58. Additionally, language is being struck from the rule to better reflect the statutory framework under Chapter 55, Occupations Code. 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 not federal law.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as noted below, for each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

The proposed changes will expand an existing regulation and will increase the number of individuals subject to the rule's applicability, as required by SB 422.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules->

and-laws/comment-on-proposed-rules, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under §55.0041, as amended by SB 422, which requires agencies to adopt rules for the recognition of out-of-state licenses for military service members and military spouses, and §55.005, which requires expedited licenses for military service members, military veterans, and military spouse.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.58. *License for Military Service Members, Veterans, or Military Spouses.*

(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 §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) Except as otherwise provide by this section:

(1) a person applying for a sales agent or broker license under this chapter must comply with all requirements of §535.51 of this chapter (relating to General Requirements for a Real Estate License); ~~and~~

(2) a person applying for an inspector license under this chapter must comply with all requirements of §535.208 of this chapter (relating to Application for a License); ~~and~~

(3) a person applying for a certificate of registration under this chapter must comply with all requirements of §535.400 of this chapter (relating to Registration of Easement or Right-of-Way Agents).

(c) Expedited application.

(1) The Commission shall process a license for an applicant who is a military service member, military veteran, or military spouse on an expedited basis.

(2) If the applicant holds a current certificate or license issued by a country, territory, or state other than Texas that has licensing requirements that are substantially equivalent to the requirements for the certificate or license issued in Texas, the Commission shall issue the license not later than the 30th day [as soon as practicable] after receipt of the application.

(d) Waiver of fees and requirements.

(1) The Commission shall waive application 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; or

(B) 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 may waive any other requirements for obtaining a license for an applicant who:

(A) meets the requirements of subsection (c)(2) of this section; or

(B) held a license in Texas within the five years preceding the date the application is filed with the Commission.

(e) Credit for military service.

(1) For an applicant who is a military service member or veteran, 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.

(f) Alternate methods of competency. The Commission may accept alternative methods for demonstrating an applicant's competency in the place of passing the specific licensing examination, or completing education and/or experience required to obtain a particular license. Based on the applicant's circumstances and the requirements of a particular license, the Commission may consider any combination of the following as alternative methods of demonstrating competency:

(1) education;

(2) continuing education;

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

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods required by the Executive Director.

(g) Limited reciprocity for military service members and military spouses.

(1) A person who is a military service member or military spouse 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 to the requirements for the certificate or license issued in Texas who wants to practice in Texas in accordance with §55.0041, Occupations Code, must:

(A) notify the Commission of the person's intent to practice in Texas on a form approved by the Commission; and

(B) submit a copy of the military identification card issued to the person; and

(2) Upon receipt of the documents required under paragraph (1) of this subsection, the Commission will:

(A) no later than 30 days, verify that the person is currently licensed and in good standing by another jurisdiction with substantially equivalent licensing requirements to Texas; and

## SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

### 22 TAC §535.147

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.147, Splitting Fee with Unlicensed Person, in Chapter 535, General Provisions.

The amendments are proposed to implement statutory changes enacted by the 88th Legislature in SB 1577, which become effective January 1, 2024. Currently, Chapter 1101, Occupations Code, requires business entities who receive compensation on behalf of a license holder to be licensed as a broker. SB 1577 allows certain entities--limited liability companies and s-corporations (as that term is defined by federal law)--to register with the Commission in lieu of obtaining a license. In order to be eligible for registration, these exempted entities must: (i) perform no acts of a broker, other than receiving said compensation on behalf of a license holder; and (ii) be at least 51 percent owned by the license holder on whose behalf the business entity receives compensation. The proposed rule changes reflect this statutory change.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Excepted as noted below, for each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

SB 1577 limits an existing regulation by exempting certain business entities from licensure requirements as detailed above. By doing so, it decreases the number of individual license holders who must obtain licenses on behalf of these entities. However, the licensure requirement is replaced with a registration requirement.

(B) upon confirmation from the other jurisdiction that the person is currently licensed and in good standing with that jurisdiction, issue a license to the person for the same period in which the person is licensed or certified by the other jurisdiction.

(3) A person may not practice in Texas in accordance with this subsection without receiving confirmation from the Commission that the Commission has verified that the person is currently licensed and in good standing with another jurisdiction. Confirmation is provided by the Commission when the person is issued a license as provided for in paragraph (2) of this subsection.

(4) A license issued under this subsection may not be renewed.

~~[(5) After expiration of the initial license, if a person wants to continue to practice in accordance with this subsection, it is the responsibility of the person to seek confirmation from Commission that the person continues to meet the requirements to practice under this subsection by submitting a form approved by the Commission certifying that:]~~

~~[(A) the person is still currently licensed and in good standing with another jurisdiction with substantially equivalent licensing requirements to Texas; and]~~

~~[(B) the person's spouse is still stationed at a military installation in this state.]~~

~~[(6) Upon verification by Commission that the person still meets the requirements under this subsection, the Commission will issue another license for the same period in which the person is currently licensed or certified by the other jurisdiction.]~~

(5) ~~[(7)]~~ The time period for which a person may practice under this subsection without meeting the requirements for licensure in Texas is limited to the lesser of:

(A) the period during which the person or person's spouse is stationed at a military installation in this state; or

(B) three years.

(6) ~~[(8)]~~ A person authorized to practice in this state under this subsection must comply will all other laws and regulations applicable to the license, including any sponsorship requirements.

(7) Notwithstanding paragraph (5) of this subsection, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to practice for three years from the date of the issuance of the license under this subsection.

(h) 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 that may be provided under federal law.

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

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Vanessa E. Burgess

General Counsel

Texas Real Estate Commission

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For further information, please call: (512) 936-3284





Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151 and §1101.355, as that section is amended by SB 1577. Section 1101.151 authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. Section 1101.355, as amended by SB 1577, requires the Commission to adopt rules providing for the registration of an exempted business entity.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.147. *Splitting Fee with Unlicensed Person.*

(a) Except as otherwise provided by the Act or Commission rules, a broker or sales agent 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 sales agent.

(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 sales agent 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, unless the entity is exempted from the requirements of licensure as provided by §535.5 of this chapter (relating to License Not Required) and §1101.355(d) of the Act.

(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 sales agent has the written consent of the sales agent'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.

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

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## SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

### 22 TAC §535.191

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions.

The amendments are proposed to address a violation of 22 TAC §535.157 (relating to Obligation to Respond Timely), which was recently adopted by the Commission. Current rule 535.157 obligates a broker and sales agent to respond to his or her principal, a broker or sales agent representing another party to a real estate transaction, or an unrepresented party of a real estate transaction within two calendar days. Under the proposed changes to §535.191, a violation of §535.157 could result in an administrative penalty of \$100 - \$1,500 per violation per day.

This proposed change is recommended by the Commission's Enforcement Committee.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity and consistency in the rules, as well as greater consumer protection.

For each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under Texas Occupations Code, §1101.702, which requires the Commission adopt by rule a schedule of administrative penalties.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§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)(3);
- (3) §1101.652(a)(8);
- (4) §1101.652(a-1)(3);
- (5) §1101.652(b)(23);
- (6) §1101.652(b)(29);
- (7) §1101.652(b)(33);
- (8) 22 TAC §535.21(a);
- (9) 22 TAC §535.53;
- (10) 22 TAC §535.65;
- (11) 22 TAC §535.91(d);
- (12) 22 TAC §535.121;
- (13) 22 TAC §535.154;
- (14) 22 TAC §535.155; ~~[and]~~
- (15) 22 TAC §535.157; and
- (16) ~~[(45)]~~ 22 TAC §535.300.

(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(a-1)(2);
- (3) §1101.652(b)(1);
- (4) §§1101.652(b)(7) - (8);
- (5) §1101.652(b)(12);
- (6) §1101.652(b)(14);
- (7) §1101.652(b)(22);
- (8) §1101.652(b)(28);
- (9) §§1101.652(b)(30) - (31);

- (10) §1101.654(a);
- (11) 22 TAC §531.18;
- (12) 22 TAC §531.20;
- (13) 22 TAC §535.2;
- (14) 22 TAC §535.6(c) - (d);
- (15) 22 TAC §535.16;
- (16) 22 TAC §535.17; and
- (17) 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;
- (5) §§1101.559(a) and (c);
- (6) §1101.560;
- (7) §1101.561(b);
- (8) §1101.615;
- (9) §1101.651;
- (10) §1101.652(a)(2);
- (11) §1101.652(a-1)(1);
- (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);
- (18) 22 TAC §535.141(f);
- (19) 22 TAC §§535.145 - 535.148; and
- (20) 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, subject to the maximum penalties authorized under §1101.702(a) of the Act, if a person has a history of previous violations.

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

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Vanessa E. Burgess

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## SUBCHAPTER R. REAL ESTATE INSPECTORS

### 22 TAC §535.210, §535.219

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.210, Fees and §535.219, Schedule of Administrative Penalties, in Chapter 535, General Provisions.

The amendments are being proposed to reflect statutory changes enacted by the 88th Legislature in HB 1363, which eliminated the real estate inspection recovery fund. The proposed changes to 535.210 reflect the fact that for applications submitted as of September 1, 2023, the \$10 fee will no longer be required. The proposed changes to §535.219 replace a repealed statutory section with a related rule--22 TAC §535.220(g) (although related, this rule is authorized by another statutory provision).

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the section as proposed are in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rules and consistency with the applicable statutory requirements.

Except as noted below, for each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

By eliminating the real estate inspection recovery fund, for those inspector applicants submitting an application on or after September 1, 2023, they will no longer be required to pay the \$10 fee upon successful completion of the exam.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under Texas Occupations Code, §1102.403, which allows the Commission to impose an administrative penalty as provided by Subchapter O, Chapter 1101 pursuant to that section.

The statute affected by this proposal is Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the proposed amendments.

The statute affected by this proposal is Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the proposed amendments.

§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 two 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 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 for taking a license examination without a national portion or retaking the state part of the license examination;
- (11) a fee of \$50 to request an inactive professional inspector license be returned to active status;
- (12) a fee of \$50 for the filing of a fitness determination;
- (13) the fee required by the Department of Information Resources as a subscription or convenience fee for use of an online payment system;
- (14) a fee of \$400 for filing an application for accreditation of a qualifying inspector education program for a period of four years;
- (15) after initial approval of accreditation, a fee of \$200 a year for operation of a qualifying inspector education program;
- (16) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each qualifying inspector education course for a period of four years:

- (A) \$5 for content and examination review;
- (B) \$5 for classroom delivery design and presentation review; and
- (C) \$10 for distance education delivery design and presentation review.

(17) a fee of \$400 for filing an application for accreditation as a continuing inspector education provider for a period of two years;

(18) a fee of \$50 plus the following fees per classroom hour approved by the Commission for each continuing inspector education course for a period of two years:

- (A) \$2.50 for content and examination review;
- (B) \$2.50 for classroom delivery design and presentation review; and
- (C) \$5 for distance education delivery design and presentation review.

(19) the fee required under paragraphs (16)(C) and (18)(C) of this subsection will be waived if the course has already been certified by a distance learning certification center acceptable to the Commission;[-]

(20) for an applicant who submits an application prior to September 1, 2023, a fee of \$10 for deposit in the Real Estate Inspection Recovery Fund upon an applicant's successful completion of an examination; and

(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.

(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.

(d) If a payment to the Commission by or on behalf of a license holder or applicant is dishonored or reversed by a bank or other financial institution, the Commission shall send a request for payment of the dishonored or reversed payment by certified mail to the last known mailing address of the license holder or applicant 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, and the license holder or applicant fails to make good on the payment in the form of a cashier's check, money order, or credit card payment within 30 days after the Commission has mailed the request, the license will be placed on inactive status.

(e) Placing a license on inactive status under this section does not preclude the Commission from proceeding under §1101.652(a)(3), Texas Occupations Code, against a license holder who has failed to make good a payment issued to the Commission within a reasonable time.

§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 1101, Chapter 1102 and this subchapter:

- (1) §1101.652(a)(8);
- (2) §1102.118;
- (3) §1102.305;
- ~~[(4) §1102.364];~~
- (4) ~~[(5)]~~ 22 TAC §535.216(c);
- (5) ~~[(6)]~~ 22 TAC §535.217;
- (6) ~~[(7)]~~ 22 TAC §535.220(a) - (d) and (g);
- (7) ~~[(8)]~~ 22 TAC §535.221; and
- (8) ~~[(9)]~~ 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 1101, Chapter 1102 and this subchapter:

- (1) §1101.652(a)(3) - (4);
- (2) §1102.301;
- (3) 22 TAC §535.222;
- (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 1101, Chapter 1102 and this subchapter:

- (1) §1101.652(a)(2), (5) - (6);
- (2) §1102.101;
- (3) §1102.102;
- (4) §1102.103;
- (5) §1102.302;
- (6) §1102.303;
- (7) §1102.304;
- (8) 22 TAC §535.208(e)(2);
- (9) 22 TAC §535.211;
- (10) 22 TAC §535.215;
- (11) 22 TAC §535.220(e)(1), (3) - (7); and
- (12) 22 TAC §535.224(b)(1) - (2).

(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 Act, if a person has a history of previous violations.

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

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Vanessa E. Burgess  
General Counsel  
Texas Real Estate Commission  
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## CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

### 22 TAC §537.62

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §537.62, Standard Contract Form TREC No. OP-H, Seller's Disclosure Notice; in Chapter 537, Professional Agreements and Standard Contracts. Texas real estate license holders are generally required to use forms promulgated by TREC when negotiating contacts for the sale of real property, although some forms--like the Seller's Disclosure Notice--are adopted by the Commission for voluntary use by license holders. Contract forms are drafted and recommended for proposal by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and one public member appointed by the governor. The Texas Real Estate Broker-Lawyer Committee recommended revisions to the contract forms adopted by reference under the proposed amendments to Chapter 537 to comply with statutory changes enacted by the 88th Legislature in HB 697.

The Seller's Disclosure Notice is updated to comply with the requirements of HB 697, which add a disclosure related to fuel gas piping to the statutorily-required notice.

Vanessa E. Burgess, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections.

There is no adverse economic effect anticipated for small businesses, micro-businesses, rural communities, or local or state employment as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Ms. Burgess also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will be improved clarity and requirements that are consistent with the statute.

For each year of the first five years the proposed amendments are in effect the amendments will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;

- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the state's economy.

Comments on the proposal may be submitted through the online comment submission form at <https://www.trec.texas.gov/rules-and-laws/comment-on-proposed-rules>, to Vanessa E. Burgess, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or via email to [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102. The amendments are also proposed under Texas Occupations Code §1101.155, which allows the Commission to adopt rules in the public's best interest that require license holders to use contract forms prepared by the Broker-Lawyer Committee and adopted by the Commission.

The statute affected by these amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the amendments.

§537.62. *Standard Contract Form TREC No. 55-0 [OP-H], Seller's Disclosure Notice.*

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 55-0 [OP-H] approved by the Commission in 2023 [2019] for voluntary use to fulfill the disclosure requirements of Texas Property Code §5.008.

The agency certifies that legal counsel has reviewed the proposal 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 9, 2023.

TRD-202302900  
Vanessa E. Burgess  
General Counsel  
Texas Real Estate Commission  
Earliest possible date of adoption: September 24, 2023  
For further information, please call: (512) 936-3284



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 15. TEXAS VETERANS COMMISSION

#### CHAPTER 460. FUND FOR VETERANS' ASSISTANCE

##### SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

#### 40 TAC §460.2

The Texas Veterans Commission (Commission) proposes amendments to Administrative Rules Chapter 460, Subchapter A, §460.2, Definitions.

## PART I. PURPOSE AND BACKGROUND

The proposed amendments are made following a comprehensive review of the chapter. Staff determined the need to update the rule language to ensure the agency's administrative rules are current and accurately reflect the Commission policies and procedures. Additionally, the changes will provide the Commission with more flexibility in awarding grant funds under the Veterans' Assistance Grant Program.

## PART II. EXPLANATION OF SECTIONS

### SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE GRANT PROGRAM

#### §460.2. Definitions.

Paragraph (5) deletes expenditure benchmarks from the definitions section and subsequent paragraphs are renumbered.

Paragraph (7) changes the name of the definition from "Performance Benchmarks" to "Performance Measures" and adds a definition for "Performance Measures."

## PART III. IMPACT STATEMENTS

### FISCAL NOTE

Coretta Briscoe, Chief Financial Officer of the Texas Veterans Commission, has determined for each year of the first five years the proposed rule amendment will be in effect, there will not be an increase in expenditures or revenue for state and local government as a result of administering the proposed rule.

### COSTS TO REGULATED PERSONS

Ms. Briscoe has also determined there will not be anticipated economic costs to persons required to comply with the proposed rule.

### LOCAL EMPLOYMENT IMPACT

Anna Baker, Director, Veterans Employment Services of the Texas Veterans Commission, has determined that there will not be a significant impact upon employment conditions in the state from the proposed rule.

### SMALL BUSINESS, MICRO BUSINESS AND RURAL COMMUNITIES IMPACT

Megan Tamez, Veterans Entrepreneur Program of the Texas Veterans Commission, has determined that the proposed rule will not have an adverse economic effect on small businesses, micro businesses or rural communities as defined in Texas Government Code §2006.001. As a result, an Economic Impact Statement and Regulatory Flexibility Analysis is not required.

### PUBLIC BENEFIT

Shawn Deabay, Deputy Executive Director of the Texas Veterans Commission, has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of administering the amended rule will increase participation within each of the agency's three remaining advisory committees.

## GOVERNMENT GROWTH IMPACT STATEMENTS

Mr. Deabay has also determined that for each year of the first five years that the proposed rule amendment is in effect, the following statements will apply:

(1) The proposed rule amendment will not create or eliminate a government program.

(2) Implementation of the proposed rule amendment will not require creation of new employee positions or elimination of existing employee positions.

(3) Implementation of the proposed rule amendment will not require an increase or decrease in future legislative appropriations to the agency.

(4) No fees will be created by the proposed rule amendment.

(5) The proposed rule amendment will not require new regulations.

(6) The proposed rule amendment has no effect on existing regulations.

(7) The proposed rule amendment has no effect on the number of individuals subject to the rule's applicability.

(8) The proposed rule amendment has no effect on this state's economy.

## PART IV. COMMENTS

Comments on the proposed new rules may be submitted to Attention: General Counsel, Texas Veterans Commission, P.O. Box 12277, Austin, Texas 78711 or by fax to (512) 475-2395. Comments may also be submitted electronically to rulemaking@tvc.texas.gov. For comments submitted electronically, please include "Chapter 460, Subchapter A, §460.2, Definitions" in the subject line. The deadline for submission of comments is twenty days from the date of publication of the proposed new section in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

## PART V. STATUTORY AUTHORITY

The proposed amendments are authorized under Texas Government Code §434.010, granting the Commission the authority to establish rules, and Texas Government Code §434.017, granting the Commission the authority to establish rules governing the award of grants by the Commission.

No other statutes, articles, or codes are affected by this proposal.

### §460.2. Definitions.

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

(1) Advisory Committee--The committee formed under §452.2(c) of this title (relating to Fund for Veterans' Assistance Advisory Committee).

(2) Agency--The Texas Veterans Commission.

(3) Commission--The members of the Texas Veterans Commission.

(4) Disallowed Cost--A questioned cost that the Agency has determined, violates the conditions of the Grant Agreement, or other law, regulation, or other document governing the expenditures of funds.

~~(5) Expenditure Benchmark--The percent of the total grant award that must be expended and reported by designated timeframes within the grant period. The specific timeframes are:]~~

{(A) If 25% of the grant period has elapsed, at least 15% of the total award amount must have been expended;}

{(B) If 50% of the grant period has elapsed, at least 40% of the total award must have been expended; and}

{(C) If 75% of the grant period has elapsed, at least 70% of the total award must have been expended.}

(5) [(6)] Grantee--An organization that receives a grant award under this chapter.

(6) [(7)] Performance Measures [Benchmark]--The benchmarks the Texas Veterans Commission establishes and must be met within the grant period. These approved benchmarks will be included in the Fund for Veterans Assistance Request for Application. [The percent of each minimum required performance measure that must be met and reported by designated timeframes within the grant period. The specific timeframes are:]

{(A) If 25% of the grant period has elapsed, at least 15% of minimum required performance measure targets must have been met;}

{(B) If 50% of the grant period has elapsed, at least 40% of minimum required performance measure targets must have been met; and}

{(C) If 75% of the grant period has elapsed, at least 70% of minimum required performance measure targets must have been met.}

(7) [(8)] Questioned Cost--A cost that has been identified to be:

(A) an alleged violation of a provision of the Grant Agreement, law, regulation, or other agreement or document governing the expenditure of funds;

(B) a cost that is not supported by adequate documentation; or

(C) a cost that is unnecessary or unreasonable.

(8) [(9)] Received by the Agency--Documents may be sent electronically or by U.S. Mail, overnight delivery, hand delivery, or courier service.

(9) [(10)] Reimbursement Grant--The Texas Veterans Commission Fund for Veterans' Assistance awards grants on a cost reimbursement basis. Under the cost reimbursement method of funding, a Grantee is required to finance its operations, beyond any authorized initial costs or payments, with its own working capital with Grant payments made to reimburse the Grantee for actual cash disbursements supported by adequate documentation.

(10) [(11)] Units of Local Government--A county, municipality, special district, school district, junior college district, a local workforce development board created under §2308.253, Texas Government Code, or other legally constituted political subdivision of the state.

The agency certifies that legal counsel has reviewed the proposal 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 11, 2023.

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Kathleen Cordova

General Counsel

Texas Veterans Commission

Earliest possible date of adoption: September 24, 2023

For further information, please call: (737) 320-4167

