

# CHAPTER 01

## STATUTORY CHANGES TO TEXAS REAL ESTATE LICENSE ACT (CHAPTER 1101, TEXAS OCCUPATIONS CODE) AND TREC RULE UPDATES

### Learning Objectives

After this chapter, you will be able to

- Understand the changes to the Texas Occupations Code (TOC) Chapter 1101 as a result of TREC's 2019 Sunset Review.
- Identify changes to TREC Rules §535.2, Broker Responsibility, and §535.148, Receiving an Undisclosed Commission or Rebate.
- Give one example of how a license holder can be involved in the rule making process.



### Chapter 1101 (TOC) gives TREC authority to

- \* Administer Chapters 1101-1102,
- \* Adopt and enforce rules necessary to administer those chapters, and
- \* Establish standards of conduct and ethics for all persons licensed under Chapters 1101-1102.

### Sunset Review

As a result of the agency's Sunset review, the 86th Texas Legislature amended Chapter 1101 in 2019 by enacting SB 624 that included changes to:

1. Require TREC to dismiss a complaint if it determines the complaint is inappropriate or without merit;
2. Require TREC to protect the identity of a

3. complainant, to the extent possible, by excluding the complainant's identifying information from the notice sent to the respondent;
4. Remove the Texas residency requirement for all licenses regulated by TREC and instead require license holders to have geographic competency;
5. Remove TREC's authority to license instructors but maintain TREC's authority over the education and experience requirements to act as an instructor for TREC approved courses, and requires providers to ensure any instructors they use meet the TREC requirements;
5. Require TREC to determine if an applicant is fit to engage in the occupations regulated by TREC in lieu of determining if an applicant's moral character complies with licensing requirements;

6. Authorize TREC to deny a renewal in the event that the license holder is in violation of a TREC order;
7. Eliminate licensure of branch offices.

## Key TREC Rules Updates

### **§531.3 - Competency (effective 9/1/19)**

The amendments clarify the definition of competency to conform with recent changes to §535.2, Broker Responsibility, which requires brokers to ensure their sponsored agents have geographic and property-type competence.

### **§535.61 - Approval of Providers of Qualifying Course (effective 9/1/19)**

The amendments add clarifying terms or timeframes for greater understanding and compliance. The amendments also provides that a provider cannot enroll students in a course 60 days before the expiration of the provider's approval, unless they have submitted an application for a subsequent approval at least 60 days prior to the expiration of the current approval. This will offer greater protection for students who enroll in courses near the end of a provider's approval term and give providers a way to avoid any business disruption when applying for a subsequent approval.

### **§535.63 - Approval of Instructors of Qualifying Courses and**

### **§535.74 - Approval of Continuing Education Instructors (effective 9/1/19)**

The amendments are made in response to the agency's Sunset Bill, which eliminates TREC's authority to approve real estate and inspector instructors but retains TREC's ability to set out qualifications and standards for instructors of TREC-approved courses.

### **§535.65 - Responsibilities and Operations of Providers of Qualifying Courses and**

### **§535.75 - Responsibilities and Operations of Continuing Education Providers (effective 9/1/19)**

The amendments to §535.65 adds that a provider must provide a hyperlink or URL to the TREC website when displaying exam passage rates in any advertisement. This will ensure that the consumers can verify the most current passage rate figures and related information for any or all providers. In addition, the amendments eliminate the waiting period before retesting for students who fail a course exam, leaving the decision as to remedial course work before the retest to the providers. Finally, §535.65 and §535.75 were updated to reflect the Sunset Commission Report directive that instructors of courses be approved by providers based on standards set by the Commission instead of being licensed by the Commission.

### **§535.148 - Receiving an Undisclosed Commission or Rebate (effective 9/1/19)**

The amendments provide clarity about consumer protection issues when paying or receiving funds to/from other settlement service providers. A section was added to define settlement providers that mostly parallels the definition in the Real Estate Settlement Procedures Act (RESPA) for consistency with the federal law. Exemptions from the prohibition provisions were also clarified. TREC currently has a rule that includes these provisions for inspectors but not explicitly for other real estate license holders. The change provides parity for license types subject to TREC's jurisdiction and ensures settlement provider independence. These amendments prohibit license holders from selling referrals or recommending settlement providers to their clients based solely on money or other valuable consideration received in order to ensure that license holders are upholding their fiduciary duty by putting their clients' interest above their own financial gain.

### **§535.222 - Inspection Reports (effective 9/1/19)**

The amendments clarify that the inspector does not have to deliver the inspection report until after receipt of payment for the report and reduces the delivery time after payment from three days to two.

### **§533.8 - Motions for Rehearing, Failure to Attend Hearing and Default Effective (effective 5/27/19)**

The amendments clarify the methods for filing a motion for rehearing with the Commission by adding the email address and facsimile number to which a motion for rehearing may be sent.

### **§535.141 - Initiation of Investigation; Order Requirements (effective 5/27/19)**

The amendments change the caption of the rule to clarify that this section also includes order requirements and clarify how the agency prioritizes complaint investigations as required in Tex. Occ. Code §1101.204.

### **§535.142 - Consumer Complaint Process (effective 5/27/19)**

The new rule sets out the existing processes authorized in statute and followed by the Commission when processing and investigating consumer complaints.

### **§535.2 - Broker Responsibility (effective 12/9/18)**

The amendments requires a broker to designate anyone who leads, supervises, directs or manages a team in the brokerage to be a delegated supervisor. This will require that person to take a six- hour broker responsibility course as part of their required continuing education for each renewal. The timeframe when a license holder must be delegated as a supervisor was shortened from six months to three consecutive months. The term

“work files” was deleted and replaced with more specific items. The rule was clarified to require the broker to ensure that a sponsored sales agent has geographic competence in the market area being served. A broker must require that a sales agent receive coaching and assistance from an experienced license holder competent for that activity, when a sales agent performs a real estate brokerage activity for the first time. In recognition of digital communications, the time frames for responding to clients, agents, other brokers, and the Commission were reduced to two and three days respectively.

### **§535.101 - Fees (effective 3/1/19)**

The amendment reduces the fee paid by a broker or sales agent from \$20 to \$10 each time a sales agent establishes or changes sponsorship.

### **§535.155 Advertisements (effective 9/4/18)**

The proposed amendments to §535.155 clarify that a sign giving directions to property for sale or lease is not considered an advertisement if it only contains the directional arrows or the directional arrows and the listing broker’s logo or name only. In addition, the word “realty” was removed from the prohibited terms set out in subsection (d)(5) to allow this word to be used at the beginning or middle of a team name.

**The full text of all revised and new rules can be found on TREC’s webpage at**

<https://www.trec.texas.gov/rules-and-laws>

### **How Can A License Holder Get Involved in the Rule Making Process?**

There are many ways a license holder can get involved:

- \* Bring an item to the attention of one of the Commission’s Advisory Committees or TREC staff;
- \* Attend a meeting of an advisory committee or the Commission where a specific issue of concern or rule is being discussed and provide input;
- \* Provide written comments to the Commission within 30 days after a rule is proposed but before it is adopted by emailing [general.counsel@trec.texas.gov](mailto:general.counsel@trec.texas.gov);
- \* Attend a meeting of the Commission when a rule is going to be proposed or adopted and provide comments in person.
- \* Attend a meeting of the Commission and give your thoughts on a new idea during the public comment on non-agenda items. The Commission can decide to send this idea to an advisory committee for exploration or put it on a future agenda for discussion and possible action.

## **Licensing Related Bills Passed by the 2019 Texas Legislative Session**

Listed below are six licensing related bills passed by the Texas legislature in the 2019 session that you should be aware of:

1. **HB 1342** *Relating to a person’s eligibility for an occupational license; providing an administrative penalty.* Effective September 1, 2019

This bill limits the ability of a licensing authority (like TREC) to suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing exam because of a conviction of a criminal offense that does not directly relate to the duties and responsibilities. The bill adds or modifies considerations that a licensing authority has to take into account when deciding whether to revoke, suspend, or deny, like whether any elements of the crime correlate to the duties and responsibilities of the occupation and whether there is evidence of a person’s compliance with any conditions of community supervision or parole.

A licensing authority can’t deny a person a license or the opportunity to take the exam because of a prior conviction of a criminal offense, unless the licensing authority: (i) provides notice; and (ii) allows the person at least 30 days to submit any relevant information.

2. **SB 37** *Relating to a prohibition on the use of student loan default or breach of a student loan repayment or scholarship contract as a ground for refusal to grant or renew an occupational license or other disciplinary action in relation to an occupational license.* Effective June 7, 2019

SB 37 removes student loan default or breach of a student loan repayment or scholarship contract as grounds to deny a license or license renewal or to take other disciplinary action against several different types of license holders, including real estate license holders.

3. **SB 1200** *Relating to the authority of certain military spouses to engage in a business or occupation in this state.* Effective September 1, 2019

Upon notice to and confirmation from the relevant Texas licensing authority, this bill allows a military spouse to use an out-of-state license to engage in a business or occupation in Texas, as long as the spouse is in good standing in the other jurisdiction and the licensing requirements are substantially similar. The military spouse can only engage in the business or occupation for the period during which their spouse is stationed in Texas, but not to exceed three years.



4. **SB 1217** *Relating to the consideration of certain arrests in determining an applicant's eligibility for an occupational license.* Effective June 14, 2019

For the purpose of determining a person's fitness for a license, the licensing authority can't consider an arrest that did not result in a conviction or placement on deferred adjudication community supervision.

5. **SB 1995** *Relating to the review of certain occupational licensing rules by the office of the governor.* Effective September 1, 2019

A state agency that issues a license has to submit any proposed rule change affecting market competition to the governor's office for review and approval before the rule is adopted or implemented.

6. **HB 3609** *Relating to the filing of an assumed name certificate by certain business entities.* Effective September 1, 2019.

Certain business entities, like corporations, LLPs, and LLCs are now only required to file an assumed name certificate with the Secretary of State, instead of both the Secretary of State and the county clerk.