



Meeting of the
Texas Real Estate Commission
February 16, 2021
10:00 a.m.

By Teleconference





AGENDA FOR TEXAS REAL ESTATE COMMISSION (TREC) MEETING
Tuesday, February 16, 2021, at 10:00 a.m. via Microsoft Teams teleconference

The Commission will provide a link to the live stream on the front page of its website the morning of February 16, 2021, at <https://www.trec.texas.gov>

This agenda and any materials will be available on the TREC website before February 16, 2021, at https://www.trec.texas.gov/apps/meetings/view.php?meeting_id=439

To participate by providing public comment during the meeting, contact Vanessa Burgess, General Counsel, at general.counsel@trec.texas.gov before 9:00 a.m. on February 16, 2021, along with the item number you wish to speak on. Anyone wishing to provide public comment will need to have internet access and a computer or device with a microphone or a telephone.

CALL TO ORDER

1. Call to order and pledges of allegiance
2. Discussion and possible action to excuse Commissioner absence(s), if any
3. Opening remarks and report from the Chair
4. Recognition of departing public servants

ELECTIONS AND APPOINTMENTS

5. Election of Vice-Chair and Secretary
6. Discussion and Appointments to:
 - a. Enforcement Committee
 - b. Budget Committee
 - d. Commission liaison to the Texas Real Estate Inspector Committee
 - e. Commission liaison to the Education Standards Advisory Committee
 - f. Commission liaison to the Broker Responsibility Working Group
 - g. Ex-Officio to the Texas A&M Real Estate Center Advisory Committee

STAFF AND COMMITTEE REPORTS

7. Staff reports by Executive Director, Deputy Executive Director, and Division Directors regarding agency operations, initiatives, and division updates
8. Report by the Executive Committee
9. Report by Education Standards Advisory Committee
10. Report by Texas Real Estate Inspector Committee

PUBLIC COMMENTS

11. Members of the public have the opportunity to address the Commission concerning an agenda item or an issue of public interest that is not on the agenda. Anyone wishing to provide public comment on an issue of public interest that is not on the agenda may do so under this section. Members of the public who wish to speak on a matter specifically listed on the agenda may do so at the time that agenda item is heard.

All individuals wishing to provide public comment of any sort should fill out a speaker request form with the agency's designated agent.

CONTESTED CASES

12. Consideration and possible action regarding proposal for decision in the matter of:
 - a. SOAH Docket No. 329-20-0455.REC; TREC v. Tiffanie L. Purvis
 - b. SOAH Docket No. 329-20-1699.REC; TREC v. Angelica Reynoso

EXECUTIVE SESSION

13. Executive session to discuss pending litigation or obtain advice of legal counsel on agenda items pursuant to Texas Government Code §551.071 and personnel matters relating to the performance review of the Executive Director pursuant to Texas Government Code §551.074

RECOVERY FUND

14. Discussion and possible action to authorize settlement of recovery fund claims or take other action on:
 - a. RF 20017; Gustave Meyner and Sally Meyner v. Jeff Neale
 - b. RF 20020; Craig Garza v. Ed Wiggins Realty, LLC and Edgar Paul Wiggins
 - c. RF 21001; Ameriplex Realtors, Inc. v. Gregory Dicker and Jeffrey Dicker
 - d. RF 21002; Anna M. Salanti and Franklin C. Cook v. Charlene King

RULES FOR POSSIBLE ADOPTION

15. Discussion and possible action to adopt repeal of 22 TAC §534.7, Vendor Protest Procedures
16. Discussion and possible action to adopt 22 TAC §534.7, Vendor Protest Procedures (NEW)
17. Discussion and possible action to adopt amendments to 22 TAC §535.91, Renewal of a Real Estate License
18. Discussion and possible action to adopt amendments to 22 TAC §535.191, Schedule of Administrative Penalties
19. Discussion and possible action to adopt amendments to 22 TAC §535.216, Renewal of License
20. Discussion and possible action to adopt amendments to 22 TAC, Chapter 537, regarding Standard Contract forms as follows:
 - a. §537.45; Standard Contract Form TREC NO. 38-6 (Notice of Buyer's Termination of Contract); and
 - b. §537.52; Standard Contract Form TREC No. 45-1 (Short Sale Addendum)

RULES FOR POSSIBLE PROPOSAL

21. Discussion and possible action to propose 22 TAC §533.50, Petition for Adoption of Rules (NEW)
22. Discussion and possible action to propose amendments to 22 TAC §535.220, Professional Conduct and Ethics

OLD BUSINESS

23. Update regarding 87th Legislative Session

NEW BUSINESS

24. Discussion and possible action regarding denying claims made to the Real Estate Recovery Trust Account and Real Estate Inspection Recovery Fund

- 25. Discussion and possible action regarding FY2021 budget amendment
- 26. Discussion and possible action regarding performance review and salary of TREC Executive Director
- 27. Discussion and possible action to approve changes to TREC form FD-1; Fitness Determination

FUTURE MEETINGS

- 28. Discussion and possible action regarding future agenda items
- 29. Discussion and possible action to schedule future meetings
- 30. Adjourn

Pursuant to the Americans with Disabilities Act, any requests for reasonable accommodation needed by persons wishing to attend this meeting should call Amber Hinton at 512-936-3000.

The Texas Real Estate Commission may meet in executive session on any item listed above as authorized by the Texas Open Meetings Act, Chapter 551, Tex. Gov't Code.





Agenda Item 1:

Call to order and pledges of allegiance

Texas Pledge:

"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."

Agenda Item 2:

Discussion and possible action to excuse Commissioner absence(s), if any

Recommended Motion:

MOVE, that the absence(s) of _____ for the February 16, 2021, Commission meeting is/are hereby excused.

Agenda Item 3:

Opening remarks and report from the Chair

Agenda Item 4:

Recognition of departing public servants

Agenda Item 5:

Election of Vice-Chair and Secretary





Agenda Item 6:

Discussion and appointments to:

- a. Enforcement Committee
- b. Budget Committee
- d. Commission liaison to the Texas Real Estate Inspector Committee
- e. Commission liaison to the Education Standards Advisory Committee
- f. Commission liaison to the Broker Responsibility Working Group
- g. Ex-Officio to the Texas A&M Real Estate Center Advisory Committee

Agenda Item 7:

Staff reports by Executive Director, Deputy Executive Director, and Division Directors regarding agency operations, initiatives, and division updates





Staff Reports

Executive Summary

December 2020

Customer Relations Division

- Average hold time was 42 seconds for December with an abandonment rate of less than 3%.
- 100% of emails were responded to within 2 business days, 99% of emails were responded to within 1 business day.
- The Division currently has 20 employees handling calls/processing emails. All staff are remote.

Education & Examination Division

- Fiscal year to date data shows that Pearson VUE has delivered a total of 15,484 licensing exams as compared to 11,630 at this same time in last year, indicating a little over a 33% increase.
- The Division has approved more than 225 contract courses to satisfy the CE contract course requirement that went into effect on February 1, 2021.
- License holders and education providers are able to utilize the “contracts” course search filter to obtain a list of courses approved to satisfy the new requirement.

Licensing Division

- The number of applications received for all license types has increased over this time last fiscal year.
- The number of sales agents and brokers has exceeded 200,000, bringing the overall license holder total to over 208,000.
- We set a record for the average number of days to process a sales agent initial license application in December of 3.44 days.

Information Technology Division

- Utilization rates for online applications and renewals remain consistent with trends from the current and previous fiscal years.
- Website utilization overall continues to show increased activity.

Financial Services Division

- Budget Status Report for December reflects activity 4 month into the fiscal year. Budget Execution was at 27.3%.
- We do not have any expenditures that exceed 20% that require an explanation of the variance.
- As of December 31, 2020, the revenue collected exceeded expenditures. We have collected 41.6% of our estimated revenue projection for FY 21.
- Holdings Report for Operating Accounts indicates one investment matured and reinvested in December.
- The Balance of the Real Estate Inspection Recovery Fund is over \$600,000 and by statute we are required to transfer the amount in excess to the state treasury, general revenue fund. The transfer of \$19,973.35 was complete on January 14, 2021. We currently have no potential payments for the next 90 days.



Staff Reports

Executive Summary

December 2020

Enforcement Division

- The Case Status report reflects a possible trend of increasing numbers of opened Application Investigations and Fitness Inquiries.
- The Case Aging report reflects 98% of complaints are less than a year old. There are two complaints over 24 months, one is pending a hearing at SOAH and one has a PFD up for adoption at this meeting.
- The Complaint Subject Categories report did not reflect any trend changes in the types of complaints received.



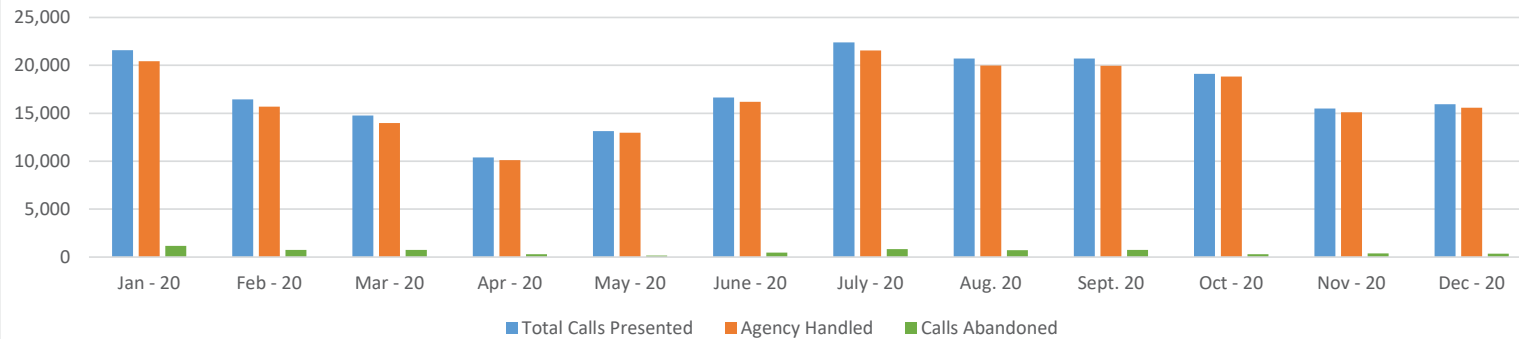
December 2020 Staff Reports

Customer Relations Division

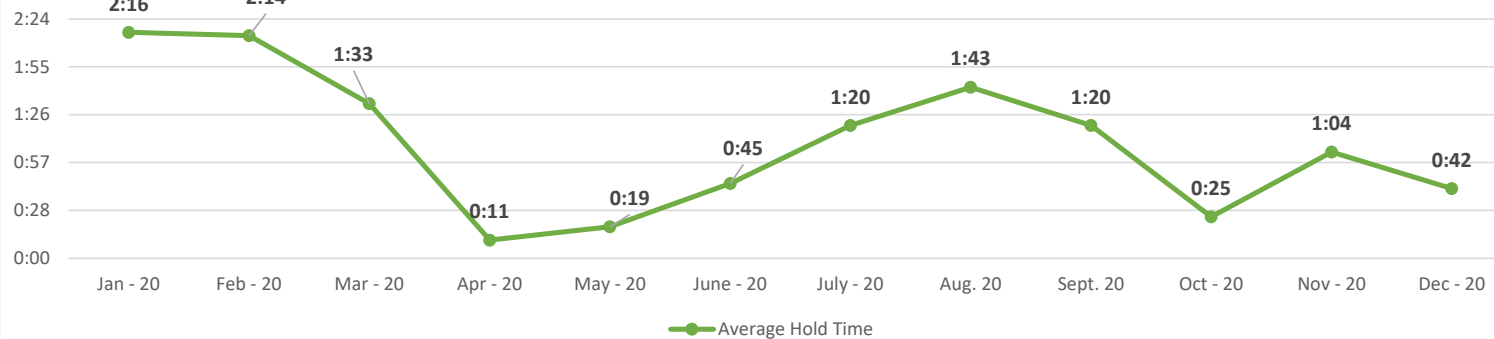
Incoming Calls

	Jan - 20	Feb - 20	Mar - 20	Apr - 20	May - 20	June - 20	July - 20	Aug. 20	Sept. 20	Oct - 20	Nov - 20	Dec - 20	Totals
Total Calls Presented	21,593	16,457	14,774	10,389	13,141	16,653	22,386	20,706	20,702	19,129	15,486	15,934	207,350
Agency Handled	20,428	15,705	13,996	10,101	12,984	16,197	21,552	19,977	19,948	18,840	15,103	15,579	200,410
Calls Handled Initially	19,347	15,246	13,504	10,086	12,929	16,003	21,019	19,324	19,495	18,801	14,835	15,429	196,018
Calls Handled by Courtesy Callback	973	422	451	11	50	180	466	552	413	33	234	140	3,925
% of Calls handled by Courtesy Callback	4.51%	2.56%	3.05%	0.11%	0.38%	1.08%	2.08%	2.67%	1.99%	0.17%	1.51%	0.88%	1.75%
Calls Re-Directed for Assistance	108	37	41	4	5	14	67	101	40	6	34	10	467
Calls Abandoned	1,165	752	747	284	157	456	834	729	754	288	382	355	6,903
% of Abandoned Calls	5.40%	4.57%	5.06%	2.73%	1.19%	2.74%	3.73%	3.52%	3.64%	1.51%	2.47%	2.23%	3.23%
Average Handle Time	5:12	5:36	5:32	6:11	5:54	5:58	5:52	5:56	5:52	5:20	5:27	5:33	5:41
Average Hold Time	2:16	2:14	1:33	0:11	0:19	0:45	1:20	1:43	1:20	0:25	1:04	0:42	1:09

Calls Presented, Handled, and Abandoned



Average Hold Time



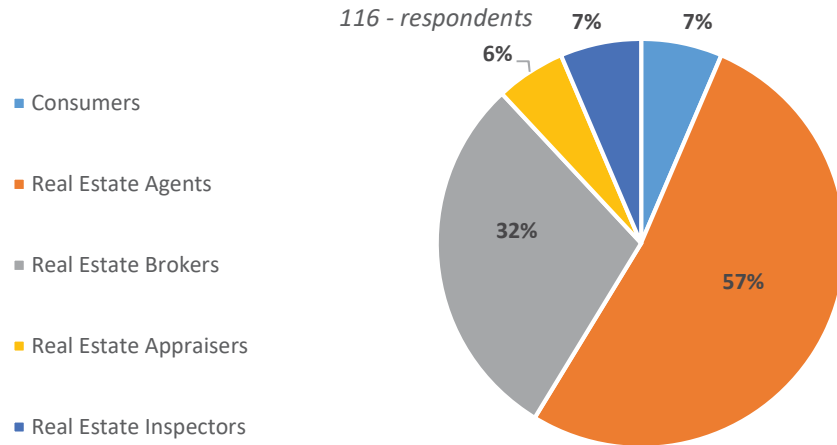
Emails													
	Jan - 20	Feb - 20	Mar - 20	Apr - 20	May - 20	June - 20	July - 20	Aug - 20	Sept. 20	Oct. 20	Nov. 20	Dec - 20	TOTAL
Licensing	4,255	3,556	3,369	3,463	3,181	3,796	5,560	4,819	5,022	4,112	3,492	3,945	48,570
Education	49	27	57	56	57	37	43	34	48	43	36	49	536
Inspector	103	69	57	62	44	79	104	102	70	76	63	43	872
Enforcement	91	86	139	102	118	146	161	121	185	142	95	116	1,502
TALCB Lic	196	179	153	120	91	170	214	203	198	174	102	92	1,892
TALCB Enf	16	9	6	14	7	14	23	8	16	13	8	7	141
Total	4,710	3,926	3,781	3,817	3,498	4,242	6,105	5,287	5,539	4,560	3,796	4,252	53,513
Respond in 2 bus days	4,709	3,926	3,781	3,817	3,498	4,242	6,105	5,287	5,539	4,560	3,796	4,252	53,512
% handled in 2 days	99.98%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%	100.00%
% handled in 1 day	82.60%	84.36%	93.63%	99.97%	100.00%	98.89%	98.60%	96.50%	94.57%	99.45%	99.55%	99.18%	95.61%

TALCB and TREC 1st Quarter Call Comparisons						
	December, 2020		January, 2021		February, 2021	
	TALCB Calls (Option 1)	TREC Calls (Options 2,3,5,&6)	TALCB Calls (Option 1)	TREC Calls (Options 2,3,5,&6)	TALCB Calls (Option 1)	TREC Calls (Options 2,3,5,&6)
Total Calls Presented	1,182	14,752				
Agency Handled	1,138	14,440				
Calls Handled Initially	1,126	14,302				
Calls Handled by Courtesy Callback	12	128				
Calls Re-Directed for Assistance	0	10				
Calls Abandoned	43	312				
Hold Times	0:41	0:43				
% of Abandoned Calls	3.64%	2.11%				
% of Callbacks	1.02%	2.11%				
% of all calls	7.42%	92.58%				

December, 2020 Customer Satisfaction Survey Results

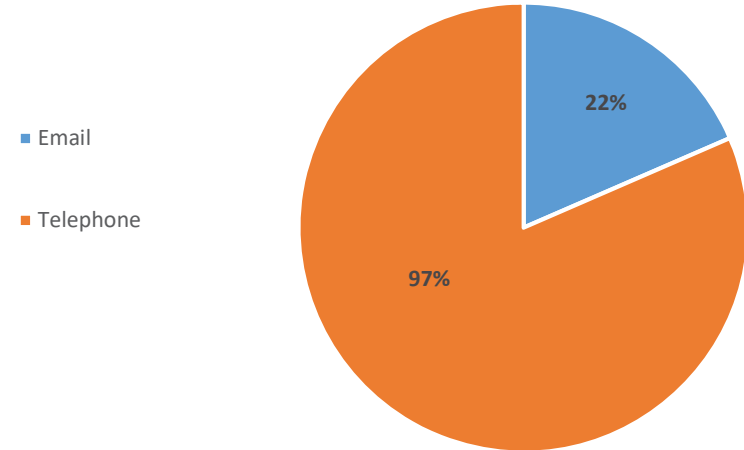
Customer Demographics

116 - respondents



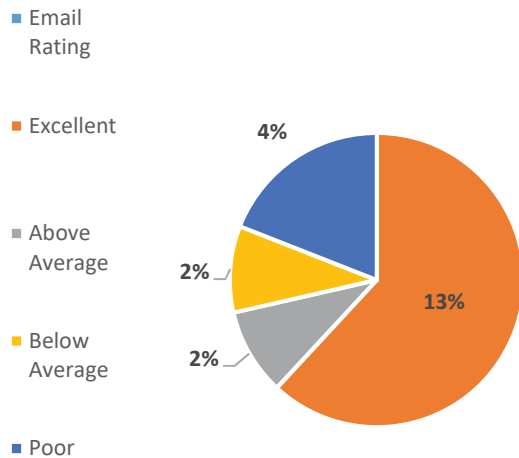
How Do Customers Contact Us?

122 respondents



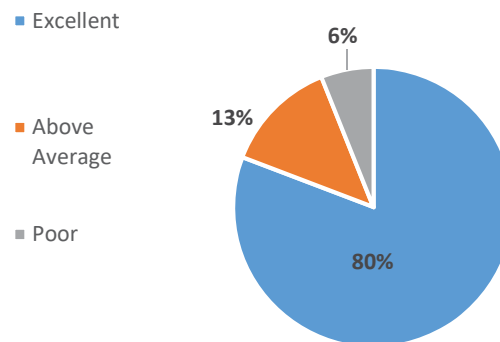
Email Service Rating

21 responses



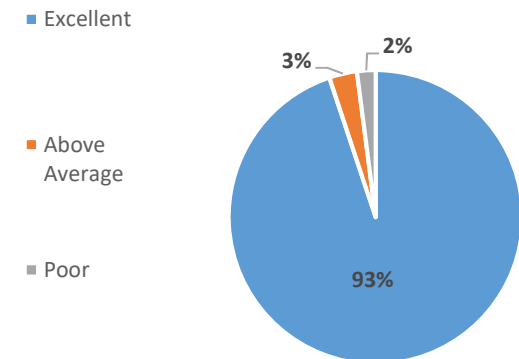
Experience with Customer Service Representatives

15 responses



Telephone Service Rating

97 responses



Education & Examination Services - EE1 Report													
TREC Qualifying Education Provider and Course Applications													
FY 2021													
	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	YTD
Applications Received													
<u>Providers</u>													
Initial Provider	0	0	0	2									2
4-year Renewal Provider	1	0	0	0									1
Annual Fee for Provider	3	2	1	5									11
<u>Real Estate Courses</u>													
Initial	4	4	1	2									11
Renewal	0	1	1	10									12
<u>Inspector Courses</u>													
Initial	0	2	3	6									11
Renewal	0	0	0	1									1
Total Applications Received	8	9	6	26	0	0	0	0	0	0	0	0	49
	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	YTD
Application Approved													
<u>Providers</u>													
Initial Provider	0	0	0	0									0
4-year Renewal Provider	0	0	2	0									2
Annual Fee for Provider	4	0	4	3									11
<u>Real Estate Courses</u>													
Initial	0	0	6	3									9
Renewal	0	6	5	0									11
<u>Inspector Courses</u>													
Initial	0	0	0	2									2
Renewal	0	0	0	0									0
Total Applications Approved	4	6	17	8	0	0	0	0	0	0	0	0	35

Education & Examination Services

TREC Continuing Education Provider and Course Applications

Fiscal Year 2021

	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	YTD
Applications Received													
<u>Providers</u>													
Initial Provider	6	13	5	8									32
Renewal Provider	26	8	10	9									53
<u>Real Estate CE Courses</u>	182	211	205	231									829
<u>Inspector CE (ICE) Courses</u>	2	14	6	5									27
Total Applications Received	216	246	226	253									941
	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	YTD
Applications Approved													
<u>Providers</u>													
Initial Provider	6	6	6	11									29
Renewal Provider	20	14	7	8									49
<u>Real Estate CE Courses</u>	111	123	128	332									694
<u>Inspector CE (ICE) Courses</u>	5	6	7	3									21
Total Applications Approved	142	149	148	354									793

Licensing Division

Applications Received and Renewal Activity

Fiscal Year 2021 - Year-to-Date Comparison

December

Real Estate Brokers & Sales Agents

<i>Applications Received</i>	Sep 2019 - Dec 2019	Sep 2020 - Dec 2020	Variance	Percent
Broker Original Applications Received	808	1,348	540	66.83%
<i>Broker Business Entity</i>	319	582	263	82.45%
<i>Broker Individual</i>	489	766	277	56.65%
Sales Agent Original Applications Received	6,716	12,971	6,255	93.14%
Total Original Applications	7,524	14,319	6,795	90.31%

<i>Renewal Activity</i>	% Renewed FY20		% Renewed FY21		% Renewed FY19	
Broker Renewals and Percentage	4,812	90.54%	7,015	88.36%	6,143	93.50%
Broker Business Entity	958	82.73%	1,341	79.77%	-	
Broker Individual	3,854	92.71%	5,674	90.67%	-	
Sales Agent Renewals and Percentage	13,574	78.88%	16,607	76.71%	14,288	83.90%
Total Renewals from Brokers & Sales Agents	18,386	81.63%	23,622	79.83%	20,431	86.58%

Real Estate Inspectors

<i>Applications Received</i>	Sep 2019 - Dec 2019	Sep 2020 - Dec 2020	Variance	Percent
Professional Inspector Original Applications Received	187	300	113	60.43%
Real Estate Inspector Original Applications Received	9	16	7	77.78%
Apprentice Inspector Original Applications Received	17	34	17	100.00%
Total Original Applications	213	350	137	64.32%

<i>Renewal Activity</i>	% Renewed FY20		% Renewed FY21		% Renewed FY19	
Professional Inspector Renewals and Percentage	279	71.72%	560	75.98%	498	68.50%
Real Estate Inspector Renewals and Percentage	9	81.81%	12	75.00%	13	59.09%
Apprentice Inspector Renewals and Percentage	2	11.76%	12	46.15%	8	33.33%
Total Renewals from Inspectors	290	69.54%	584	74.97%	519	67.14%

Licensing Division

License Holder and Registrant Status

December 2020

Real Estate License Holders

	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	Jul 20	Aug 20	Sep 20	Oct 20	Nov 20	Dec 20
Brokers													
Individual (Active)	32,636	32,620	32,631	32,617	32,640	32,715	32,869	32,931	32,521	32,514	32,430	32,434	32,442
Business Entities (Active)	11,475	11,572	11,668	11,728	11,823	11,902	11,998	12,113	11,923	12,002	12,003	12,089	12,213
Total Active Status	44,111	44,192	44,299	44,345	44,463	44,617	44,867	45,044	44,444	44,516	44,433	44,523	44,655
Inactive Status	1,759	1,788	1,807	1,783	1,800	1,819	1,845	1,919	1,724	1,710	1,861	1,841	1,817
Total Brokers	45,870	45,980	46,106	46,128	46,263	46,436	46,712	46,963	46,168	46,226	46,294	46,364	46,472
Sales Agents													
Active Status	115,321	115,650	116,711	117,119	117,436	118,182	118,665	120,233	119,890	121,420	122,665	123,717	124,115
Inactive Status	30,948	31,093	30,760	30,715	30,800	31,563	33,262	33,861	29,749	29,625	29,876	29,736	30,883
Total Sales Agents	146,269	146,743	147,471	147,834	148,236	149,745	151,927	154,094	149,639	151,045	152,541	153,453	154,998
Total Active	159,432	159,842	161,010	161,464	161,899	162,799	163,532	165,277	164,334	165,936	167,098	168,240	168,770
Total Inactive	32,707	32,881	32,567	32,498	32,600	33,382	35,107	35,780	31,473	31,335	31,737	31,577	32,700
Total Brokers/Sales Agents	192,139	192,723	193,577	193,962	194,499	196,181	198,639	201,057	195,807	197,271	198,835	199,817	201,470

Inspector License Holders

	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	Jul 20	Aug 20	Sep 20	Oct 20	Nov 20	Dec 20
Inspector License Holders													
Professional Inspectors(active)	3,339	3,333	3,334	3,335	3,333	3,325	3,362	3,383	3,291	3,292	3,318	3,332	3,361
Real Estate Inspectors (active)	138	137	137	132	131	128	133	135	127	129	126	126	123
Apprentice Inspectors(active)	132	135	137	141	143	146	150	157	140	135	146	147	154
Professional Inspectors(inactive)	546	568	561	566	600	622	629	653	572	555	540	535	561
Real Estate Inspectors(inactive)	14	14	15	18	19	21	22	22	23	17	17	15	18
Apprentice Inspectors(inactive)	26	26	27	26	27	27	27	27	22	22	22	23	22
Total Active	3,609	3,605	3,608	3,608	3,607	3,599	3,645	3,675	3,558	3,556	3,590	3,605	3,638
Total Inactive	586	608	603	610	646	670	678	702	617	594	579	573	601
Total Inspectors	4,195	4,213	4,211	4,218	4,253	4,269	4,323	4,377	4,175	4,150	4,169	4,178	4,239

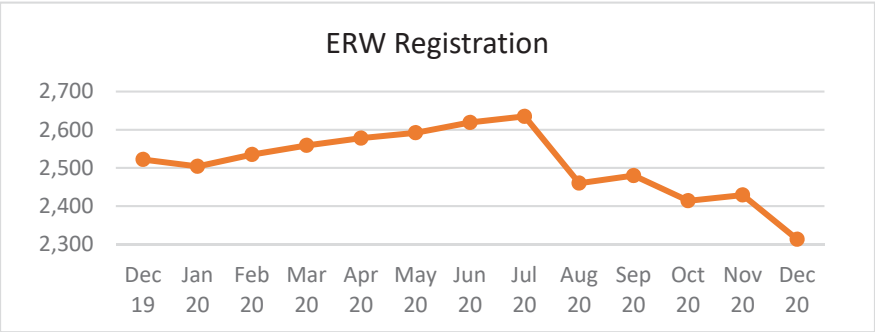
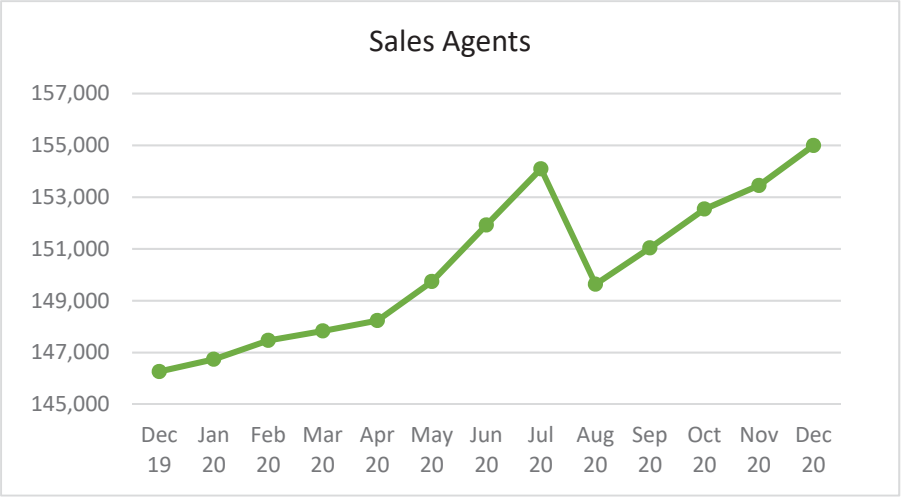
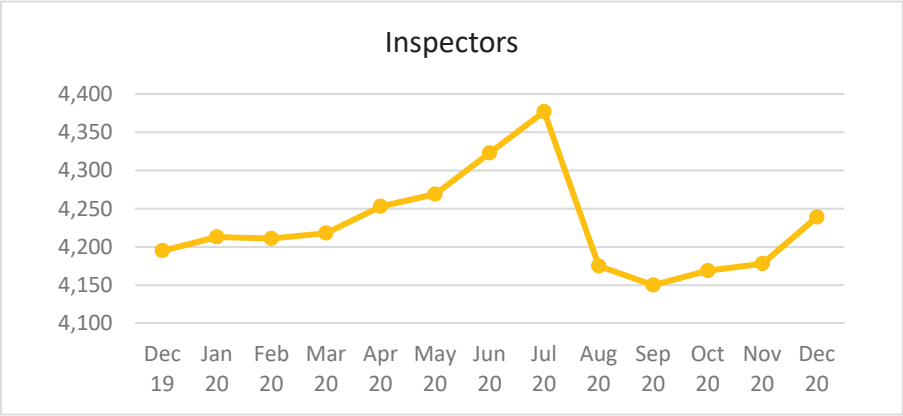
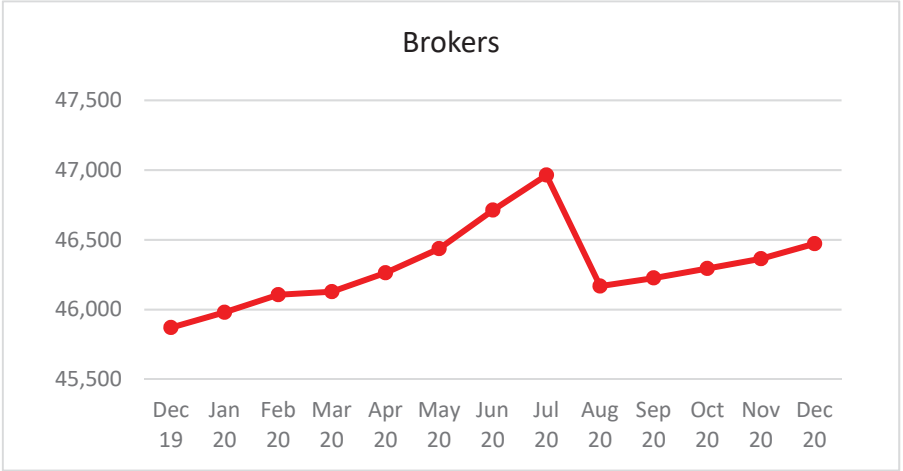
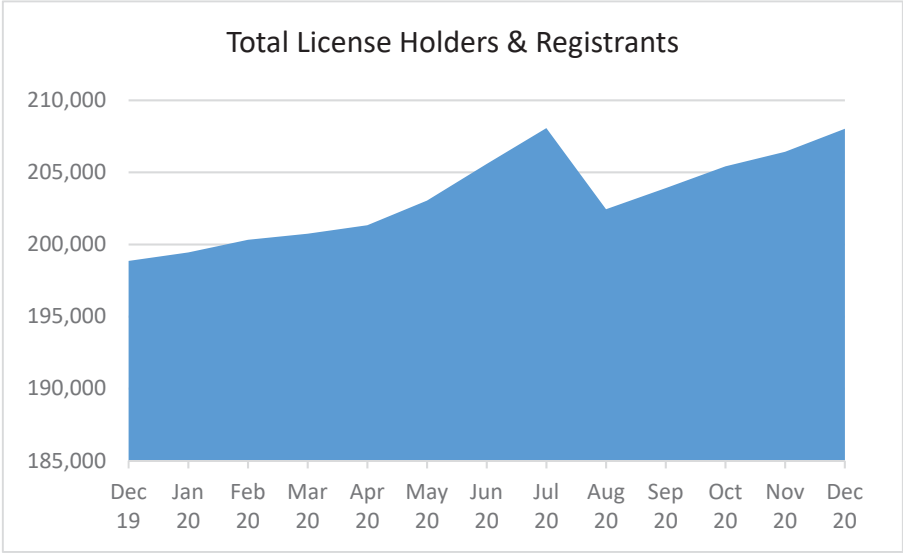
Easement & Right-of-way Registrants

	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	Jul 20	Aug 20	Sep 20	Oct 20	Nov 20	Dec 20
ERW Registrants													
Businesses	66	69	69	71	73	73	73	74	71	73	73	74	72
Individuals	2,456	2,435	2,466	2,488	2,505	2,519	2,546	2,561	2,389	2,407	2,341	2,355	2,241
Total Registrants	2,522	2,504	2,535	2,559	2,578	2,592	2,619	2,635	2,460	2,480	2,414	2,429	2,313

Total License Holders and Registrants

	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	Jul 20	Aug 20	Sep 20	Oct 20	Nov 20	Dec 20
License Holders & Registrants	198,856	199,440	200,323	200,739	201,330	203,042	205,581	208,069	202,442	203,901	205,418	206,424	208,022

Total License Holder and Registrants – December 2019 through December 2020



Licensing Division

Average Number of Calendar Days to Process an Application

December 2020

Real Estate Initial License Applications

	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	Jul 20	Aug 20	Sep 20	Oct 20	Nov 20	Dec 20
Individual Broker	18.51	13.89	9.73	11.28	6.14	5.13	7.13	6.69	8.58	10.22	7.04	7.28	6.68
<i>Number of Applications Received</i>	<i>157</i>	<i>189</i>	<i>174</i>	<i>146</i>	<i>154</i>	<i>159</i>	<i>175</i>	<i>185</i>	<i>198</i>	<i>176</i>	<i>211</i>	<i>195</i>	<i>189</i>
Business Entity Broker	8.83	12.73	5.46	5.23	2.86	2.93	6.03	4.32	9.15	7.07	4.54	5.65	3.98
<i>Number of Applications Received</i>	<i>134</i>	<i>149</i>	<i>145</i>	<i>106</i>	<i>99</i>	<i>109</i>	<i>133</i>	<i>137</i>	<i>131</i>	<i>147</i>	<i>144</i>	<i>125</i>	<i>165</i>
Sales Agent	13.22	13.59	12.04	10.76	4.55	6.21	7.47	6.69	17.54	11.38	8.79	5.32	3.44
<i>Number of Applications Received</i>	<i>2,068</i>	<i>2,736</i>	<i>2,590</i>	<i>2,009</i>	<i>1,768</i>	<i>2,693</i>	<i>3,123</i>	<i>3,422</i>	<i>3,547</i>	<i>3,323</i>	<i>3,615</i>	<i>2,896</i>	<i>3,353</i>

Inspector Initial License Applications

	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	Jul 20	Aug 20	Sep 20	Oct 20	Nov 20	Dec 20
Professional Inspector	18.51	19.47	22.17	20.19	6.92	12.73	9.81	16.99	19.45	23.08	22.24	15.42	13.60
<i>Number of Applications Received</i>	<i>42</i>	<i>61</i>	<i>54</i>	<i>39</i>	<i>28</i>	<i>48</i>	<i>46</i>	<i>51</i>	<i>59</i>	<i>78</i>	<i>62</i>	<i>80</i>	<i>80</i>
Real Estate Inspector	18.56	22.04	n/a	31.94	8.42	n/a	6.44	11.65	n/a	24.91	28.33	7.86	3.24
<i>Number of Applications Received</i>	<i>3</i>	<i>0</i>	<i>5</i>	<i>2</i>	<i>0</i>	<i>3</i>	<i>3</i>	<i>1</i>	<i>3</i>	<i>2</i>	<i>2</i>	<i>6</i>	<i>6</i>
Apprentice Inspector	2.58	6.49	n/a	2.36	3.78	4.42	6.01	17.00	22.85	17.00	24.09	15.71	9.01
<i>Number of Applications Received</i>	<i>8</i>	<i>4</i>	<i>4</i>	<i>2</i>	<i>5</i>	<i>11</i>	<i>10</i>	<i>17</i>	<i>12</i>	<i>5</i>	<i>14</i>	<i>8</i>	<i>7</i>

Easement & Right-of-way Initial Registration Applications

	Dec 19	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	Jul 20	Aug 20	Sep 20	Oct 20	Nov 20	Dec 20
ERW Business	6.45	9.40	n/a	4.50	6.00	n/a	n/a	1.00	n/a	2.47	2.00	3.64	6.96
<i>Number of Applications Received</i>	<i>2</i>	<i>1</i>	<i>0</i>	<i>5</i>	<i>1</i>	<i>0</i>	<i>1</i>	<i>0</i>	<i>0</i>	<i>2</i>	<i>1</i>	<i>5</i>	<i>1</i>
ERW Individual	5.69	9.83	2.88	6.63	5.93	1.60	1.53	2.29	2.01	5.35	4.28	3.79	3.56
<i>Number of Applications Received</i>	<i>27</i>	<i>59</i>	<i>39</i>	<i>35</i>	<i>22</i>	<i>28</i>	<i>20</i>	<i>18</i>	<i>39</i>	<i>19</i>	<i>15</i>	<i>10</i>	<i>7</i>

TREC Enforcement Division: E1 Report

Case Status

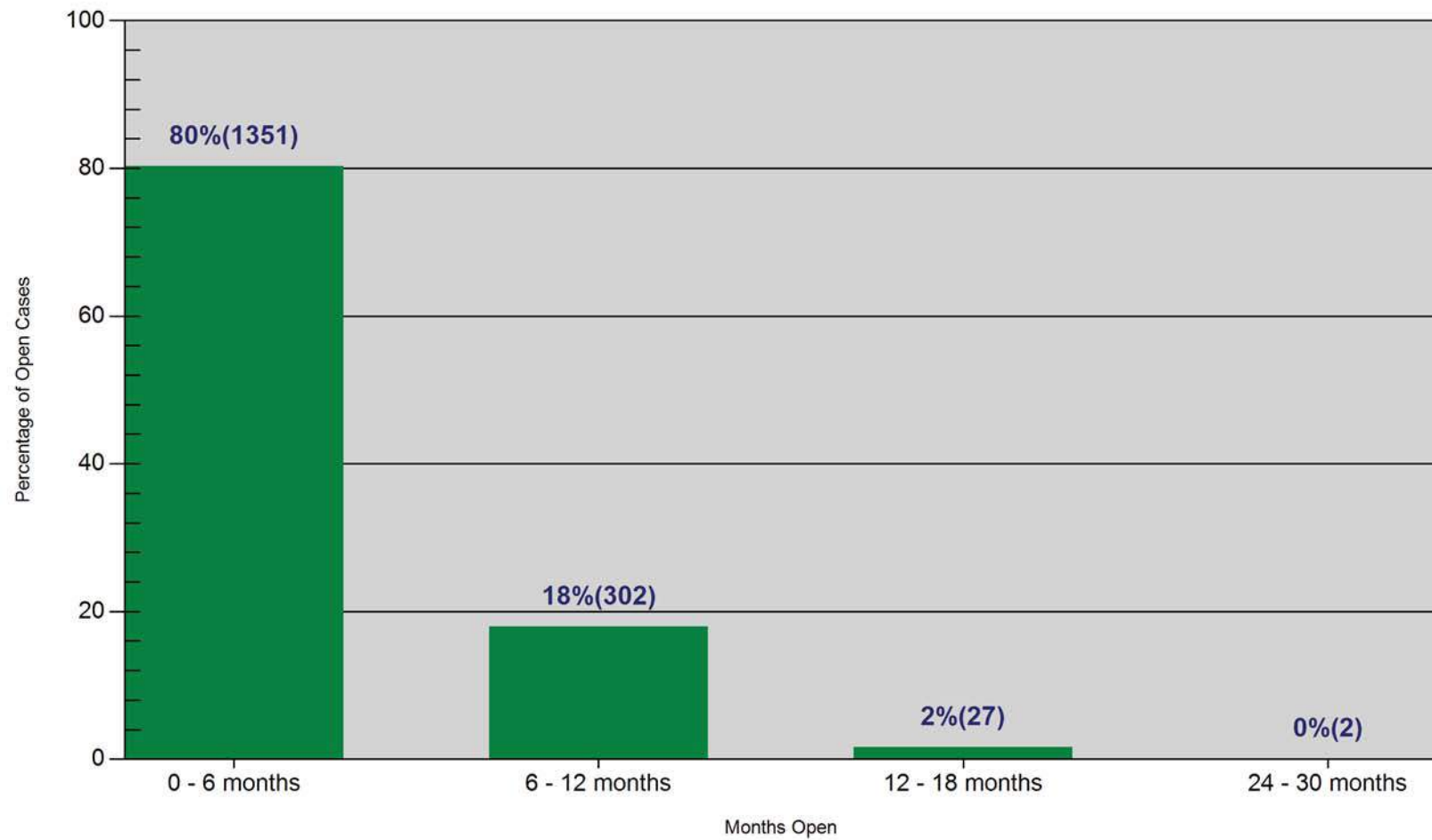
FY 2021

	Sep 20	Oct 20	Nov 20	Dec 20	Jan 21	Feb 21	Mar 21	Apr 21	May 21	Jun 21	Jul 21	Aug 21	YTD
Received During Month	778	631	611	569									2589
Broker/Sales	146	129	134	131									540
Inspector	13	10	11	10									44
Timeshare	6	8	5	4									23
Unlicensed Activity	2	3	4	5									14
Residential Service Company	30	21	15	18									84
No Jurisdiction	15	19	12	13									59
Application Investigation	388	274	255	261									1178
Fitness Inquiry	176	165	172	125									638
Education Related	0	1	3	1									5
Easement ROW	0	0	0	1									1
Other	1	1	0	0									2
	Sep 20	Oct 20	Nov 20	Dec 20	Jan 21	Feb 21	Mar 21	Apr 21	May 21	Jun 21	Jul 21	Aug 21	YTD
Closed During Month	577	600	545	593									2315
Complaint Withdrawn	7	5	5	1									18
Disciplinary Action	55	43	44	44									186
Failure to Go Forward	31	24	53	65									173
Insufficient Evidence	37	44	38	38									157
Matter Settled	27	21	15	25									88
No Jurisdiction	50	46	37	38									171
No Violation	6	4	8	4									22
Application Investigation	183	239	213	227									862
Fitness Inquiries	163	159	119	136									577
Other	12	15	10	12									49
Open at Beginning of Month				1706									
Received During Month				569									
Closed During Month				593									
Open at End of Month				1682									
Received During Fiscal Year				2589									
Closed During Fiscal Year				2315									

TREC Enforcement Division: E2 Report

Open Case Aging Report

as of 12/31/2020



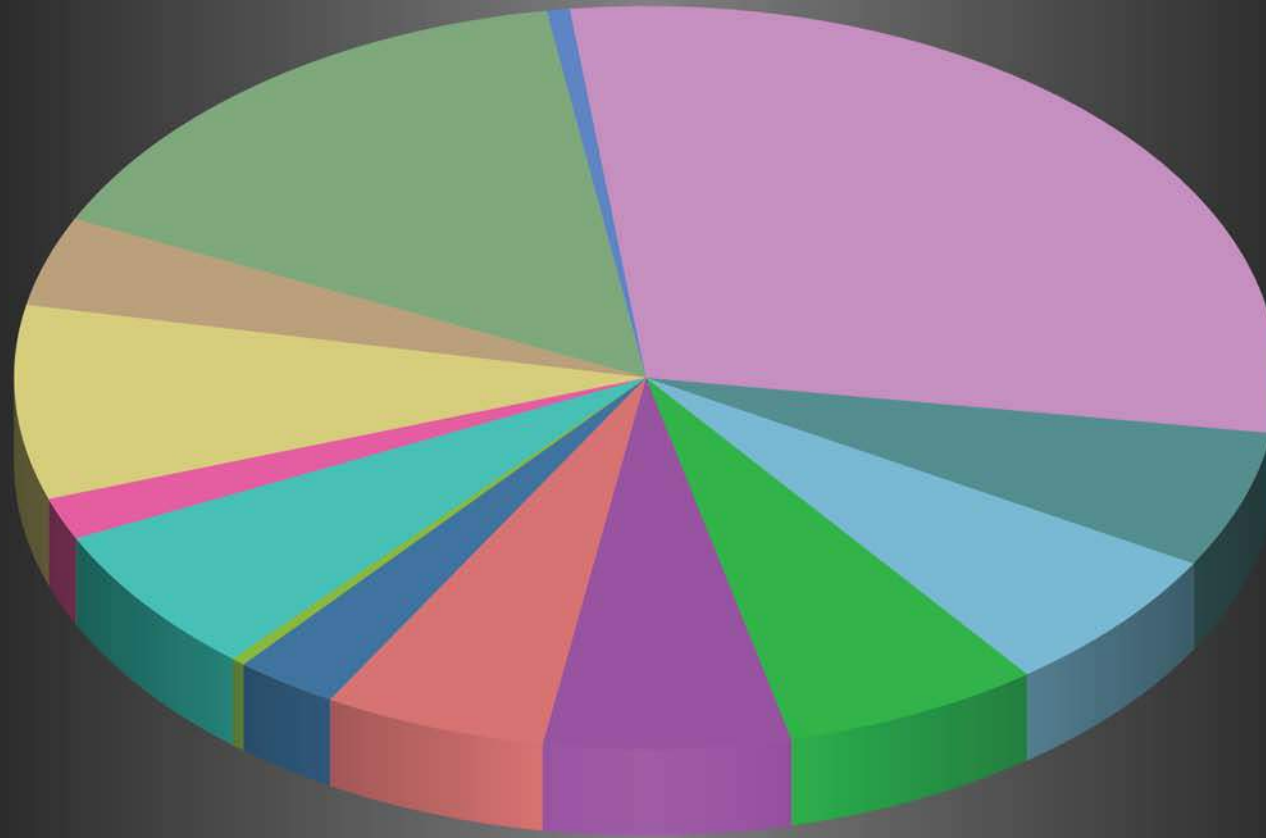
TREC Enforcement Division

Open Case Aging

E2 Report

Complaint Subject Categories for December 2019 through December 2020

1696 Total Allegations



Administrative 6.37 % (108)	Leasing/Property Management - Misappropriation 1.83 % (31)
Advertising 6.60 % (112)	Leasing/Property Management - Other 8.43 % (143)
Breach of Fiduciary Duties 6.31 % (107)	License Holder Acting as Principal 3.89 % (66)
Broker Supervision 5.72 % (97)	Licensure Issues 15.45 % (262)
Failure to Disclose 2.65 % (45)	Sales Misappropriation 0.59 % (10)
Improper Contract/Seller Disclosure form usage 0.35 % (6)	Sales Other 29.30 % (497)
Intermediary/IABS 6.54 % (111)	Unlicensed Activity 5.96 % (101)

Complaint Subject Categories by Month															
Subject Matter Categories	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Total	YTD
Administrative <i>Bad check, contact information, uncooperative, etc.</i>	17	11	4	9	13	5	8	3	14	6	5	7	6	108	6.37%
Advertising <i>Includes misleading & dba</i>	9	10	3	10	12	11	6	11	14	3	7	9	7	112	6.60%
Breach of Fiduciary Duty <i>Including false promise</i>	5	11	6	7	9	6	5	10	7	14	6	10	11	107	6.31%
Broker Supervision	10	6	4	6	9	19	8	3	10	7	5	5	5	97	5.72%
Failure to Disclose	7	7	2	2	1	1	1	4	4	4	5	5	2	45	2.65%
Improper contract/Seller Disclosure form usage <i>Including false promise</i>	1	0	1	0	0	1	0	0	0	1	1	0	1	6	0.35%
Intermediary/IABS	5	4	1	9	32	13	6	2	10	8	6	7	8	111	6.54%
Leasing/Property Management - Misappropriation	0	2	0	3	6	1	2	1	2	2	6	1	5	31	1.83%
Leasing/Property Management - Other <i>Includes negligence, referral, etc.</i>	21	13	8	15	17	6	9	11	12	6	11	7	7	143	8.43%
Licensure Issues <i>Criminal background check, denials, probationary license, etc.</i>	15	21	16	13	16	16	16	26	30	32	24	21	16	262	15.45%
License Holder Acting as Principal	5	4	4	6	5	3	3	6	4	8	5	8	5	66	3.89%
Sales Misappropriation <i>Other than Leasing/Property Management - Misappropriation</i>	0	0	0	0	0	1	1	0	0	6	0	1	1	10	0.59%
Sales Other <i>Includes negligence, rebate, referral, earnest money, etc. (other than Leasing/Property Management - Other)</i>	43	52	43	46	32	55	29	38	52	33	33	25	16	497	29.30%
Unlicensed Activity	5	5	6	5	16	9	11	5	10	11	5	8	5	101	5.96%
Total	143	146	98	131	168	147	105	120	169	141	119	114	95	1696	

Information & Technology Division

Electronic Information Outlet Statistics

December 2020

Website	Current Month	FYTD Total	Prior FYTD Total
Total Pages Viewed	2,000,730	8,018,292	6,347,281
Total Monthly Sessions	518,786	2,505,860	1,903,979

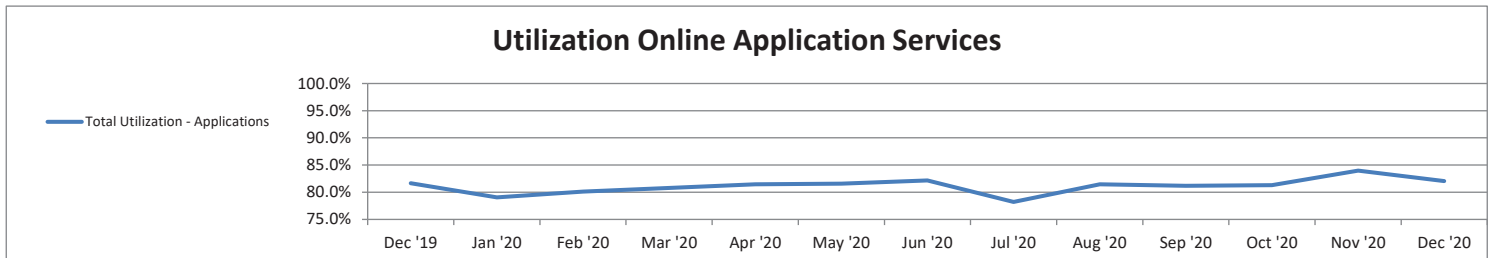
Online Transactions	Total	Online	Online Percent	FYTD Online Percent	Prior FYTD Percent
Applications	2586	2122	82.1%	82.1%	81.1%
Broker Application	124	101	81.5%	80.0%	80.7%
Sales Agent Application	2448	2010	82.1%	82.1%	81.9%
Corporate Broker Application	14	11	78.6%	86.8%	69.0%
Renewals	5842	5739	98.2%	98.1%	97.9%
Broker Renewals	1425	1393	97.8%	97.7%	97.2%
Sales Agent Renewal	4056	3997	98.5%	98.5%	98.8%
Corporate Broker Renewals	124	121	97.6%	95.6%	89.3%
Professional Inspector Renewals	188	182	96.8%	96.1%	97.8%
Real Estate Inspector Renewals	6	6	100.0%	93.3%	100.0%
Apprentice Inspector Renewals	6	6	100.0%	100.0%	100.0%
Easement ROW Business Renewals	3	3	100.0%	85.7%	100.0%
Easement ROW Individual Renewals	34	31	91.2%	94.0%	94.3%

Information & Technology Division

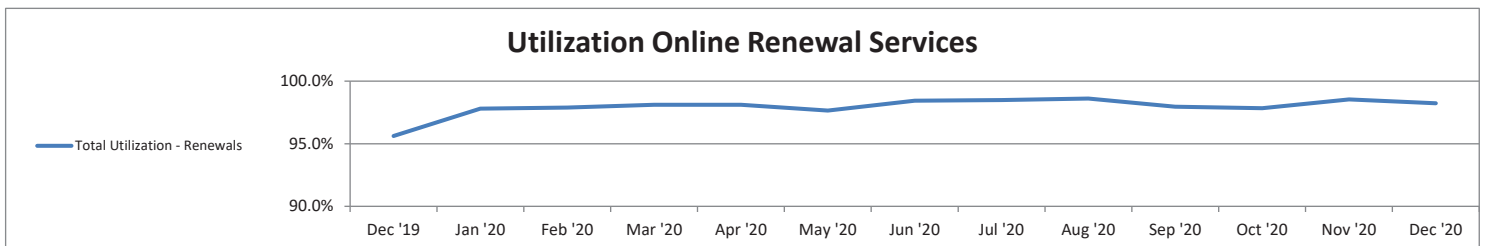
Electronic Information Outlet Statistics

December 2020

Applications	Dec '19	Jan '20	Feb '20	Mar '20	Apr '20	May '20	Jun '20	Jul '20	Aug '20	Sep '20	Oct '20	Nov '20	Dec '20
Broker Application	78.7%	68.8%	67.4%	74.8%	73.6%	72.2%	72.1%	76.1%	87.2%	82.9%	75.0%	80.0%	81.5%
Sales Agent Application	82.5%	80.7%	81.6%	81.9%	82.7%	82.0%	83.9%	78.3%	81.8%	81.0%	81.5%	84.1%	82.1%
Broker Organization Applications	71.1%	65.8%	70.6%	66.7%	61.4%	86.7%	65.9%	79.2%	60.0%	89.5%	85.7%	90.9%	78.6%
Total Utilization - Applications	81.7%	79.1%	80.1%	80.8%	81.5%	81.6%	82.2%	78.2%	81.5%	81.2%	81.3%	84.0%	82.1%



Renewals	Dec '19	Jan '20	Feb '20	Mar '20	Apr '20	May '20	Jun '20	Jul '20	Aug '20	Sep '20	Oct '20	Nov '20	Dec '20
Broker Renewals	98.9%	97.7%	97.6%	97.7%	97.2%	97.2%	97.6%	97.6%	97.9%	97.6%	97.7%	97.8%	97.8%
Sales Agent Renewal	99.0%	98.4%	98.3%	98.5%	98.9%	99.2%	99.2%	98.9%	99.1%	98.4%	98.1%	98.9%	98.5%
Broker Organization Renewal	32.9%	93.2%	94.9%	95.2%	93.8%	82.5%	95.3%	97.3%	95.6%	95.4%	91.3%	97.1%	97.6%
Professional Inspector Renewals	98.5%	95.1%	98.1%	96.0%	96.6%	96.9%	93.4%	97.9%	93.6%	94.6%	95.9%	97.2%	96.8%
Real Estate Inspector Renewals	66.7%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	80.0%	100.0%	66.7%	100.0%	100.0%
Apprentice Inspector Renewals	0.0%	100.0%	100.0%	100.0%	0.0%	100.0%	100.0%	50.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Easement ROW Business Renewals	100.0%	100.0%	100.0%	N/A	50.0%	0.0%	N/A	N/A	50.0%	50.0%	100.0%	N/A	100.0%
Easement ROW Individual Renewals	92.9%	93.2%	89.7%	94.1%	94.2%	92.3%	91.1%	93.2%	96.3%	93.8%	92.7%	97.7%	91.2%
Total Utilization - Renewals	95.6%	97.8%	97.9%	98.1%	98.1%	97.6%	98.4%	98.5%	98.6%	98.0%	97.8%	98.5%	98.2%



Financial Services Division

TREC Budget Status Report

December 2020 - Fiscal Year 2021

Expenditure Category	Proposed Amendment-Budget FY2021	Expenditures	Remaining Balance	Budget % Remaining	8/12 = 66.67% Comments
Actual Beginning Balance	19,732,109		\$15,250,953		Actual Beginning balance includes TTSTC balances as of 8/31/2020 reduced by expenditures for AY2020 processed after 8/31/2020 & payroll liability as of 8/31/2020. This resulted in a beginning balance that was \$1,002,446 more than originally estimated.
Operating Reserves	(7,432,904)				
Available balance within Texas Treasury Safekeeping Trust	12,299,205		\$7,818,049		excess remaining available TTSTC balance considered to balance FY21 budget
Salaries & Wages	8,284,693	2,523,616	\$5,761,077	69.5%	
Other Personnel Costs	3,255,480	954,273	\$2,301,208	70.7%	Lump sum amounts for Mark Moore and Angie Gladney \$24,463.55 & \$21,118.89, respectively; YTD longevity pay \$21K, one time merit \$5K for SES staff member; budget category includes employee & employer retirement contributions, health insurance contribution, payroll taxes
Professional Fees & Services	1,842,440	74,375	\$1,768,065	96.0%	Budgeted amount includes Versa Replacement over 3 years \$500K, SOAH hearings, Office of the Attorney General, technical support from Neubus Inc., Connectwise Virtual Server hosting, ITS Staffing Services for contract Programmer/Developer, Supervisory, Payroll, and Certified TX Contract developer training for staff, additional licenses needed for Cybersecurity PhisER, Several ITS Projects pending & expected to be completed by FY21
Consumables	12,000	282	\$11,718	97.7%	ABC check storage box--package of 3
Utilities	22,182	2,468	\$19,714	88.9%	YTD AT&T U-Verse for Maggie Weillbacher (contract through 8/31/2021); wireless headset for SES staff member; hotspots for ITS & Sprint hotspots purchased via DIR contract (purchased additional hotspots due to Pandemic)
Travel	73,784	11	\$73,773	100.0%	travel for SES staff member
Rent - Building	171,695	169,098	\$2,597	1.5%	Office rent remaining expense \$16K due March 1, rent for SFA parking spaces
Rent - Machines - Other	116,200	61,950	\$54,250	46.7%	Canon Copier lease cost YTD, PC Refresh rental payments for FY19 & FY20
Other Operating Expenses	1,083,228	292,355	\$790,873	73.0%	retirement and health insurance contributions; ARELLO Regulatory seminar; State Office of Risk Management, Versa maintenance & support, Postage, Westlaw subscription, Texas Legislative Service, Imaging & Processing Service with Neubus Inc., DouSign Enterprise Pro for Go
Benefit Replacement Pay	4,107	0	\$4,107	100.0%	
Subtotal -Operations Expenditures	14,865,810	4,078,427	10,787,383	72.6%	
DPS Criminal History Background Checks	22,416	0	22,416	100.0%	
Statewide Cost Allocation Plan (SWCAP)	215,993	0	215,993	100.0%	Indirect costs charged by the state. Paid quarterly. Actual expense will be \$164,769.10
Contribution to General Revenue	727,500	242,500	485,000	66.7%	Allocated monthly until August 2021
Subtotal - Nonoperational Expenditures	965,909	242,500	723,409	74.9%	
Total Expenditures	\$15,831,719	\$4,320,927	\$11,510,792	72.7%	

Revenue	FY2021 Approved Revenue	Revenue Collected	Revenue Remaining to be Collected	Revenue % Remaining to be Collected	Comments
License Fees	\$10,338,009	4,277,217.50	\$6,060,792	58.6%	
Education Fees	\$400,772	130,723	\$270,049	67.4%	
Examination Fees	\$369,894	164,624	\$205,270	55.5%	
Other Miscellaneous Revenue	\$241,888	151,244	\$90,644	37.5%	Interest earned exceeds projections.
Total Revenue	\$11,350,563	\$4,723,808	\$6,626,755	58.4%	
Revenue Over/(Under) Expenditures & Transfers	\$7,818,049	\$402,882	\$2,934,011		

Financial Services Division
Texas Real Estate Commission Operating Account No. 3055 Investments
Holdings Report
DECEMBER 2020

Purchase Date	Par Value	Purchase Price	Beginning Market Value	Additions Changes	Ending Market Value	Accrued Interest	Description	Maturity Date
12/15/2020	2,145,800.00	2,199,683.57	0.00	2,197,265.68	2,197,265.68	2,630.67	U.S. T-Notes, 1.875%	12/15/2021
12/15/2019	2,359,700.00	2,365,593.21	2,361,820.05	(2,361,820.05)	0.00	0.00	U.S. T-Notes, 1.875%	12/15/2020
03/16/2020	3,850,000.00	3,927,496.94	3,875,867.19	(8,271.50)	3,867,595.69	27,279.70	U.S. T-Notes, 2.38%	03/15/2021
06/17/2020	3,278,000.00	3,357,582.19	3,323,072.50	(7,554.77)	3,315,517.73	4,018.70	US T-Notes, 2.625	06/15/2021
09/16/2020	2,841,000.00	2,915,126.21	2,900,372.47	(6,658.60)	2,893,713.87	23,308.76	U.S. T-Notes, 2.75%	09/15/2021
Totals	\$ 14,474,500.00	\$ 14,765,482.12	\$ 12,461,132.21	\$ (187,039.24)	\$ 12,274,092.97	\$ 57,237.83		

Monthly Activity

Beginning Balance	Current Month	Cumulative Totals
-------------------	---------------	-------------------

Beginning Cash Available Balance \$ 6,991,817.39

Current Month Receipts \$ 3,490,872.39

Current Month Disbursements \$ (3,199,703.71)

Total Cash	\$ 7,282,986.07
Investment Ending Market Value	12,274,092.97
Total Account Balance	19,557,079.04
Operating Reserves	(7,432,904.00)
Ending Balance Available for Operations	\$ 12,124,175.04

Investment Compliance: These investments have been made in compliance with the Commission's Investment Policy.

Ranada O. Williams

Ranada Williams, Investment Officer

Melissa Huerta

Melissa Huerta, Alternate Investment Officer

Oretha Trice

Oretha Trice, Alternate Investment Officer

Financial Services Division
Real Estate Recovery Trust Account No. 3058 Investments
Current Securities
December 2020

Purchase Date	Par Value	Purchase Price	Beginning Market Value	Additions Changes	Ending Market Value	Accrued Interest	Description	Maturity Date
12/15/2020	622,500.00	638,131.71	0.00	637,430.28	637,430.28	763.16	U.S. T-Notes, 1.875	12/15/2020
12/15/2019	593,400.00	594,835.62	593,933.13	(593,933.13)	0.00	0.00	U.S. T-Notes, 1.875	12/15/2020
03/16/2020	585,000.00	596,775.51	588,930.47	(1,256.84)	587,673.63	4,145.10	U.S. T-Notes, 1.875	03/15/2021
06/17/2020	791,000.00	810,203.63	801,876.25	(1,823.01)	800,053.24	969.74	U.S. T-Notes, 2.625	06/15/2021
09/15/2020	1,139,000.00	1,168,673.84	1,162,803.32	(2,669.53)	1,160,133.79	9,344.83	U.S. T-Notes 2.75	09/15/2021
Totals	\$ 3,730,900.00	\$ 3,808,620.31	\$ 3,147,543.17	\$ 37,747.77	\$ 3,185,290.94	\$ 15,222.83		

	Beginning Balance	Current Month	Ending Balance
Receipts:			
Licenses' Remittances to Recovery Fund		\$ 29,120.00	
Interest Realized		15,957.73	
Repayments to Recovery Fund (Principal and Interest)		0.00	
Administrative Penalties		9,950.00	
Investments Matured		593,400.00	
Total Received	\$ 393,962.02	\$ 648,427.73	\$ 1,042,389.75
Disbursements:			
Investments Purchased		\$ 638,131.71	
Accrued Interest Purchased		0.00	
Disbursement to Treasury		(20.00)	
Payments from Recovery Fund		0.00	
Administrative Costs		83.58	
Total Disbursed		\$ 638,195.29	(638,195.29)
Cash Balance			404,194.46
Investment Ending Market Value			3,185,290.94
Total Portfolio			3,589,485.40
Reserved for Potential Payments Within 90 Days			(373,100.00)
Balance			\$ 3,216,385.40

Investment Position: The Fund is capable of meeting all known obligations.
Investment Compliance: The Investment Policy of the Commission has been followed.

Ranada O. Williams

Ranada Williams, Investment Officer

Melissa Huerta

Melissa Huerta, Alternate Investment Officer

Oretha Trice

Oretha Trice, Alternate Investment Officer

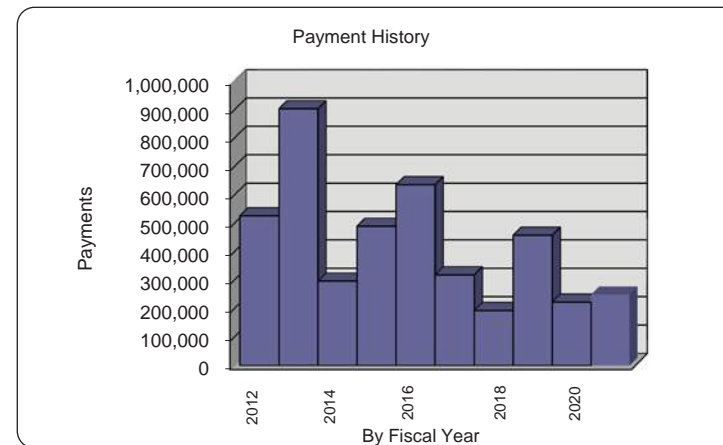
Texas Occ Code, Sec 1101.603(e): On a determination by the commission at any time that the balance in the trust account is less than \$1 million, each license holder at the next license renewal must pay, in addition to the renewal fee, a fee that is equal to the lesser of \$10 or a pro rata share of the amount necessary to obtain a balance in the trust account of \$1.7 million.

Financial Services Division
Real Estate Recovery Trust Account No. 3058 Investments
Payments and Repayments
December 2020

Month-Year	Payment Total	Repayment Total	Admin Penalties Total	Admin Costs	Payments FY2021-To-Date	Number of Claims FY 2021
December 2019	0.00	0.00	29,145.00	152.68	0.00	
January 2020	0.00	46,731.75	29,975.00	78.79	0.00	
February 2020	0.00	451.18	14,068.15	72.47	0.00	
March 2020	0.00	0.00	23,758.00	77.13	0.00	
April 2020	0.00	0.00	8,523.90	82.96	0.00	
May 2020	44,375.00	0.00	12,876.00	81.56	44,375.00	
June 2020	10,349.07	0.00	14,072.12	84.42	10,349.07	
July 2020	15,928.39	633.74	11,650.00	102.16	15,928.39	
August 2020	0.00	91.64	103,400.00	85.14	0.00	
September 2020	117,058.22	0.00	4,000.00	87.67	117,058.22	1
October 2020	0.00	1,000.00	9,650.00	84.14	0.00	0
November 2020	82,009.79	0.00	5,500.00	87.34	82,009.79	5
December 2020	50,927.20	0.00	9,950.00	63.58	50,927.20	1
	320,647.67	48,908.31	276,568.17	1,140.04	249,995.21	6

Potential Payments*
Next 3 Months 373,100.00

Payment History		
Fiscal Year	# of Payments	Total Payments
thru 2011	673	12,207,932.37
2012	21	527,323.23
2013	18	904,295.08
2014	13	297,028.02
2015	15	490,540.91
2016	20	636,691.80
2017	14	319,142.23
2018	7	193,671.65
2019	22	458,766.76
2020	7	223,285.53
2021	6	249,995.21
Total	816	\$16,508,672.79



*Potential Payments: Payments could be made in the time periods indicated. Several time/work variables can affect the actual payment dates.

Financial Services Division
Real Estate Inspection Recovery Fund No. 0889 (3059)
December 2020

Purchase Date	Par Value	Purchase Price	Beginning Market Value	Additions Changes	Ending Market Value	Accrued Interest	Description	Maturity Date
3/16/2020	61,000.00	62,227.87	61,409.84	(131.05)	61,278.79	432.22	U.S. T-Notes 2.375%	03/15/2021
12/15/2019	498,600.00	499,806.27	499,047.96	(499,047.96)	0.00	0.00	U.S. T-Notes 1.875%	12/15/2020
12/15/2020	523,300.00	536,440.68	-	535,851.03	535,851.03	641.55	U.S. T-Notes 2.625%	12/15/2021
Totals	\$ 1,082,900.00	\$ 1,098,474.82	\$ 560,457.80	\$36,672.02	\$597,129.82	\$1,073.77		

<u>Monthly Activity</u>				<u>Payment History</u>		
Beginning Balance	Current Month	Cumulative Totals		Fiscal Year	Number of Payments	Total Payments
Beginning Balance	\$ 54,668.62	\$ 54,668.62		1991 - 2009	45	\$ 319,879.95
Receipts:				2011	2	16,205.00
Licensees' Remittances to Recovery Fund	\$ 560.00			2012	2	25,000.00
Interest Realized (includes accruals)	1.68			2013	1	12,500.00
Treasury Note Semi-Annual Interest	4,674.38			2014	0	0.00
Repayments	0.00			2015	0	0.00
Administrative Penalties	802.30			2016	0	0.00
Investments Matured	498,600.00			2017	1	2,275.23
Total Received in Current Month		\$ 504,638.36		2018	2	25,000.00
Disbursements:				2019	0	0.00
Investments Purchased	\$ 536,440.68			2019	0	0.00
Payments from Recovery Fund	0.00			2020	0	0.00
* Cash Transfer Trust to Treasury (GR)	0.00			2021	0	0.00
Administrative Costs	22.77			Total	53	\$ 400,860.18
Total Disbursed in Current Month		\$ (536,463.45)				
Total Cash		\$ 22,843.53				
Reserved for Potential Payment within 90 Days		0.00				
Unobligated Fund Balance		\$ 22,843.53				
Investment Ending Market Value		597,129.82				
Balance		\$ 619,973.35				

Investment Position: The Fund is capable of meeting all known obligations.

Investment Compliance: The Investment Policy of the Commission has been followed.

* Per Occupation Code, Sec. 1102.353(d) If the balance in the fund on December 31 of a year is more than \$600,000, the commission shall transfer the amount in excess of \$600,000 to the credit of the general revenue fund.

Ranada O. Williams

Ranada Williams, Investment Officer

Melissa Huerta

Melissa Huerta, Alternate Investment Officer

Oretha Trice

Oretha Trice, Alternate Investment Officer





Agenda Item 8:

Report by the Executive Committee





EXECUTIVE COMMITTEE MINUTES – December 10, 2020

Committee members in attendance: Scott Kesner, Chair; Bob Leonard; TJ Turner

Staff in attendance: Chelsea Buchholtz, Executive Director; Tony Slagle; Deputy Executive Director; Abby Lee, Deputy General Counsel; Steve Rapp, IT Director

1. Call to order

The meeting was called to order at 1:32pm.

2. Executive Director update on agency operations and communication check-in

Executive Director Buchholtz provided an update to the committee on COVID-19 staff protocols. Ms. Buchholtz noted that the planned power outage impacting the agency's building and services went smoothly and that all services were back up and running on schedule. Finally, Ms. Buchholtz also noted that the agency recently hosted two successful, virtual events. The first event was town hall to provide staff with an update on the November Commission meeting and other agency news. The second event—"Coffee with the Commission"—provided an agency and forms update to over 200 people.

3. Discussion regarding personnel matters

Executive Director Buchholtz provided a total staff count and turnover update.

4. Discussion regarding possible proposal of 22 TAC 533.50, Petition for Adoption of Rules (New)

Deputy General Counsel Abby Lee presented a draft version of a rule, which would allow an interested person to petition the agency for rulemaking. Ms. Lee explained this new rule is being brought forward by staff in order to comply with a statutory requirement found in the Texas Administrative Procedures Act (Texas Government Code, Chapter 2001), which requires state agencies to have a rule that prescribes the form for such a petition and the process for submitting and considering it.

5. Update and discussion regarding the 87th Legislative Session

Deputy Executive Director Slagle provided an update of agency planning for legislative session and possible legislative initiatives.

6. Discussion regarding format of February 2021 Committee meeting

Executive Director Buchholtz noted that the agency is looking into options for a hybrid meeting, and discussed health and safety concerns and recommendations, as well as recent input from the Governor's office. Director of IT, Steve Rapp, noted that that staff will be testing technology options for a hybrid meeting. Ms. Buchholtz discussed with the committee the issue of offering CE to license holders attending the February committee

meeting. Staff will continue to investigate possible options for providing credit for license holders attending remotely.

7. Discussion regarding Customer Relations Division call and email volume

Deputy Executive Director Slagle provided an update on call and email volume and noted the improvement in response time compared with the same time period last year.

8. Discussion of outstanding items or questions since last Executive Committee meeting

The committee discussed the Governor's letter with regard to the reduction of application fees and criminal history background requirements.

9. Discussion regarding possible future topics and meeting dates

The committee requested that the Enforcement Committee discuss the agency's criminal history background requirements for license holders during their next meeting.

10. Adjourn

The committee adjourned at 2:37 pm.



EXECUTIVE COMMITTEE MINUTES – January 13, 2021

Committee members in attendance: Scott Kesner, Chair; Bob Leonard; TJ Turner

Staff in attendance: Chelsea Buchholtz, Executive Director; Tony Slagle; Deputy Executive Director; Abby Lee, Deputy General Counsel; Steve Rapp, IT Director; Amber Hinton, Recording Secretary.

1. Call to order
The meeting was called to order at 1:31 pm.
2. Executive Director update on agency operations and communication check-in
Executive Director Buchholtz provided an update to the committee on the updated consumer protection notice effective February 1, 2021. The agency will post the new version alongside the current form prior to the effective date to allow license holders sufficient time to prepare. Ms. Buchholtz noted that the agency will provide reminders to license holders and interested stakeholders regarding the CE contracts course requirement effective February 1st. Finally, Ms. Buchholtz provided an update to the committee on communication received regarding license holders' involvement in the events that took place at the U.S. Capitol on January 6, 2021.
3. Discussion regarding personnel matters
Executive Director Buchholtz provided an update on total staff count and open positions. The committee requested that this remain an agenda item and noted that the committee is particularly interested in being updated on personnel matters at the executive or director level.
4. Update and discussion regarding 87th Legislative Session
Deputy Executive Director Tony Slagle provided a brief overview of the bills currently being monitored by the agency and the outcome of the Sunset Commission hearing.
5. Discussion regarding format of February 2021 Commission meeting
Executive Director Buchholtz provided an update to the committee on different options for a hybrid meeting. The committee discussed and determined that the February meeting will be held remotely. The agency will offer CE for attendees of the February meeting by asking attendees to certify attendance using a form the agency will create.
6. Discussion regarding Real Estate Recovery Trust Account and Recovery Fund delegation of duties
Deputy General Counsel Abby Lee discussed the current procedure for handling denials of recovery fund claims. The committee determined that staff should continue to process

denials as currently done, but that such denials should be reported at the Commission's quarterly meetings. Staff will either draft a rule for review by the committee at their next meeting or will draft a policy that the Commission can approve at their next meeting.

7. Discussion regarding Customer Relations Division call and email volume
Deputy Executive Director Slagle provided some highlights on call and email volume, including the fact that hold times consistently remain very low despite having some of the highest call volumes in the Capitol Complex.
8. Discussion regarding Executive Director performance evaluation responses
The committee reviewed and discussed responses received regarding Executive Director's performance.
9. Discussion of outstanding items or questions since last Executive Committee meeting
Executive Director Buchholtz provided an update on the committee's request to have the Enforcement Committee discuss criminal history background requirements for license holders during their next meeting. The committee agreed that this should be discussed, and recommended that the Enforcement Committee report back to the Commission or that this topic be included in a future workshop.
10. Discussion regarding possible future topics and meeting dates
The committee requested that future topics include a discussion on criminal history background requirements and the process, reporting on emerging trends in the real estate industry, and finding ways to increase Commission interaction with agency staff. The committee agreed to meet again on March 17 at 1:30 p.m.
11. Adjourn
The committee adjourned at 2:49 pm.



Agenda Item 9:

Report by Education Standards Advisory Committee

Summary:

The entire video of the January 11, 2021, meeting is available on the TREC website:
https://www.trec.texas.gov/apps/meetings/view.php?meeting_id=435

Agenda Item 10:

Report by Texas Real Estate Inspector Committee

Summary:

The entire video of the January 15, 2021, meeting is available on the TREC website:
https://www.trec.texas.gov/apps/meetings/view.php?meeting_id=436

Agenda Item 11:

Members of the public have the opportunity to address the Commission concerning an agenda item or an issue of public interest that is not on the agenda. Anyone wishing to provide public comment on an issue of public interest that is not on the agenda may do so under this section. Members of the public who wish to speak on a matter specifically listed on the agenda may do so at the time that agenda item is heard.

All individuals wishing to provide public comment of any sort should fill out a speaker request form with the agency's designated agent.





Agenda Item 12.a.:

Consideration and possible action regarding proposal for decision in the matter of:
SOAH Docket No. 329-20-0455.REC; TREC v. Tiffanie L. Purvis





MEMORANDUM

TO: The Commission Members
FROM: Michael Molloy, Director of TREC Enforcement Division
RE: Proposal for Decision In The Matter of Tiffanie L. Purvis
DATE: January 14, 2021

The enclosed Proposal for Decision has been filed in SOAH Docket No. 329-20-0455.REC/Commission Hearing No. 191472. The Proposal for Decision will be considered for Final Order at the meeting of the Commission scheduled for February 16, 2021, at 10:00 a.m. via Microsoft Teams Application. Parties will receive an invitation to join the meeting via email.

A handwritten signature in blue ink that reads "Michael Molloy".

Michael Molloy
Director
TREC Enforcement Division

MM:sm
Enclosure

cc: Chelsea Buchholtz, Executive Director
Tony Slagle, Deputy Executive Director
Vanessa Burgess, General Counsel
Abby Lee, Deputy General Counsel
Amber Hinton, Executive Legal Assistant



ACCEPTED
329-20-0455
10/26/2020 2:00 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jodi Brown, CLERK



FILED
329-20-0455
10/26/2020 1:24 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jodi Brown, CLERK

State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

October 26, 2020

Chelsea Buchholtz
Executive Director
Texas Real Estate Commission
1700 N. Congress Avenue, Suite 400
Austin, TX 78701

VIA EFILE TEXAS

**RE: Docket No. 329-20-0455.REC; Texas Real Estate Commission v
Tiffanie L. Purvis.**

Dear Ms. Buchholtz:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code § 155.507, a SOAH rule that may be found at www.soah.texas.gov

Sincerely,

A handwritten signature in blue ink that reads "Ross Henderson".

Ross Henderson
Administrative Law Judge

LB/db
Enclosure

xc: Jose Antonio Renteria, Staff Attorney, 1700 N. Congress Ave., Suite 400, Austin, TX – **VIA EFILE TEXAS**

Keval Patel, Attorney, 19855 Southwest Freeway, Suite 330, Sugar Land, TX 77478 - **VIA EFILE TEXAS**

Michael Molloy, Director of Standards & Enforcement Services, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 (with 1 CD; Certified Evidentiary Record) - **VIA EFILE TEXAS & VIA INTERAGENCY**

SOAH DOCKET NO. 329-20-0455.REC

TEXAS REAL ESTATE COMMISSION,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
TIFFANIE LYNN PURVIS,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Real Estate Commission (Commission) brought this action against Tiffanie Lynn Purvis (Respondent), seeking to impose administrative penalties against her totaling \$4,500; to order that she refund a \$3,762.50 real estate broker sales commission; and to suspend her real estate broker's license (license no. 472798) for two years, with the suspension fully probated once the penalty and refund are paid in full. During the hearing, Staff withdrew the request that Respondent refund the broker sales commission. The Administrative Law Judge (ALJ) finds that Staff proved two of the allegations and recommends that Respondent pay an administrative penalty of \$1,500 and that her license be suspended until payment of the entire penalty as set forth in this proposal for decision (PFD).

I. NOTICE AND JURISDICTION

The Commission is responsible for licensing and regulating real estate brokers and sales agents in Texas.¹ The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of this proceeding, including the authority to issue a PFD with proposed findings of fact and conclusions of law.² No party disputes notice, which is addressed only in the Findings of Fact and Conclusions of Law.

¹ Tex. Occ. Code § 1101.151.

² Tex. Gov't Code ch. 2003.

II. PROCEDURAL HISTORY

This matter was referred to SOAH on October 1, 2019, for a hearing to be held on December 3, 2019. The hearing was continued to January 14, 2020, and a conditional order of default and dismissal was issued after Respondent failed to appear at the hearing.³ On January 30, 2020, Respondent filed a Motion for Reconsideration, which was granted.⁴

The hearing on the merits convened July 15, 2020, before ALJ Ross Henderson via Zoom videoconference. Staff appeared at the hearing and was represented by attorney Jose Antonio (Tony) Renteria. Respondent appeared and was represented by attorney Keval Patel. During the hearing, Staff withdrew its request for Respondent to refund the \$3,762.50 sales commission. The hearing concluded the same day and the record closed on August 28, 2020.⁵

III. APPLICABLE LAW

Pursuant to the Real Estate License Act, Texas Occupations Code ch. 1101 (Act), the Commission enforces standards of conduct and ethics for persons licensed by the Commission.⁶

The Act provides that the Commission may, among other enforcement options, suspend or revoke the license of, assess administrative penalties against, and order a refund to a consumer, if a license holder engages in prohibited conduct,⁷ including: acting negligently or incompetently, while acting as a broker or sales agent;⁸ engaging in conduct that is dishonest or in bad faith or

³ See SOAH Order Nos. 2, 4.

⁴ See SOAH Order No. 5.

⁵ The Agreed Post-Hearing Schedule was set in SOAH Order No. 10, which included dates for: Respondent to submit additional evidence; Petitioner to submit objections to additional evidence; and dates for written closing briefs.

⁶ Tex. Occ. Code § 1101.151(b)(2).

⁷ Tex. Occ. Code §§ 1101.652, .656, .659, and .701.

⁸ Tex. Occ. Code § 1101.652(b)(1).

that demonstrates untrustworthiness;⁹ and failing within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person.¹⁰

According to Commission rules, while a licensee must deal honestly and fairly with all parties to a real estate transaction and is obligated to convey accurate information to those with whom he deals, the licensee owes a “duty of fidelity” to the client. This duty requires the licensee to put the client’s interest above the licensee’s interest.¹¹ Commission rules further state that the real estate broker must keep a principal informed at all times of significant information applicable to the transaction or transactions in which the license holder is acting as agent for the principal.¹²

Administrative penalties imposed by the Commission cannot exceed \$5,000 per violation, must be calculated by considering a variety of factors, and must be consistent with a schedule of penalties adopted by Commission rule.¹³ The Commission has adopted such a schedule.¹⁴

IV. DISCUSSION

A. Background

Since 2004, Respondent has been a licensed real estate broker.¹⁵ On December 5, 2018, a complaint was filed with the Commission alleging Respondent: failed to inform the title company of the correct sales commission prior to closing the sale of a property, which resulted in an overpayment to Respondent from the proceeds of the sale of the client’s home; and failed to timely refund the client the excess commission received by Respondent from the proceeds of the sale.¹⁶

⁹ Tex. Occ. Code § 1101.652(b)(2).

¹⁰ Tex. Occ. Code § 1101.652(b)(9).

¹¹ 22 Tex. Admin. Code § 535.156(b).

¹² 22 Tex. Admin. Code § 535.156(c).

¹³ Tex. Occ. Code § 1101.702.

¹⁴ 22 Tex. Admin. Code § 535.191.

¹⁵ Staff Ex. 2.

¹⁶ Staff Ex. 3 (the agreed sales commission was 4%, but the title company paid 6% out of the sale proceeds).

Staff initiated an investigation into the complaint, resulting in a determination by Staff that Respondent violated the Act and Commission rules.¹⁷

B. Allegations

Staff alleges that Respondent committed the following violations when acting as a real estate broker for Grayland Noah (Principal or Complainant) in a real estate sales transaction and after the transaction had closed in Houston, Texas:

- Section 1101.652(b)(1) of the Act, by acting negligently or incompetently while acting as a broker or sales agent;
- Section 1101.652(b)(2) of the Act, by engaging in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness while acting as a broker or sales agent when refusing to refund the retainer fee;
- Section 1101.652(b)(9) of the Act, by failing within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person;
- 22 Texas Administrative Code § 535.156(b) by failing to put the interest of the license holder's principal above the license holder's own interest; and
- 22 Texas Administrative Code § 535.156(c) by failing to keep a principal informed at all times of significant information applicable to the transaction or transactions in which the license holder is acting as agent for the principal.

For the alleged violations, Staff recommends that the Commission assess an administrative penalty of \$4,500 and suspend Respondent's real estate broker's license for two years, with the suspension fully probated after the penalty is paid in full.

¹⁷ Staff Exs. 1, 4.

C. Evidence

Staff called Respondent, Glenn Killey, and Aimee Cooper as witnesses. Staff offered Staff Exhibits 1 through 5 and 7 through 11, which were admitted into evidence without objection.¹⁸ Respondent offered PUR Exhibits 1-15,¹⁹ which were admitted, and Respondent provided additional testimony. After the hearing, the evidentiary record was held open so that Respondent could submit an additional exhibit (PUR Exhibit 16) referred to in her testimony. PUR Exhibit 16 was admitted over Petitioner's objections.²⁰

1. Tiffany Purvis

Respondent became a licensed Texas realtor in 1999 and has been a licensed broker since 2004 (license 472798).²¹ She is a broker for Texas Real Estate & Company. In 23 years, she has participated in hundreds of real estate transactions. Respondent acknowledged that in March 2018, she entered into a real estate listing agreement with Complainant to sell a property located at 1956 Haddon Street, Houston, Texas (the Property) at a 4% commission.²² Respondent also acknowledged that in July 2018, Complainant entered into a sales agreement (Sales Agreement) with a buyer to sell the Property which included a 3% sales commission to the buyer's agent. The buyer's agent commission was to come from Respondent's 4% total commission.

Respondent stated that for a sales contract, her staff is tasked with submitting a Commission Dispersion Authorization (CDA) to the title company to let the title company know what the total commission is for the transaction and how it should be split among agents. Nevertheless, she also testified that a CDA is not required by law to be provided to the title company. Respondent, citing a head injury to her responsible staff member, admitted that neither

¹⁸ Staff Ex. 6 was not offered.

¹⁹ PUR is short for Respondent's last name (Purvis).

²⁰ PUR Ex. 16 was admitted for the limited purpose of showing Respondent's state of mind, not for the truth of the matters asserted within the document. *See* SOAH Order No. 11.

²¹ Staff Ex. 2.

²² Staff Ex. 6.

she nor her staff could state with certainty whether or not a CDA was presented to the title company (Independence) prior to the closing of this particular transaction notifying them that the listing agreement for the property specified a 4% total commission. It is Respondent's belief that in the absence of receiving a CDA, Independence was responsible for reaching out to her regarding the amount of the commission, but in this case they did not. Respondent speculated that Independence mistakenly assumed the commission was a standard 6% split between buyer's and seller's agents.

Respondent testified that a title company is required to prepare a Preliminary Closing Disclosure (Disclosure) three days prior to the closing that outlines all costs and credits to her client associated with the sales transaction. Respondent testified that the documents often contain mistakes. She also testified that the document is not usually provided until the date of the closing, and that she did not receive one in this matter until after the closing was completed. Respondent did not dispute that the closing documents erroneously included a 6% commission (rather than the agreed upon 4% commission). As a result, the documents provided her with a 3% sales commission instead of the 1% commission she should have received. She also admitted that she did not attend the closing with her client, nor did she review the closing settlement statement (Settlement Statement) for accuracy prior to the closing, which contained the same error.

Respondent believes that there is no legal requirement that she review the Settlement Statement or CDA, and failure to do so does not violate her duty to her client. However, Respondent testified that she and her assistant try to review settlement statements when they can. She said they are not always able to so because the title companies do not always get the documents to her in sufficient time. In this case, the closing time and place were announced at the last minute, and she was unable to attend the closing. As Complainant was driving to the closing, she told him that he should carefully review the closing documents for accuracy prior to signing them, but she did not otherwise discuss the documents with him in advance of the signing.

Respondent stated that her commission from the sale was deposited directly into her business account, and the commission received from the transaction was not immediately verified for correctness because her staff person with access to the accounts was on medical leave.

Between October 24, 2018, and November 20, 2018, Respondent exchanged emails with Complainant's wife, Denielle Noah, regarding the error. Ms. Noah requested Respondent repay the amount owed to Complainant. A complaint was filed on December 5, 2018. Respondent's attorney subsequently submitted a reimbursement check to Complainant on July 22, 2019. During the intervening period, Respondent stated she sought advice from her own attorney, an attorney at the Texas Association of Realtors (TAR), and from the Commission's investigators. about how best to refund the money. She stated that she was concerned that incorrectly reimbursing the funds could result in tax liability for her and Complainant, and that a check directly from her to Complainant might be considered an illegal kickback or violate Commission rules.

Respondent called the Commission to seek advice and spoke with the Commission's original investigator named "Angela" who suggested she have the title company amend the closing documents. She later spoke to Mr. Brent Killey, also a Commission investigator, who suggested she use a third-party payment processing company to make the payment to complainant.²³ She offered to send the money to the Commission directly and Mr. Killey informed her they could not accept the money. She continued to believe that making a direct payment to Complainant would be a violation and her attorney counseled her that using the third-party payor suggested by the Commission would "muddy the water."²⁴ She testified that despite her persistent efforts, neither the Commission Staff, nor TAR, nor her attorney would give her clear advice, which made her uncomfortable about taking any specific action.

Respondent believes she acted in congruence with her fiduciary duties. Respondent testified that she always intended to repay Complainant and she never denied owing him. Prior to Complainant's eventual repayment, she was in contact with Complainant and his wife, including phone calls and over 321 text messages. She testified that she offered to leave, and did leave, a ring valued at over \$35,000 with Complainant as collateral (without a receipt) while the matter was being resolved. Respondent testified that she kept her client's interests in mind at all times and did not want to take any action that would be detrimental to her client or herself. She testified

²³ See also PUR Ex. 33.

²⁴ PUR Ex. 22.

that the money was at all times available in her brokerage's business account. She explained that she had maintained a personal relationship with Complainant throughout the relevant times and was sending him business referrals during the investigation.

2. Glenn Killey

Mr. Killey is a Commission investigator, and was the investigator assigned to this complaint. He is a licensed real estate agent and a real estate instructor. He has previously supervised the work of other realtors in a real estate brokerage. Mr. Killey reviewed the complaint, and interviewed Complainant and Respondent. He prepared an investigative report.²⁵

Mr. Killey testified that, based on his understanding of the Listing Agreement and Sales Agreement, Respondent was entitled to receive a commission of \$3,762.50 from the sale of Complainant's property, but that she instead received \$11,287.50. Mr. Killey testified that although he was provided a copy of a cashier's check from Respondent to Complainant for the amount of overpayment, dated May 20, 2019, his understanding was that Complainant had not received payment until July 22, 2019.

Mr. Killey explained that an executed contract is typically sent to a title company, which is an independent third-party to the contract whose responsibility is to issue a title policy and serve as the closing coordinator for the sales transaction. He stated that it is the listing agent's responsibility to inform the title company of the commission and that the title company is not privy to the listing agreement and would have no other means of knowing the commission information. Mr. Killey testified that Respondent admitted she did not send Independence the CDA informing Independence of the commission. Mr. Killey testified that, absent a CDA, title companies will often contact realtors to ask them what the commission should be, but that it is ultimately the realtor's responsibility to make sure the title company has the correct information. Mr. Killey explained that a failure of the realtor to provide the information can result in overpayment by the client as it did in this instance.

²⁵ Staff Ex. 4.

Mr. Killey also testified that while federal law requires the title company to provide a preliminary disclosure statement three days before the closing, title companies sometimes do not meet that deadline. If the agent reviews the closing disclosure prior to the closing, the agent would be able to see an error in the commission amount, he said. Mr. Killey reviewed the Disclosure as part of his investigation. The Disclosure includes a commission percentage of 6% rather than the 4% agreed to by the Complainant in the listing agreement. Mr. Killey testified that Respondent acknowledged that she did not review the Disclosure or the Settlement Statement prior to closing, but it was her belief that it was the client's responsibility to do so.

Mr. Killey testified that a broker is obligated to "shepherd" a contract through closing and to keep the client informed of areas of concern that may arise—including reviewing all documentation and providing counsel. Mr. Killey believes that in order to give accurate and faithful representation, it is the agent's duty to review the settlement documents for errors and advise the client.

Mr. Killey reviewed Respondent's response to the complaint and had other communications with Respondent. It was his opinion that Respondent seemed to be making excuses and delaying repayment intentionally. He testified that Respondent acknowledged she owed the money to Complainant but her explanation as to why she did not repay the money changed based on guidance she was receiving from other persons, including TAR and her attorney. Mr. Killey testified that there was no Commission rule that Respondent would violate by repaying the money directly to Complainant; however, he admitted that he was not allowed to advise her of that on behalf of the Commission.

3. Aimee Cooper

Ms. Cooper is a Staff Attorney and Team Leader for the South, Central, and West Division of the Commission. She also supervises the Application and Background Check program for the Commission. She has worked for the Commission since 2007. She has completed all of the coursework necessary to obtain a real estate license but has not taken the required tests. She is

familiar with the Act and Commission rules, the duties and responsibilities of real estate license holders, and is experienced in determining the appropriate discipline under the Act and Commission rules. Her job duties include reviewing broker and sale agent complaints, reviewing investigator reports, determining if violations have been committed, and determining if disciplinary action should be pursued.

Ms. Cooper reviewed the exhibits and listened to each witness's testimony. Ms. Cooper provided her opinion that Respondent committed the five alleged violations. Ms. Cooper testified that Respondent's concerns regarding rule violations for repaying the overpaid commission relating to mortgage fraud or kick-backs were unfounded and inapplicable to Respondent as the representative of the seller rather than a buyer. However, Ms. Cooper explained that Commission staff would not be authorized to provide advice to a realtor about the correct manner of repaying an overpayment or the potential legal liability of doing so.

Ms. Cooper testified that § 1101.656 of the Act prescribes the Commission's authority to suspend or revoke a real estate license for certain conduct while § 1101.702 prescribes the maximum penalty that may be imposed for specified violations and the factors the Commission is required to consider in determining the appropriate administrative penalty. Based on those penalty factors, the Commission has adopted 22 Texas Administrative Code § 535.191, which provides specific penalties ranges for specific violations. Accordingly, Staff provided a matrix spreadsheet for each of the charges and the penalty ranges for each specified in 22 Texas Administrative Code § 535.191. The matrix shows that a violation of § 1101.652(b)(1) of the Act has a penalty range of \$500 - \$3000. A violation of § 1101.652(b)(2) or (b)(9) of the Act, or a violation of 22 Texas Administrative Code §§ 535.156(b) or (c), have penalty range of \$1,000 to \$5,000 per violation per day.

In this case, after considering the penalty factors, Ms. Cooper testified that Staff seeks the minimum administrative penalty for each violation for a total of \$4,500, which includes \$500 for Respondent's alleged violation of § 1101.652(b)(1) of the Act, and \$1,000 each for alleged violations of 22 Texas Administrative Code § 535.156(b) and (c), and of § 1101.652(b)(2) and (b)(9) of the Act. She stated that the minimum penalty was appropriate because of the extended

period of time Respondent has been licensed without any other complaints or disciplinary action against her. Additionally, Ms. Cooper testified that Respondent should receive a 2-year suspension that is fully probated after the penalty is paid in full.

V. ANALYSIS

Staff bears the burden of proof to establish that Respondent violated the Act and Commission rules. Staff presented five charges against Respondent—all relating to an overpayment of her commission in a real estate transaction in which she represented Complainant in the sale of his property. This section will first set forth the facts established by the evidence relating to Respondent's conduct during and after the transaction closing and next analyze whether the established facts constitute a violation under each of the charges.

A. Established Background Facts

The ALJ finds the following facts relating to conduct at issue are either undisputed or established by a preponderance of the credible evidence. On March 23, 2018, Respondent, using the business name "Texas Real Estate & Co." entered into a Listing Agreement with Complainant to represent him in the sale of the Property located at 1956 Haddon St., Houston, Texas.²⁶ Pursuant to the Listing Agreement, Complainant agreed to pay Respondent a 4% commission upon sale of the Property and, if the buyer of the property had an agent, Respondent agreed to pay the agent representing a buyer a 3% commission. The 4% commission was less than Respondent's typical 6% commission, but she agreed to reduce it because she had a personal relationship with Complainant and because she received another 3% commission from a separate transaction in which Respondent represented Complainant as his buyer's agent.²⁷

On July 22, 2018, Complainant subsequently entered into the Sales Agreement to sell the Property to a buyer for \$392,500, and by later amendment the sales price was reduced to

²⁶ Staff Ex. 6.

²⁷ Staff Ex. 4.

\$376,250.²⁸ The Sales Agreement provided that Respondent would pay the buyer's broker a commission of 3% of the total sales price. Pursuant to the Listing Agreement and the Sales Agreement, Respondent was entitled to receive a 4% commission (totaling \$15,050) from which she agreed to pay the buyer's broker a 3% commission (\$11,287.50). Thus, when read together, Respondent was to receive 1% of the sales price (\$3,762.50) as her portion of the commission.

The Sales Agreement was submitted to Independence for Independence to issue a title policy and act as a third-party coordinator of the transaction.²⁹ Only Respondent and Complainant were privy to the Listing Agreement and the commission specified in it.³⁰ The Listing Agreement was not submitted to Independence by Respondent.³¹ A CDA is a document typically submitted to a title company which notifies the title company of the total commission and who is to receive the commission at the closing of a property sale.³² A CDA was not presented to Independence by Respondent or by her brokerage prior to the closing of the Sales Agreement.³³ Respondent did not otherwise inform Independence of the agreed commission for this transaction. The title agent at Independence had closed transactions with Respondent previously at a different title company and was familiar with her typical 6% commission agreements.³⁴ Independence did not ask Respondent or her brokerage whether the commission should be less than her typical commission.³⁵

A Disclosure is a document required by law to be presented by a title company to the parties at least 3 days prior to the closing of a sale.³⁶ The parties agree that sometimes title companies fail to meet that requirement. However, a Disclosure, dated August 2, 2018, was created by Independence identifying the pertinent dispersals for the Sales Agreement, and it included an

²⁸ Staff Ex. 11; and Testimony of Respondent.

²⁹ Testimony of Mr. Killey.

³⁰ Testimony of Mr. Killey.

³¹ Testimony of Respondent.

³² Testimony of Mr. Killey.

³³ Testimony of Mr. Killey.

³⁴ Testimony of Respondent.

³⁵ Testimony of Respondent.

³⁶ Testimony of Mr. Killey.

incorrect commission dispersal amount to Respondent (\$11,287.50 or 3%, rather than the 1% she was entitled to receive pursuant to the Listing Agreement and Sales Agreement).³⁷

A Settlement Statement, dated September 14, 2018, was created by Independence and signed by Complainant at the closing on September 17, 2018.³⁸ The Settlement Statement details dispersals from the sale of property and it became final after the closing. The Settlement Statement contained the same incorrect commission dispersal to Respondent as the Disclosure. Respondent did not review the Disclosure or Settlement Statement prior to the closing nor attend the closing.³⁹ Consistent with the erroneous Settlement Statement, Independence wired the incorrect commission into Respondent's account.⁴⁰ Thus, Respondent was overpaid \$7,525.⁴¹

Beginning on October 24, 2018, over a month after the closing, and continuing through November 29, 2018, Respondent and Complainant's wife, Deneille Pratel, exchanged emails in which Ms. Pratel first notified Respondent of the error and repeatedly requested that Respondent repay the overpayment.⁴² Respondent responded first that she was looking into whether there was an error and later what the appropriate means of refunding the overpayment should be to avoid liability to Complainant and herself.⁴³ A complaint was filed with the Commission on December 5, 2018, either by or on behalf of Complainant, regarding the overpayment and outlining the efforts by Complainant's wife to recover the overpayment.⁴⁴

A Commission investigation ensued. During the Commission investigation, Respondent did not dispute there was an overpayment and consistently agreed she would repay it. However, Respondent stated that the error was the fault of Independence and that she could not get a clear

³⁷ Staff Ex. 7.

³⁸ PUR Ex. 13.

³⁹ Testimony of Respondent.

⁴⁰ Testimony of Mr. Killey.

⁴¹ Testimony of Mr. Killey.

⁴² Staff Ex. 8.

⁴³ Staff Ex. 8; Testimony of Respondent.

⁴⁴ Staff Ex. 3.

answer from Commission Staff, TAR, or her own attorney on how to accomplish the repayment without incurring additional tax or regulatory liability to herself and Complainant.⁴⁵ As of May 1, 2019, the date the Commission investigator Glenn Killey issued his report of his investigation into the matter, Respondent had not repaid the overpayment to Complainant.⁴⁶

On July 22, 2019, an attorney for Respondent notified the Commission that a check for \$7,525.00, the entire overpayment amount, had been mailed to Complainant.⁴⁷

B. Staff's Allegations

Staff alleged that Respondent's conduct and actions relating to the transaction and her failure to timely repay the overpayment violated three sections of the Act and two Commission rules. The ALJ finds that Staff proved violations of § 1101.652(b)(1) and (b)(9) of the Act, and recommends the minimum penalties for those violations totaling \$1,500. The ALJ further recommends that Respondent's license be suspended until the penalty is paid.

1. Texas Occupations Code § 1101.652(b)(1).

Staff proved by a preponderance of the evidence that Respondent violated § 1101.652(b)(1) of the Act. Section 1101.652(b)(1) provides that a licensee should not act negligently or incompetently while acting as a broker or sales agent. Staff alleged that Respondent, as the only party to know the correct amount commission she was to receive, was responsible for providing that information to Independence prior to closing and that she failed to do so. The failure resulted in an error whereby Respondent received a larger commission from her client than she was entitled to. Staff also alleged that Respondent could have avoided the incorrect commission dispersal by reviewing the closing documents before or after the closing. Staff further alleged that Respondent failed to timely verify that the payment she received from Independence for the transaction was

⁴⁵ Testimony of Respondent.

⁴⁶ Staff Ex. 4.

⁴⁷ Testimony of Mr. Killey.

correct or to timely notify Independence that the payment was incorrect. Finally, Staff alleged that Respondent failed to timely correct the error and return the overpayment.

Respondent did not convey the information regarding the correct commission split to Independence prior to or after closing, and that failure resulted in her receiving a larger commission than she was entitled to from her client. Respondent acknowledged that Independence had no other means to obtain the commission information other than receiving it from Respondent, but she argued that it if she or her office neglected to provide the information to Independence, it was Independence's responsibility to reach out to her to obtain the information. The ALJ finds Respondent's attempted shifting of responsibility to Independence and to her own employee unpersuasive.

Respondent has had an extensive career as a broker and there is no evidence that she has previously demonstrated negligence or incompetence in her representation of any client. However, in this particular transaction there is no doubt that a clear error occurred as a result of her negligence or incompetence. The ALJ finds that Staff proved by a preponderance of evidence that Respondent violated § 1101.652(b)(1) of the Act by representing her client incompetently when she failed to provide the correct commission information to the title company prior to the closing of the sale of the Property. However, while Respondent could have mitigated the effects of her error by reviewing the Closing Disclosure or Settlement Statement for errors prior to or after closing or by ensuring she was wired the correct amount of money from the transaction, the ALJ does not find those lapses constituted incompetence or negligence because Staff's own witness, Mr. Killey, stated that reviewing these documents was merely "best practice" for a broker – not that a broker was required to do so.

2. Texas Occupations Code § 1101.652(b)(2).

Staff did not prove by a preponderance of evidence that Respondent violated § 1101.652(b)(2) of the Act, which provides that a broker must not engage in conduct that is dishonest, in bad faith, or that demonstrates untrustworthiness. Staff alleged, based mostly on the length of time it took her to repay the overpayment, that Respondent acted in bad faith when she

knowingly or intentionally failed to inform Independence of the correct commission amount prior to the closing, and then intentionally refused to repay the money that belonged to Complainant.

Although Respondent admitted that she did not inform Independence of the correct commission amount and did not review the closing documents for errors, she testified credibly that she reviews documents prior to closing when she can, but was not able to do so in this transaction because it was scheduled at the last minute. While Respondent's committed errors due to her reliance on others, there is no evidence that she intentionally withheld the correct commission information from Independence.

Further, the ALJ finds that Respondent was not acting in bad faith as a result of the length of time it took Respondent to repay the overpayment. Respondent never denied owing the repayment to Complainant and consistently stated her intent to repay it; she maintained a relationship and constant contact with him throughout the relevant times; she gave Complainant a ring that was worth in excess of the amount of the overpayment to hold as collateral until he was repaid;⁴⁸ and she provided un rebutted testimony that she could not get a clear answer from TAR, the Commission, or her private attorney as to the correct means of repaying the overpayment without incurring additional tax or regulatory liability for herself or Complainant. The ALJ acknowledges that the amount of time it took Respondent to repay the overpayment was overly long; however, the length of time, without more, is insufficient to prove that Respondent was acting in bad faith. Therefore, Staff did not prove by a preponderance of evidence that Respondent violated § 1101.652(b)(2) of the Act.

3. Texas Occupations Code § 1101.652(b)(9).

Staff proved by a preponderance of evidence that Respondent violated § 1101.652(b)(9) of the Act. That provision requires that a broker must, within a reasonable time, properly account for or remit money received by the broker that belongs to another person. Unlike the above analysis of § 1101.652(b)(2) of the Act, which requires a finding that Respondent acted in bad faith, this

⁴⁸ Evidence of the collateral was established by Respondent's testimony and PUR Ex. 7.

provision only requires that the amount of time taken to make a repayment be unreasonable irrespective of Respondent's intent. Respondent repaid the overpayment about nine months after she knew of the error.⁴⁹ The ALJ finds that nine months, on its face, is an unreasonable amount of time to make the repayment.

Additionally, although for about six months Respondent consulted with others about how to best to repay the Complainant, there is no evidence that Respondent took any action over the final three months until eventually making repayment nine months after she was told about the overpayment.⁵⁰ Therefore, the ALJ finds that evidence shows that Respondent violated § 1101.652(b)(9) of the Act because she failed within a reasonable time to properly remit money that she received and which belonged to Complainant.

4. 22 Texas Administrative Code § 535.156(b).

The ALJ finds that Staff did not prove by a preponderance of evidence that Respondent violated 22 Texas Administrative Code § 535.156(b) by placing her own interests above that of her client's interests.

Staff urged that the primary duty of the agent is to represent the interests of the agent's client, and to put the client's interests above their own interests. As discussed previously, the evidence showed that the erroneous commission overpayment was due to Respondent's incompetent handling of this particular transaction and not due to bad faith or an intentional effort to obtain Complainant's money. The evidence shows that, whether her concerns were valid or not, Respondent was concerned about incurring tax and regulatory liability for herself and her client. Further, Respondent provided Complainant with collateral valued in excess of the amount she had been overpaid so that Complainant's interest in the transaction was secure. Therefore, Staff did not prove that Respondent placed her own interests above that of her client's interests, in violation of 22 Texas Administrative Code § 535.156(b).

⁴⁹ Testimony of Mr. Killey.

⁵⁰ PUR Ex. 8.

5. 22 Texas Administrative Code § 535.156(c).

Finally, the ALJ finds that Staff did not prove Respondent violated 22 Texas Administrative Code § 535.156(c), which requires a broker to keep a principal informed at all times of significant information applicable to the transaction or transaction.⁵¹

The preponderance of the credible evidence shows Complainant was kept informed of the significant information applicable to the contract, as evidenced by his signature on the Listing Agreement and the Sales Agreement. These documents, when read together, specified the amount of Respondent's commission. Respondent was unable to attend the closing because it was scheduled at the last minute. She testified credibly that she told Complainant that he should carefully review the closing documents for accuracy prior to signing them.

At the closing, Complainant signed the Settlement Statement averring that he had carefully read the Settlement Statement, and agreed to the dispersals contained within it. Complainant's signatures on the documents show that Complainant was legally informed of the information. This fact is further evidenced by Complainant's eventual discovery of the error by later reviewing the documents already in his possession. After the error was discovered, there is sufficient evidence in the record to demonstrate that Respondent communicated with the Complainant regarding her efforts to resolve the repayment. Therefore, Staff did not prove that Respondent violated 22 Texas Administrative Code § 535.156(c).

C. Penalty

Staff argued that Respondent's alleged violations justified imposition of a \$4,500 administrative penalty and suspension of her real estate broker's license for two years, with the suspension fully probated once the penalty and refund were paid in full.

⁵¹ 22 Tex. Admin. Code § 535.156(c).

As discussed above, the evidence supports findings that Respondent violated § 1101.652(b)(1) and (9) of the Act. In determining the amount of the administrative penalty, the following factors are to be considered:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.⁵²

Respondent's error in failing to provide Independence with the correct commission information appears to have resulted from her doing something out of the ordinary (reducing her commission), and by her misplaced reliance on others to perform her duty. The conduct was not shown to be intentional bad faith. Her failure to timely remit Complainant's money was likewise shown to be caused by a lack of diligence, and was not shown to be in bad faith. In the end, Respondent's concerns about accruing liability for her and Complainant do not appear to have been valid. However, Respondent consistently acknowledged that she owed Complainant the money and kept in contact with Complainant and Commission Staff. Respondent ultimately repaid Complainant in full and appears to continue to have a personal relationship with him. Respondent has been licensed for many years and has no prior violations.

Considering the penalty factors above, the ALJ recommends a total administrative penalty of \$1,500, consisting of a \$500 administrative penalty for violation of § 1101.652(b)(1), and a \$1,000 administrative penalty for violation of § 1101.652(b)(9). The ALJ recommends that Respondent's real estate broker license be suspended until the penalty is paid in full.

⁵² Tex. Occ. Code § 1101.702(b).

VI. FINDINGS OF FACT

1. Tiffanie Lynn Purvis (Respondent) became a licensed Texas realtor in 1999 and has been a licensed broker since 2004 (license 472798). She is a broker for Texas Real Estate & Company. In 23 years, she has participated in hundreds of real estate transactions.
2. Respondent was at all times relevant to this matter, a licensed Texas real estate broker, and was engaged in brokerage activity.
3. In March 2018, Respondent entered into a real estate listing agreement with Grayland Noah (Complainant) to sell a property located at 1956 Haddon St., Houston, Texas (the Property) at a 4% commission.
4. Complainant subsequently entered into sales agreement (Sales Agreement) to sell the Property to a buyer for \$392,500 on July 22, 2018, and by later amendment, the sales price was reduced to \$376,250. The Sales Agreement provided that Respondent would pay the buyer's broker a commission of 3% of the total sales price.
5. Pursuant to the Listing Agreement and the Sales Agreement, Respondent was entitled to receive a 4% commission (totaling \$15,050) from which she agreed to pay the buyer's broker a 3% commission (\$11,287.50). Thus, when read together, Respondent was to receive 1% of the sales price (\$3,762.50) as her take away commission. Respondent was responsible for providing the commission information to Independence.
6. The Sales Agreement was submitted to Independence so that Independence could issue a title policy and act as a third-party coordinator of the closing of the Sales Agreement.
7. Respondent was responsible providing Independence the correct commission split for the transaction. Only Respondent and Complainant were privy to the Listing Agreement and the commission specified in it. The Listing Agreement was not submitted to Independence by Respondent.
8. A Commission Dispersal Authorization (CDA) is a document typically submitted to a title company to notify the title company of the total commission and who is to receive the commission at the closing of a property sale. A CDA was not presented to Independence by Respondent prior to the closing of the Sales Agreement.
9. The title agent at Independence had closed transactions with Respondent and was familiar with her typical 6% commission agreements. Independence did not ask Respondent or her brokerage whether the commission should be less than her typical commission. Respondent did not otherwise inform Independence of the agreed commission for this transaction.
10. A closing disclosure (Disclosure), dated August 2, 2018, was created by Independence identifying the pertinent dispersals for the Contract and it included an incorrect commission

dispersal amount to Respondent (\$11,287.50 or 3%, rather than the 1% she was entitled to receive pursuant to the Listing Agreement and Sales Agreement).

11. A Settlement Statement, dated September 14, 2018, was created by Independence and was signed by Complainant at the closing of the Sales Agreement on September 17, 2018. The Settlement Statement details all dispersals for the closing of a property and it became final after the sale was closed. The Settlement Statement contained the same incorrect commission dispersal to Respondent (\$11,287.50 or 3%).
12. Respondent did not review the Disclosure or Settlement Statement prior to the closing. Respondent did not attend the closing with Complainant.
13. Consistent with the erroneous Settlement Statement, Independence wired the incorrect commission into the account of Texas Real Estate & Company. Respondent was overpaid \$7,525 from Complainant's proceeds from the sale of the Property. Respondent took no immediate action to ensure that her commission fee was correct.
14. Beginning on October 24, 2018, over a month after the closing, and continuing through November 29, 2018, Respondent and Complainant's wife, Deneille Pratel, exchanged emails in which Ms. Pratel first notified Respondent of the error and repeatedly requested that Respondent repay the overpayment. Respondent responded first that she was looking into whether there was an error and later what the appropriate means of refunding the overpayment should be to avoid liability to Complainant and herself.
15. A complaint was filed with the Texas Real Estate Commission (Commission) on December 5, 2018, either by or on behalf of Complainant, regarding the overpayment and outlining the efforts by Complainant's wife to recover the overpayment.
16. Staff (Staff) of the Commission initiated an investigation into the complaint.
17. Respondent never disputed there was an overpayment and consistently agreed she would repay it. However, Respondent stated that the error was the fault of Independence and that she could not get a clear answer from Commission Staff, Texas Association of Realtors, or her own attorney on how to accomplish the repayment without incurring additional tax or regulatory liability to herself and Complainant.
18. Respondent provided Complainant a ring as collateral pending repayment of the \$7,525 she owed Complainant for the erroneous overpayment. The ring was valued in excess of \$7,525.
19. After concluding its investigation Staff made a determination that Respondent violated the Real Estate License Act, Texas Occupations Code ch. 1101 (Act) and Commission rules.
20. On July 22, 2019, or about nine months after Respondent became aware of the overpayment of commission an attorney for Respondent notified the Commission that a check for \$7,525.00, the entire overpayment amount, had been provided to Complainant.

During the nine months Respondent was indecisive about how to repay the overpayment and did not take any actions to resolve the overpayment during the last few months.

21. Respondent timely requested a hearing and, on October 4, 2019, Staff mailed a Notice of Hearing to Respondent.
22. The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the agency.
23. The hearing on the merits convened July 15, 2020, before Administrative Law Judge (ALJ) Ross Henderson via Zoom videoconference. Staff appeared at the hearing and was represented by attorney Jose Antonio (Tony) Renteria. Respondent appeared and was represented by attorney Keval Patel. The hearing concluded the same day and the record closed on August 28, 2020.

VII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Occ. Code ch. 1101.
2. SOAH has jurisdiction over the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Respondent received proper and timely notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.
4. Staff had the burden of proving the case by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
5. A broker must put the interest of the principal above the license holder's own interest. 22 Tex. Admin. Code §§ 535.156(b). Based on the Findings of Fact, Respondent did not violate 22 Texas Administrative Code § 535.156(b).
6. A broker must keep a principal informed at all times of significant information applicable to the transaction or transactions in which the license holder is acting as agent for the principal. 22 Tex. Admin. Code §§ 535.156(c). Based on the Findings of Fact, Respondent did not violate 22 Texas Administrative Code § 535.156(c).
7. The Commission may suspend or revoke a license or take other disciplinary action if the license holder, while engaged in real estate brokerage: acts negligently or incompetently; engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness; or fails within a reasonable time to properly account for or remit money that is received by

- the license holder and that belongs to another person. Tex. Occ. Code § 1101.652(b)(1), (2), (9).
8. Respondent violated Texas Occupations Code (Code) § 1101.652(b)(2) because she failed to provide information regarding her commission, that was in her sole possession, to Independence which resulted in her receiving a larger commission from her client than what she was entitled.
 9. Respondent violated Code § 1101.652(b)(9) because she did not return the overpayment of commission, that rightfully belonged to her client, until nine months after she became aware of the overpayment (an unreasonable amount of time).
 10. Respondent did not violate Code § 1101.652(b)(1) because she was not shown to have acted in bad faith.
 11. The Commission may suspend or revoke the license of, assess administrative penalties against, and order a refund to a consumer by, a license holder who violates the Act or a Commission rule. Tex. Occ. Code §§ 1101.652, .656, .659, and .701. The amount of any administrative penalty imposed may not exceed \$5,000 per violation per day and shall be based on consideration of specified factors. Tex. Occ. Code § 1101.702.
 12. The factors to consider when determining the amount of the penalty are: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts; (2) the history of previous violations; (3) the amount necessary to deter future violations; (4) efforts to correct the violation; and (5) any other matter that justice may require. Tex. Occ. Code § 1101.702(b).
 13. The Commission has adopted a schedule of administrative penalties taking into consideration the factors set forth in Code § 1101.702(b). 22 Tex. Admin. Code § 535.191.
 14. The Commission should impose an administrative penalty of \$1,500 and suspend Respondent's real estate broker license until the total administrative penalty is paid in full.

SIGNED October 26, 2020.



ROSS HENDERSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



Agenda Item 12.b.:

Consideration and possible action regarding proposal for decision in the matter of:
SOAH Docket No. 329-20-1699.REC; TREC v. Angelica Reynoso





MEMORANDUM

TO: The Commission Members
FROM: Michael Molloy, Director of TREC Enforcement Division
RE: Proposal for Decision In The Matter of
Angelica Reynoso
DATE: January 14, 2021

The referenced matter, filed under SOAH Docket No. 329-20-1699.REC/Commission Hearing No. 200606, will be considered for Final Order at the meeting of the Commission scheduled for February 16, 2021, at 10:00, via Microsoft Teams Application. Parties will receive an invitation to join the meeting via email.

Enclosed for your consideration are copies of the following:

- 1) Proposal for Decision dated October 26, 2020;
- 2) Respondent's Exceptions to the Proposal for Decision dated November 10, 2020;
- 3) Petitioner's Response to Respondent's Exceptions to Proposal for Decision dated November 13, 2020; and
- 4) Response to Exceptions from Administrative Law Judge dated November 23, 2020.

A handwritten signature in blue ink that reads "Michael Molloy".

Michael Molloy
Director
TREC Enforcement Division

MM:sm
Enclosure

cc: Chelsea Buchholtz, Executive Director
Tony Slagle, Deputy Executive Director
Vanessa Burgess, General Counsel
Abby Lee, Deputy General Counsel
Amber Hinton, Executive Legal Assistant



ACCEPTED
329-20-1699
10/26/2020 11:29 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jodi Brown, CLERK



FILED
329-20-1699
10/26/2020 11:02 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Jodi Brown, CLERK

State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

October 26, 2020

Chelsea Buchholtz
Executive Director
Texas Real Estate Commission
1700 N. Congress Avenue, Suite 400
Austin, TX 78701

VIA EFILE TEXAS

**RE: Docket No. 329-20-1699.REC; Texas Real Estate Commission v
Angelica Reynoso.**

Dear Ms. Buchholtz:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 Tex. Admin. Code § 155.507, a SOAH rule that may be found at www.soah.texas.gov

Sincerely,

A handwritten signature in cursive script that reads "L Brite".

LINDA H. BRITE
Administrative Law Judge

LB/db
Enclosure

xc: Sarah Decker, Staff Attorney, 1700 N. Congress Ave., Suite 400, Austin, TX – **VIA EFILE TEXAS**
Jeffrey S. Kelly, Attorney, Post Office Box 2125, Austin, TX 78768 - **VIA EFILE TEXAS**
Michael Molloy, Director of Standards & Enforcement Services, 1700 N. Congress Ave., Suite 400, Austin, TX 78701 (with 1 CD; Certified Evidentiary Record) - **VIA EFILE TEXAS & VIA INTERAGENCY**

P.O. Box 13025 Austin, Texas 78711-3025 | 300 W. 15th Street Austin, Texas 78701
Phone: 512-475-4993 | www.soah.texas.gov

SOAH DOCKET NO. 329-20-1699.REC

TEXAS REAL ESTATE COMMISSION,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
ANGELICA REYNOSO,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Angelica Reynoso (Respondent) holds an active real estate sales agent license issued by the Texas Real Estate Commission (Commission). Commission staff (Staff) seeks disciplinary action against Respondent based on her guilty plea to the felony offense of theft of \$20,000 or more, but less than \$100,000. Having considered the evidence in the context of applicable law, the Administrative Law Judge (ALJ) recommends that the Commission revoke Respondent's license.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No party contested notice or jurisdiction, and those matters are addressed solely in the findings of fact and conclusions of law. On August 5, 2020, a telephonic hearing on the merits convened before State Office of Administrative Hearings ALJ Linda H. Brite. Respondent appeared and was represented by attorney Jeffrey Kelly. Staff appeared and was represented by attorney Sarah Decker. The record closed on September 2, 2020, upon submission of written closing briefs.

II. DISCUSSION

A. Background

On October 7, 2019, in Cause No. F-1600273-L in the Criminal District Court No. 5 of Dallas County, Respondent pleaded guilty to the third-degree felony offense of theft of \$200,000 or more, but less than \$100,000. The Court deferred adjudication of guilt, placed Respondent on

community supervision for five years, and ordered Respondent to pay \$23,534 in restitution.¹ The grand jury indictment indicates that between approximately July 1, 2011, and June 1, 2014, “pursuant to one scheme and continuing course of conduct, [Respondent] did by deception unlawfully appropriate by acquiring and otherwise exercising control over property, to wit: Medicaid and food stamp benefits, with the intent to deprive the State of Texas, the owner thereof, and the aggregate value of the said property was \$20,000 or more but less than \$100,000.”²

B. Legal Standards

The Commission is authorized to impose disciplinary action against its licensees, including suspending or revoking a license.³ The Commission may suspend or revoke a license if the license holder enters a plea of guilty or *nolo contendere* to, or a conviction, for a felony.⁴

Under chapter 53 of the Code, the Commission is authorized to suspend or revoke a license if the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.⁵ The Commission considers offenses “against real or personal property belonging to another” to be directly related to the real estate profession.⁶ The Commission may consider a deferred adjudication to be a conviction for licensing purposes if: (1) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license; and (2) after consideration of the factors described in Sections 53.022 and 53.023, the Commission determines that the person may pose a continued threat to public safety or employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.⁷

¹ Staff Ex. 4 at 24-25.

² Staff Ex. 4 at 23.

³ Tex. Occ. Code (Code) §§ 1101.652, .656.

⁴ Code § 1101.652(a)(1).

⁵ Code § 53.021(a).

⁶ 22 Tex. Admin. Code (TAC) § 541.1(a)(4).

⁷ Code § 53.021(d)(1)(B)(i), (2).

Commission of a crime that is directly related to the profession is not necessarily dispositive. Before suspending or revoking the license of a person who has been convicted of a crime, the Commission must first determine whether that person is fit to perform the duties and discharge the responsibilities of the licensed profession in spite of her criminal history. If the Commission determines that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, the Commission shall consider the following factors in determining a person's present fitness for a license:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
- (6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision;
- (7) the time remaining, if any, on the person's term of parole, supervised release, probation, or community supervision; and
- (8) other evidence of the person's fitness, including letters of recommendation.⁸

The licensee has the responsibility, to the extent possible, to obtain and provide the letters of recommendation.⁹

⁸ Code § 53.023(a); 22 Tex. Admin. Code § 541.1(d).

⁹ Code § 53.023(b).

In this proceeding, Staff has the burden of proving its basis for revoking Respondent's license, while Respondent has the burden to prove that she is fit to be licensed despite her criminal history.¹⁰

C. Evidence

Staff offered and had admitted eight exhibits and presented the testimony of Aimée Cooper. Respondent offered and had admitted four exhibits and presented the testimony of Richard Machos. Respondent declined the opportunity to provide sworn testimony on her own behalf.

1. Testimony of Aimée Cooper

Ms. Cooper has been employed with the Commission since 2007 and is responsible for overseeing applications and background investigations. Ms. Cooper testified that from 2011 through 2014, Respondent did not report to the Texas Workforce Commission that she had an employed husband in the home and that she had income from her employment with JP Morgan Chase.¹¹ As a result, Respondent received Medicaid and food-stamp benefits she would not have qualified for had her true income been reported.

Ms. Cooper testified that Respondent's license should be revoked because she pleaded guilty to an offense against property. Ms. Cooper testified that an additional factor to consider is that the offense was ongoing over three years. Also, Respondent was an adult between 41 and 44 years old when she committed the crime. Respondent has more than three years remaining on her five-year probation period.

Approximately six years have elapsed since the offense was committed. Respondent provided recommendation letters and has done some volunteer work. Respondent is in compliance

¹⁰ Tex. Occ. Code § 53.023(a); 1 Tex. Admin. Code § 155.427.

¹¹ Staff Ex. 8 at 79.

with the restitution payment terms of her probation.¹² Ms. Cooper noted that although Respondent is paying, she still owes more than \$20,000 in restitution.

Ms. Cooper believes revocation is appropriate because in the real estate profession, Respondent would be required to handle money in option fees and earnest money and would have access to funds and private information. Ms. Cooper did not believe the profession would give Respondent access to Medicaid benefits; however, Ms. Cooper pointed out that the offense is described simply as theft, which is a serious offense. Ms. Cooper testified that the license holders act as fiduciaries for their clients. Ms. Cooper was not aware of any other criminal activity involving Respondent.

2. Testimony and Recommendation Letter of Richard Machos

Richard Machos has been licensed by the Commission since 1980 and is currently a broker at a realty firm. He used to teach classes to new agents, which is how he met Respondent approximately seven years ago. Mr. Machos currently supervises Respondent in her role as an agent. She is very thorough with her contracts and gets the earnest money to title companies timely and without any issues. Respondent has been entrusted with certified checks, personal checks, and money orders, and they have all been delivered without issues. Mr. Machos testified that Respondent is one of the top agents at the firm.

Mr. Machos testified that Respondent was charged with Medicaid and food stamps theft, which has nothing to do with what a sales agent does. He stated that her role would not provide any opportunities for Respondent to engage in theft of proceeds. According to Mr. Machos, even when a buyer pays cash, the agent is not involved; it would be handled with the title company at closing. Mr. Machos testified that checks are never made out to Respondent or the company. He opined that Respondent is perfectly fit to be an agent. He testified that Respondent cares for her family, is trustworthy, and does volunteer work.

¹² Resp. Ex. 4.

In his recommendation letter, Mr. Machos described Respondent as hardworking and dedicated to her clients. The letter indicated that Respondent conducted her business with the utmost professionalism. Mr. Machos also pointed out that Respondent is up-to-date and has even paid extra on the restitution payments to pay off the amount sooner.¹³

3. Recommendation Letters of Carmen Pedregon and Ruben De La Torre

Carmen Pedregon submitted a recommendation letter on Respondent's behalf. Ms. Pedregon has known Respondent since 2013, when she was working for Keller Williams Realty. Ms. Pedregon described Respondent as a hardworking, dedicated, conscientious, honest, caring, compassionate, professional, and helpful. According to the letter, Respondent is one of the top agents in the company. Ms. Pedregon did not address Respondent's criminal history.¹⁴

Ruben De La Torre also submitted a recommendation letter on Respondent's behalf. Mr. De La Torre has known Respondent for over seven years. He described Respondent as a family-oriented person of integrity, respect, and ethics. Mr. De La Torre stated that Respondent is one of his preferred realtors, and he admires Respondent for how hardworking she is as a professional and as a mother. Mr. De La Torre did not address Respondent's criminal history.¹⁵

D. Analysis

Under Code § 1101.652(a)(1), the Commission may suspend or revoke a license if the license holder enters a plea of guilty or *nolo contendere* to, or a conviction, for a felony. While this provision grants the Commission the authority to suspend or revoke Respondent's, it does not offer any factors of consideration or guidance for determination of whether Respondent's license

¹³ Resp. Ex. 2; *see* Resp. Ex. 4 (A statement dated July 31, 2020, showing Respondent had paid \$515 extra on her required payments and has a remaining balance of \$21,869.68).

¹⁴ Resp. Ex. 1

¹⁵ Resp. Ex. 3.

should be suspended or revoked. Therefore, the ALJ relies primarily on Code chapter 53 for analysis of this matter.

Pursuant to Code § 53.021(a)(1), the Commission may suspend or revoke a license on the grounds that the person has been placed on deferred adjudication for an offense that directly relates to the duties and responsibilities of the licensed occupation and has not completed the period of supervision, provided that the Commission determines that the person may pose a continued threat to public safety or that employment of the person in the licensed occupation would create an opportunity to reoffend.¹⁶ After consideration of the factors of Code § 53.022 and .023, the Administrative Law Judge finds that Respondent's employment as a sales agent would create a situation in which Respondent would have an opportunity to reoffend. And under 22 Texas Administrative Code § 541.1(a)(4), Respondent's theft offense is directly related to the duties and responsibilities of a real estate sales agent because it is an offense against personal property. Therefore, the Commission *may* revoke Respondent's license on such grounds; the issue is whether it *should* revoke or suspend the license. Having considered the evidence, the ALJ concludes that Respondent has not shown that she is presently qualified to continue holding a real estate sales agent license.

Respondent was approximately 41 to 44 years old during the time period she committed the theft that led to her deferred adjudication. Approximately six years have passed since the commission of the offense, but Respondent remains on probation until 2024. The offense appears to be Respondent's only criminal involvement, which is in her favor. Respondent's has been employed with realty firms as a licensed real estate sales agent since 2013.

Respondent's supervisor Mr. Machos commended her hard work, dedication, professionalism, and volunteer work. The letters of recommendation from Ms. Pedregon and Mr. De La Torre describe Respondent as hardworking, honest, ethical, and professional, but do not acknowledge Respondent's theft charge. Respondent is in compliance with the restitution

¹⁶ Code § 53.021(a), (d)(1)(B)(i), (d)(2).

payments of her probation. No letter from Respondent's probation officer was submitted addressing her compliance with all terms of her probation.

The fact that she is esteemed by her supervisor and two colleagues is positive, but it does not demonstrate that Respondent will not reoffend if given an opportunity. Respondent declined to provide testimony during the hearing, so no additional information about Respondent's offense is in evidence. The real estate profession could give Respondent opportunities to potentially divert or misuse payments or property entrusted to her care. Respondent has not shown she is able to be entrusted with the fiduciary duties that are integral to the real estate profession. Therefore, Respondent has not demonstrated that she is presently fit to perform the duties of a real estate sales agent.

Respondent has a single, but serious, felony offense at issue. She may be sanctioned by suspension or revocation of her license. Respondent argued that a license suspension would be a more appropriate sanction than revocation. Given the nature and seriousness of Respondent's offense, however, the ALJ does not find that a license suspension would be appropriate. Respondent could reapply for a license in the future if she wished to do so. Accordingly, the ALJ concludes that Respondent's license should be revoked.

III. FINDINGS OF FACT

1. Since October 2013, Respondent has been a Texas real estate sales agent licensed by the Texas Real Estate Commission (Commission).
2. Over a period of approximately July 2011 through June 2014, Respondent did not report to the Texas Workforce Commission that she had an employed husband in the home and that she had income from her employment. At the time, Respondent was receiving Medicaid and food-stamp benefits that she would have not qualified for had her true income been reported.
3. On October 7, 2019, Cause No. F-1600273-L in the Criminal District Court No. 5 of Dallas County, Respondent pleaded guilty to the third degree felony offense of theft of \$20,000 or more but less than \$100,000. The Court deferred adjudication of guilt, placed Respondent on community supervision for five years, and ordered Respondent to pay \$23,534 in restitution.

4. On January 15, 2020, Staff sent Respondent a notice of the hearing to be held at the State Office of Administrative Hearings (SOAH). It contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted, or an attachment that incorporated by reference the factual matters asserted in the complaint or petition.
5. On August 5, 2020, SOAH Administrative Law Judge Linda H. Brite convened the telephonic hearing. Respondent appeared and was represented by attorney Jeffrey Kelly. Staff appeared and was represented by attorney Sarah Decker. The record closed on September 2, 2020, upon submission of written closing briefs.
6. Respondent was approximately 41 to 44 years old during the time she committed the offense.
7. There is no evidence of any further criminal involvement by Respondent, but her offense is a serious one.
8. Respondent is in compliance with the restitution payments of her probation. She will remain on probation until 2024.
9. Respondent is a dedicated and hardworking sales agent.
10. Respondent has worked as a sales agent with realty firms since 2013.
11. Respondent has not demonstrated that she is presently fit to perform the fiduciary duties required of a real estate sales agent, which include handling payments and property entrusted to her care.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Occ. Code §§ 53.021, 1101.652.
2. SOAH has jurisdiction over all matters related to conducting a hearing in this case, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Respondent received proper and timely notice of the hearing on the merits. Tex. Gov't Code §§ 2001.051-.052.
4. Staff had the burden of proving its basis for revoking Respondent's license, while Respondent had the burden to prove that she is fit to be licensed despite her criminal history. Tex. Occ. Code §§ 53.023(a); 1 Tex. Admin. Code § 155.427.
5. Theft is an offense that the Commission considers directly related to the profession of a real estate sales agent. 22 Tex. Admin. Code § 541.1(a)(4).

6. Respondent's deferred adjudication may be considered a conviction for licensing purposes because she has not completed her period of supervision, and she may pose a continued threat to public safety or her employment as a real estate sales agent would create an opportunity to repeat the offense. Tex. Occ. Code § 53.021(d); *see also* Tex. Occ. Code §§ 53.022-.023.
7. The Commission may suspend or revoke Respondent's license because she is considered convicted of an offense that directly relates to the duties and responsibilities of a real estate sales agent. Tex. Occ. Code § 53.021(a)(1), (d); 22 Tex. Admin. Code § 541.1(a)(4).
8. Respondent has not established that she is fit to continue holding a real estate sales agent license despite her criminal history. Tex. Occ. Code §§ 53.022-.023; 22 Tex. Admin. Code § 541.1(d)-(e).
9. Respondent's license should be revoked. Tex. Occ. Code § 53.021(a)(1).

SIGNED October 26, 2020.



**LINDA H. BRITE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS REAL ESTATE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
v.	§	OF
	§	
ANGELICA REYNOSO	§	
TEXAS REAL ESTATE SALES AGENT	§	
LICENSE NUMBER 634238	§	ADMINISTRATIVE HEARINGS

RESPONDENTS EXCEPTIONS TO THE PROPOSAL FOR DECISION

TO THE HONORABLE JUDGE OF THIS TRIBUNAL:

COMES NOW Respondent Angelica Reynoso (“Respondent”) and files this her Respondent’s Exceptions to the Proposal for Decision, and will show the tribunal the following:

I. PROCEDURAL HISTORY

1. On August 5, 2020 a telephonic hearing on the merits convened before this tribunal. This tribunal published its Proposal for Decision on October 26, 2020.
2. Consistent with Texas Administrative Code §155.507 Respondent files her Exceptions to the Proposal for Decision within the specified fifteen (15) days.

II. CONCLUSIONS OF FACT

3. The following were substantiated as conclusions of fact during the August 5, 2020 hearing.
4. Ms. Aimee Cooper who is employed by the Texas Real Estate Commission (the “Commission”) testified that Respondent’s license should be revoked because she pleaded guilty to an offense against property. Ms. Cooper’s conclusions were focused on considerations surrounding the allegations that “...in the real estate profession, Respondent would be required to handle money in option fees and earnest money and would have access to funds and private information.”

5. Mr. Richard Machos testified that this allegation was simply not true, in fact the Respondent, in the past seven years, has always "...[delivered] the earnest money to title companies timely and without any issues. Respondent has been entrusted with certified checks, personal checks, and money orders, and they have all been delivered without issues."

6. Mr. Richard Machos further testified that "...[Respondent's] role would not provide any opportunities for Respondent to engage in theft of proceeds." It was recognized by this tribunal that Mr. Machos affirmed that "...even when a buyer pays cash, the agent is not involved; it would be handled with the title company at closing." Mr. Machos testified that "...checks are never made out to Respondent or the company." Mr. Machos opined that Respondent is perfectly fit to be an agent.

7. This difference of opinions is notable in that a practitioner (Mr. Macho) in this field has provided first-hand substantial evidence¹ that this tribunal has largely ignored. This tribunal has wrongly and overwhelmingly relied upon the Commission's witness (whom is an admitted career Commission employee who has not personally interviewed Respondent) more than a first-hand account of Respondents fitness for the license.

III. EXCEPTIONS TO PROPOSAL FOR DECISION

8. This tribunal is suggesting in its Proposal for Decision that the facts as stated logically support the legal conclusion that the Respondent is not qualified to hold a real estate license. The evidence does not support this conclusion. It is clear and unequivocal that "a reasonable mind might accept as adequate" the evidence presented by a practitioner of forty years (Mr. Richard Machos) whom has worked

¹ See *Texas Real Estate Commission v. Riekers* 2020 Tex. App. LEXIS 1820 *; 2020 WL 1026478 quoting *Slay v. Texas Comm'n on Envtl. Quality*, 351 S.W.3d 532, 549 (Tex. App.—Austin 2011, pet. denied) wherein the court found that the standard on appeal is "Substantial Evidence" and the court must consider (1) whether the agency made findings of underlying facts that logically support the ultimate facts and legal conclusions that are the ultimate basis for the order; and, (2) whether the findings of underlying fact are reasonably supported by evidence. "such relevant evidence as a reasonable mind might accept as adequate to support a [finding] of fact."

with the Respondent side by side for seven years, possesses a better ability to access the fitness of Respondent than the Commissions employee whom has never met or interviewed Respondent.

9. Next, as this Court has cited, under Texas Occupations Code §1101.652(a)(1) the Commission may suspend or revoke a license if the license holder enters a plea of guilty to a felony. This code section does not provide factors or guidance for determination of whether Respondent's license should be (a) suspended; or (b) revoked.

10. Analyzing Texas Occupations Code §53.021(a)(1) the Commission may suspend or revoke a license on the grounds that the person has been placed on deferred adjudication for an offense that directly relates to the duties and responsibilities of the licensed occupation and has not completed the period of supervision, provided that the Commission determines that the person may pose a continued threat to public safety or that employment of the person in the licensed occupation would create an opportunity to reoffend.

11. One must then look at Texas Occupations Code §53.022 FACTORS IN DETERMINING WHETHER CONVICTION DIRECTLY RELATES TO OCCUPATION and §53.023 ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER AFTER DETERMINING CONVICTION DIRECTLY RELATES TO OCCUPATION.

a. §53.022: shall consider each of the following factors:

(1) the nature and seriousness of the crime; the crime is of a serious nature, however there was evidence presented during the hearing that Respondent's only reason for committing the crime was by mistake.

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation; there is no relation here whatsoever. The crime which Respondent plead guilty to has nothing whatsoever to do with real estate and the services provided by Respondent. There was no evidence presented which the Commission may rely upon to prove this element, therefore consideration of this element is a resounding NO.

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; Mr. Machos testified that this just does not exist for two reasons, Respondent is never put in possession of money of her clients, and second the aspect "of the same type" should be literally construed to mean whether or not the Respondent would have the opportunity to engage in the theft of Medicaid or food stamp theft. No

one has EVER presented a Texas Real Estate agent with Medicaid or Food Stamps. There was no evidence presented which the Commission may rely upon to prove this element, therefore consideration of this element is a resounding NO.

(4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and Again, here there is no relationship whatsoever. There is no relationship between Medicaid or Food Stamp theft and the ability or capacity to perform the duties of a Texas real estate agent. There was no evidence presented which the Commission may rely upon to prove this element, therefore consideration of this element is a resounding NO.

(5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation. Here there are no correlation between the elements of Medicaid or Food stamp theft and the duties and responsibilities of a Texas licensed agent. There was no evidence presented which the Commission may rely upon to prove this element, therefore consideration of this element is a resounding NO.

Four of the five elements were not met by the evidence presented; therefore, the Commission cannot prove, and this tribunal should conclude that the conviction does not relate to the occupation.

b. §53.023: This tribunal should have concluded that the conviction does not relate to the occupation and therefore not consider the factors in §53.023, however in the event, this Tribunal does proceed and consider the following seven factors it was shown by direct evidence that no action should be taken:

(1) the extent and nature of the person's past criminal activity; Here, the answer is none. There is no evidence presented that Respondent had as much as a speeding ticket prior to the infraction made the subject of this inquiry. There was no evidence presented which the Commission may rely upon to prove this element, therefore consideration of this element is a resounding NO.

(2) the age of the person when the crime was committed; Much was made by the Commission that this infraction was not simply a youthful indiscretion (Respondent was 41 to 44). No, it was not, however the facts presented and admitted show that Respondent was involved in an abusive and neglectful relationship which caused her to be concerned with being able to support her children.

(3) the amount of time that has elapsed since the person's last criminal activity; Six years has passed since the conviction, however the actions the subject of the conviction initiated in 2011, this almost ten years ago;

(4) the conduct and work activity of the person before and after the criminal activity; There was no evidence presented by the Commission on this element whatsoever. Respondent presented evidence that Respondents work activity during and after the incident has been impeccable. There was no evidence presented which the Commission may rely upon to prove this element, therefore consideration of this element is a resounding NO.

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; Specific evidence was presented by Respondent that showed she was complying with the court ordered probation (RES:006 through RES:007 and PET 000047-000051). No contradicting evidence was presented by the Commission which suggested that Respondent was not in compliance, however, this tribunal seems to allege that Respondent did not prove she was in compliance. There was no evidence presented which the Commission may rely upon to prove this element, therefore consideration of this element is a resounding NO.

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and As stated in item (5) above, Specific evidence was presented by Respondent that showed she was complying with the court ordered probate. There was no evidence presented which the Commission may rely upon to prove this element, therefore consideration of this element is a resounding NO.

(7) other evidence of the person's fitness, including letters of recommendation. Respondent presented her broker and a recommendation letter of a lender as specific evidence speaking to her fitness. In cross examination by the Commission of Mr. Machos, Respondents fitness was not questioned. No events of missteps or issues were discovered, therefore Respondent's fitness was proven to be exemplary. There was no evidence presented which the Commission may rely upon to prove this element, therefore consideration of this element is a resounding NO.

The Commission was unable to prove that any action should be taken. There is no "direct relation" to the duties of a Texas real estate agent and the crime. Because this tribunal has been asked to make conclusions of law which can result in the revocation of a citizens livelihood, it is suggested that the tribunal consider whether the elements of the crime directly relate to the activities of an agent. There was no evidence presented by the Commission which shows a direct relationship. Rather, the Commission relies upon a broad assertion that because the crime Respondent plead guilty to was one of theft of personal property then it has to relate to the duties of a real estate agent. Mr. Richard Machos was specifically asked whether or not the Respondent ever came into contact with personal property (money in any form from clients) and he said no. Therefore, there is no relation. This is the only evidence in the record regarding this point. In fact, when Ms. Cooper was asked, she was unsure of the day to day activities/responsibilities of the Respondent. To find otherwise is clearly against the weight of the substantial evidence presented during the hearing.

12. Next, this tribunal alleges a conclusion of law associated with Respondent failing to show that she is presently qualified to continue holding a real estate sales agent license. In the recitation of facts of this tribunal, it is clear that Respondent is in fact presently qualified to continue holding a real estate license, but it is apparent that this tribunal seems to penalize Respondent for not testifying. Further, the tribunal alleges that no additional facts regarding her offense were presented. These conclusions of law are just not supported by facts. This tribunal admitted Petitioner's Evidence 000055 which conclusively provided details of the crime and mitigating facts of why the crime was committed "I was in an abusive marriage which I feared for my life many times. He threatened to kill me several times.". This evidence showed that Respondent was in an abusive relationship, this the cause of the crime. For some reason, this tribunal has not addressed this factor in the findings of facts at all. This is clearly a cause and a mitigating factor for commission of the crime, one which should suggest a suspension not a revocation. This evidence was not contested by the Commission but does not show in the findings of fact, and clearly does not factor into the conclusions of law as a factor to reduce the crime and a cause to suspend and not revoke.

13. Next, this tribunal continues to allege a conclusion of law that acting as a Texas real estate agent will allow Respondent the opportunity to commit a crime related to her conviction in the future. This conclusion is without any factual basis, in fact it is contradicted by testimony in favor of Respondent (Mr. Machos testimony). Further the tribunal states that the license with which Respondent has "...could give..." Respondent opportunities to "potentially divert or misuse payment or property entrusted to her care.". This statement as well, is not supported by proof, and is overwhelmingly conclusive and broad and not reflective of the facts presented by Respondent. I again ask of this tribunal, how does the theft of Medicaid or food stamps at all relate to the purchase or sale of real property. There needs to be a direct nexus between the elements of the crime and the ability of Respondent to again commit the same crime, such a nexus does not exist and no evidence of same was presented by the Commission. Respondent, in Mr. Machos testimony, specifically refuted these allegations and affirmed that Respondent is in fact fit to carry out her duties as a Texas real estate agent.

14. Next, this tribunals conclusion of law regarding the availability of a suspension vs. a revocation is not substantiated by facts. Given the nature and seriousness of the Respondent's offense..." this is not a sufficient factual basis to not recommend a suspension. As stated above Petitioner's Evidence 000055 which conclusively provided details of the crime and mitigating facts of why the crime was committed "I was in an abusive marriage which I feared for my life many times. He threatened to kill me several times.". This evidence showed that Respondent was in an abusive relationship, this the cause of the crime. This should diminish the actions of the Commission and amend this tribunals Proposal for Decision.

15. Lastly, this tribunals conclusion of law regarding Respondents alleged failure to established she is fit to continue holding a real estate sales agent license is not based on facts. Mr. Machos testified as Respondent's broker and said that she was extremely qualified to hold a license. An abundance of proof in written form and by oral testimony was presented proving that Respondent is qualified. During cross examination of Mr. Machos, the Commission was unable to refute same. Respondent carried her burden to show she is in fact fit for the license she holds.

PRAYER

For each of the reasons stated above Respondent prays that this tribunal amend its original proposal for decision consistent with the above and find that Respondent is in fact qualified to hold the license she currently has and issue findings of fact that revocation is not appropriate.

Respectfully submitted,

THE KELLY LEGAL GROUP, PLLC
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By: _____

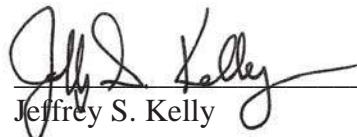
Jeffrey S. Kelly
State Bar No. 24043749
Keith S. McMahon
State Bar No. 24060992
Sheroo Bhagia
State Bar No. 24042916
Christian Davila
State Bar No. 24081698
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on this the 10th day of November 2020, a true and correct copy of the attached was served as stated below.

Sarah Decker
Staff Attorney
Standards & Enforcement Services
Texas Real Estate Commission
P.O. Box 12188
Austin, Texas 78711-2188
(512) 936-3005 Telephone
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| <input checked="checked" type="checkbox"/> | Electronic Filing |
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| <input type="checkbox"/> | Hand Delivery |
| <input type="checkbox"/> | Regular U.S. Mail |
| <input type="checkbox"/> | CMRRR |

_____
Jeffrey S. Kelly

SOAH Docket No. 329-20-1699.REC

Texas Real Estate Commission Petitioner	§ § § § § § §	Before the State Office of Administrative Hearings
v.		
Angelica Reynoso Respondent		

**PETITIONER’S RESPONSE TO RESPONDENT’S EXCEPTIONS TO THE PROPOSAL FOR
DECISION**

The Texas Real Estate Commission (“the Commission” or “Petitioner”) files this response to the Respondent’s exceptions, pursuant to Section 2001.062, Texas Government Code, and in accordance with 1 TEX. ADMIN. CODE Section 155.507, SOAH Rules, and 22 TEX. ADMIN. CODE Sections 533.6 and 533.7. The Commission respectfully requests the proposal for decision (“PFD”) be adopted with one typographical correction.

On the bottom of Page 2, the PFD states “Respondent pleaded guilty to the third-degree felony offense of theft of \$200,000 or more, but less than \$100,000.” This phrase should be amended to state: “Respondent pleaded guilty to the third-degree felony offense of theft of \$20,000 or more, but less than \$100,000.”

Petitioner’s Response

Respondent’s exceptions focus on whether Respondent’s offense is “directly related” to the duties and responsibilities of her occupation. Pursuant to 22 TEX. ADMIN. CODE Section 541.1(a)(4), the Commission considers offenses against the real or personal property belonging to another to be directly related to the duties and responsibilities of a real estate broker. Therefore, the PFD correctly concludes that Respondent’s offense is directly related.

The PFD correctly determined that Respondent may pose a continued threat to public safety or her employment as a real estate sales agent would create an opportunity to repeat the offense. Real estate transactions involve significant financial decisions, physically handling money of clients and others, and the trust of clients to act as a fiduciary. In addition, real estate brokerage may include property management activities, including the acceptance and deposit of rent from single-family dwellings. Section 1101.002(1)(A)(x), Texas Occupations Code. Due to the financial matters involved, the occupation would also create a situation in which Respondent has an opportunity to commit another theft offense.

The PFD also considered the factors in Section 53.023(a), Texas Occupations Code, and Rule 541.1(d), Texas Administrative Code. Respondent is not presently fit for a license due to the serious nature of the offense, the extent that the theft continued for multiple years, and the recentness of the offense. Respondent's offense was not a youthful discretion, as Respondent was between 41 years old and 44 years old. Respondent is still on probation, with a substantial sum of restitution to pay. Respondent provided proof that she is in compliance with her payments, but provided no additional proof of compliance with the other terms of her community supervision. Respondent has not completed her period of community supervision.

The PFD appropriately determined that Respondent's license should be revoked. The Commission requests the PFD be adopted with the typographical error mentioned above corrected.

Respectfully submitted,



Sarah Decker, Staff Attorney
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Texas Real Estate Commission
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above document has been sent as follows on November 13, 2020:

Jeffrey S. Kelly
P.O. Box 2125
Austin, Texas 78701
Via Electronic Filing

State Office of Administrative Hearings
Docketing Division
300 West 15th Street, Room 504
Austin, Texas 78701-1649

Via: electronic filing



Sarah Decker
Standards & Enforcement Services
Texas Real Estate Commission



State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 23, 2020

Chelsea Buchholtz
Executive Director
Texas Real Estate Commission
1700 N. Congress Avenue, Suite 400
Austin, TX 78701

VIA EFILE TEXAS

**RE: Docket No. 329-20-1699.REC; Texas Real Estate Commission v
Angelica Reynoso.**

On October 26, 2020, I issued the Proposal for Decision (PFD) in this case. Angelica Reynoso (Respondent) filed exceptions on November 10, 2020. Staff filed its response to Respondent's exceptions on November 13, 2020.

Respondent's exceptions letter largely reiterates arguments that were fully presented at the hearing and which the ALJ carefully considered in preparation of the PFD. Therefore, the ALJ does not recommend any changes in response to Respondent's exceptions.

Staff's response points out a typographical error in the PFD that the ALJ agrees should be corrected. Accordingly, the ALJ recommends that the phrase at the bottom of page 2 of the PFD be corrected to read, "Respondent pleaded guilty to the third-degree felony offense of theft of **\$20,000** or more, but less than \$100,000."

With this typographical correction, the PFD is ready for your consideration.

Sincerely,

LINDA H. BRITE
Administrative Law Judge

SOAH Docket No. 329-20-1699.REC
Exceptions Letter by ALJ
Page No. 2

LB/db
Enclosure

xc: Sarah Decker, Staff Attorney, 1700 N. Congress Ave., Suite 400, Austin, TX – **VIA EFILE TEXAS**
Jeffrey S. Kelly, Attorney, Post Office Box 2125, Austin, TX 78768 - **VIA EFILE TEXAS**
Michael Molloy, Director of Standards & Enforcement Services, 1700 N. Congress Ave., Suite 400,
Austin, TX 78701 - **VIA EFILE TEXAS**



Agenda Item 13:

Executive session to discuss pending litigation or obtain advice of legal counsel pursuant to Texas Government Code §551.071 and personnel matters relating to the performance review of the Executive Director pursuant to Texas Government Code §551.074

Agenda Item 14:

Discussion and possible action to authorize settlement of recovery fund claims or take other action on:

- a. RF 20017; Gustave Meyner and Sally Meyner v. Jeff Neale
- b. RF 20020; Craig Garza v. Ed Wiggins Realty, LLC and Edgar Paul Wiggins
- c. RF 21001; Ameriplex Realtors, Inc. v. Gregory Dicker and Jeffrey Dicker
- d. RF 21002; Anna M. Salanti and Franklin C. Cook v. Charlene King





Agenda Item 15:

Discussion and possible action to adopt repeal of 22 TAC §534.7, Vendor Protest Procedures

Summary:

The proposed repeal of §534.7 was published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8470).

The repeal of §534.7 eliminates the agency's use of vendor protest procedures adopted by the Texas Facilities Commission. TREC will replace these vendor protest procedures in rule with a new set of vendor protest procedures that better meet the agency's needs and provide greater transparency to both members of the public and parties seeking to protest.

Comments:

No comments were received.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit for adoption, the repeal of 22 TAC §537.7, Vender Protest Procedures, as published, to the *Texas Register*, along with any technical or non-substantive changes required for adoption.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.





AGENDA ITEM 15
ADOPTED RULE REPEAL ACTION FROM THE FEBRUARY 16, 2021,
MEETING OF THE COMMISSION
CHAPTER 534 GENERAL ADMINISTRATION
§534.7. Vendor Protest Procedures

~~§534.7. Vendor Protest Procedures.~~

~~(a) To comply with Texas Government Code, §2155.076(a), the Commission adopts by reference the rules of the Texas Facilities Commission regarding purchasing protest procedures as set forth in 1 TAC §111.32 (relating to Protests/Dispute Resolution/Hearing).~~

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





Agenda Item 16:

Discussion and possible action to adopt new 22 TAC §534.7, Vendor Protest Procedures

Summary:

The proposed new §534.7, Vendor Protest Procedures, was published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8470).

The new §534.7 creates new vendor protest procedures that better meet the agency's needs than the previous version. This new rule also more clearly establishes the agency's protest review and appeal process and identifies the roles and requirements of both TREC staff and the protesting party.

Comments:

No comments were received.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit for adoption, new 22 TAC §534.7, Vendor Protest Procedures, as published, to the *Texas Register*, along with any technical or non-substantive changes required for adoption.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.





AGENDA ITEM 16
ADOPTED RULE ACTION FROM THE FEBRUARY 16, 2021, MEETING OF THE COMMISSION
CHAPTER 534 GENERAL ADMINISTRATION
(NEW) §534.7. Vendor Protest Procedures

§534.7. Vendor Protest Procedures.

(a)The purpose of this section is to provide a procedure for vendors to protest purchases made by the Texas Real Estate Commission ("Commission") and the Texas Appraiser Licensing and Certification Board (collectively "the agency"). Protests of purchases made by the Texas Facilities Commission ("TFC") on behalf of the agency are addressed in 1 Texas Administrative Code Chapter 111, Subchapter C (relating to Complaints and Dispute Resolution). Protests of purchases made by the Department of Information Resources (DIR) on behalf of the agency are addressed in 1 Texas Administrative Code Chapter 201, §201.1 (relating to Procedures for Vendor Protests and the Negotiation and Mediation of Certain Contract Disputes and Bid Submission, Opening and Tabulation Procedures). Protests of purchases made by the Statewide Procurement Division of the Comptroller of Public Accounts ("CPA") on behalf of the agency are addressed in 34 Texas Administrative Code Chapter 20, Subchapter F, Division 3 (relating to Protests and Appeals). The rules of TFC, DIR, and the CPA are in the Texas Administrative Code, which is on the Internet website of the Office of the Secretary of State, Texas Register Division at: www.sos.state.tx.us/tac/index.shtml.

(b)Any actual or prospective bidder, offeror, or contractor who believes they are aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the agency. Such protests must be in writing and received in the office of the Director of Finance within ten working days after such aggrieved person knows, or should have known, of the occurrence of

the action which is protested. Formal protests must conform to the requirements set forth in subsection (c) of this section. Copies of the protest must be mailed or delivered by the protesting party to all vendors who have submitted bids or proposals for the contract involved.

(c)A formal protest must be sworn and contain:

(1)a specific identification of the statutory provision(s) that the action complained of is alleged to have violated;

(2)a specific description of each act alleged to have violated the statutory provision(s) identified in paragraph (1) of this subsection;

(3)a precise statement of the relevant facts;

(4)an identification of the issue or issues to be resolved;

(5)argument and authorities in support of the protest; and

(6)a statement that copies of the protest have been mailed or delivered to other identifiable interested parties.

(d)The Director of Finance shall have the authority, prior to appeal to the Executive Director or his or her designee, to settle and resolve the dispute concerning the solicitation or award of a contract. The Director of Finance may solicit written responses to the protest from other interested parties.

(e)If the protest is not resolved by mutual agreement, the Director of Finance will issue a written determination on the protest.

(1)If the Director of Finance determines that no violation of rules or statutes has occurred, he or she shall so inform the protesting party and interested

parties by letter which sets forth the reasons for the determination.

(2)If the Director of Finance determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action.

(3)If the Director of Finance determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he or she shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and any appropriate remedial action. Such remedial action may include, but is not limited to, declaring the purchase void; reversing the award; and re-advertising the purchase using revised specifications.

(f)The Director of Finance's determination on a protest may be appealed by an interested party to the Executive Director or his or her designee. An appeal of the Director of Finance's determination must be in writing and must be received in the office of the Executive Director or his or her designee no later than ten working days after the date of the Director of Finance's determination. The appeal shall be limited to review of the Director of Finance's determination. Copies of the appeal must be mailed or delivered by the appealing party to other interested parties and must contain an affidavit that such copies have been provided.

(g)The General Counsel shall review the protest, Director of Finance's determination, and the appeal and prepare a written opinion with recommendation to the executive director or his designee. The executive director or his or her designee may, in his or her discretion, refer the matter to TREC at a regularly scheduled open meeting or issue a final written determination.

(h)When a protest has been appealed to the Executive Director or his or her designee under subsection (f) of this section and has been referred to the relevant Commission or Board of TREC by the Executive Director or his or her designee under

subsection (g) of this section, the following requirements shall apply:

(1)Copies of the appeal, responses of interested parties, if any, and General Counsel recommendation shall be mailed to the TREC members and interested parties. Copies of the general counsel's recommendation and responses of interested parties shall be mailed to the appealing party.

(2)All interested parties who wish to make an oral presentation at TREC's open meeting are requested to notify the office General Counsel at least two working days in advance of the open meeting.

(3)TREC may consider oral presentations and written documents presented by staff, the appealing party, and interested parties. The chairman shall set the order and amount of time allowed for presentations.

(4)TREC's determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting and shall be final.

(i)Unless good cause for delay is shown or the Executive Director or his or her designee determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(j)In the event of a timely protest or appeal under this section, a protestor or appellant may request in writing that the agency not proceed further with the solicitation or with the award of the contract. In support of the request, the protestor or appellant is required to show why a stay is necessary and that harm to the agency will not result from the stay. If the Executive Director determines that it is in the interest of agency not to proceed with the contract, the Executive Director may make such a determination in writing and partially or fully suspend contract activity.

(k)A decision issued either by TREC in open meeting, or in writing by the Executive Director or his or her designee, shall constitute the final administrative action of the agency.



Agenda Item 17:

Discussion and possible action to adopt amendments to 22 TAC §535.91, Renewal of a Real Estate License

Summary:

The amendment to §535.91, Renewal of a Real Estate License, was published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8472).

The amendment to §535.91 corrects a reference within the rule to include the appropriate subsection.

Comments:

No comments were received.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit for adoption, amendments to 22 TAC §535.91, Renewal of a Real Estate License, as published, to the *Texas Register*, along with any technical or non-substantive changes required for adoption.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.





AGENDA ITEM 17
ADOPTED RULE ACTION FROM THE FEBRUARY 16, 2021, MEETING OF THE COMMISSION
CHAPTER 535 GENERAL PROVISIONS
Subchapter I. License Renewal
§535.91. Renewal of a Real Estate License.

§535.91. Renewal of a Real Estate License.

(a) Renewal application.

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

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

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

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

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

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

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

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

(b) Renewal Notice.

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

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

(3) The Commission has no obligation to notify any license holder who has failed to provide the Commission with the person's mailing address and email address or a corporation, limited liability company, or partnership that has failed to designate an officer, manager, or partner who meets the requirements of the Act.

(c) Timely renewal of a license.

(1) A renewal application for an individual broker or sales agent is filed timely if it is received by the Commission, or postmarked, on or before the license expiration date.

(2) A renewal application for a business entity broker is filed timely if the application and all required supporting documentation is received by the Commission, or postmarked, not later than the 10th business day before the license expiration date.

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

(d) Initial renewal of sales agent license. A sales agent applying for the first renewal of a sales agent license must:

(1) submit documentation to the Commission showing successful completion of the additional educational requirements of §535.55 of this chapter (relating to Education and Sponsorship Requirements for a Sales Agent License) no later than 10 business days before the day the sales agent files the renewal application; and

(2) fulfill the continuing education requirements of §535.92(a)(1) and (a)(2) of this subchapter and §535.92(a)(4) [~~§535.92(a)(3)~~] of this subchapter (relating to Continuing Education Requirements), if applicable.

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

(1) has designated a corporate officer, an LLC manager, an LLC member with managing authority, or a general partner who:

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

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

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

(3) is currently eligible to transact business in Texas.

(f) Renewal and pending complaints.

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

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

(g) Renewal with deferred continuing education.

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

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

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

(2) If after expiration of the 60 day period set out in paragraph (1) of this subsection, the Commission

has not been provided with evidence that the license holder has completed all outstanding continuing education requirements, the license holder's license will be placed on inactive status.

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

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

(h) Denial of Renewal. The Commission may deny an application for renewal of a license if the license holder is in violation of the terms of a Commission order.

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

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

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



Agenda Item 18:

Discussion and possible action to adopt amendments to 22 TAC §535.191, Schedule of Administrative Penalties

Summary:

The amendments to §535.191, Schedule of Administrative Penalties, was published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8474).

The amendment to §535.191 corrects a reference within the agency's schedule of administrative penalties that corresponds to statutory changes enacted by the 86th Legislature in SB 624.

Comments:

No comments were received.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit for adoption, amendments to 22 TAC §535.191, Schedule of Administrative Penalties, as published, to the *Texas Register*, along with any technical or non-substantive changes required for adoption.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.





AGENDA ITEM 18
ADOPTED RULE ACTION FROM THE FEBRUARY 21, 2020, MEETING OF THE COMMISSION
CHAPTER 535 GENERAL PROVISIONS
Subchapter Q. Administrative Penalties
§535.191. Schedule of Administrative Penalties

§535.191. Schedule of Administrative Penalties.

(a) The Commission may suspend or revoke a license or take other disciplinary action authorized by the Act in addition to or instead of assessing the administrative penalties set forth in this section.

(b) The administrative penalties set forth in this section take into consideration all of the criteria listed in §1101.702(b) of the Act.

(c) An administrative penalty range of \$100 - \$1,500 per violation per day may be assessed for violations of the following sections of the Act and Rules:

- (1) §1101.552;
- (2) §1101.652(a)(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 §535.300.

(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) [~~22 TAC §535.141(g)~~];
(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.



Agenda Item 19:

Discussion and possible action to adopt amendments to 22 TAC §535.216, Renewal of License

Summary:

The amendments to §535.216, Renewal of License, was published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8476).

The amendments implement statutory changes enacted by the 83rd Legislature in HB 2911 stating that applicants for reinstatement of license under Chapter 1102 of the Texas Occupations Code who previously held the same license within the two years preceding the application date are eligible for reinstatement so long as they have completed the required continuing education hours for renewal and satisfy the agency's requirements for honesty, trustworthiness, and integrity. The amendments were recommended by the Texas Real Estate Inspector Committee.

Comments:

No comments were received.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit for adoption, amendments to 22 TAC §535.216, Renewal of License, as published, to the *Texas Register*, along with any technical or non-substantive changes required for adoption.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.





AGENDA ITEM 19
ADOPTED RULE ACTION FROM THE FEBRUARY 16, 2021, MEETING OF THE COMMISSION
CHAPTER 535 GENERAL PROVISIONS
Subchapter R. Real Estate Inspectors
§535.216. Renewal of License

§535.216. Renewal of License.

(a) Renewal application.

(1) A license issued by the Commission under Chapter 1102, Occupations Code, expires on the date shown on the face of the license issued to the license holder.

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

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

(B) pay the appropriate fee as required by §535.210 of this title;

(C) comply with the fingerprinting requirements of Chapter 1102, Occupations Code;

(D) satisfy the applicable continuing education requirements of Chapter 1102, Occupations Code, and this subchapter; and

(E) provide proof of financial responsibility as required in Chapter 1102, Occupations Code, on a form approved by the Commission.

(3) An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license on an active status.

(b) Renewal Notice.

(1) The Commission will send a renewal notice to each license holder at least 90 days before the license expiration date.

(2) If a license holder intends to renew a license, failure to receive a renewal notice does not relieve the license holder from responsibility of applying for renewal as required in this section.

(c) Request for information.

(1) The Commission may request a license holder to provide additional information to the Commission in connection with a renewal application.

(2) A license holder must provide the information requested by the Commission within 30 days after the date of the Commission's request.

(3) Failure to provide the information requested within the required time is grounds for disciplinary action under Chapter 1102, Occupations Code.

(d) Renewal on inactive status.

(1) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status.

(2) Inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status, but must satisfy continuing education requirements before returning to active status.

(e) Late Renewal.

(1) If a license has been expired for less than six months, a license holder may renew the license by:

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

(B) paying the appropriate late renewal fee as required by §535.210 of this title (related to Fees);

(C) satisfying the applicable continuing education requirements; and

(D) providing proof of financial responsibility on a form approved by the Commission.

(2) To renew a license on active status without any lapse in active licensure, an apprentice or real estate inspector must also submit a Real Estate Apprentice

and Inspector Sponsorship Form certifying sponsorship for the period from the day after the previous license expired to the day the renewal license issued, and for the period beginning on the day after the renewal license issued. The same inspector may be the sponsor for both periods. The Commission will renew the license on inactive status for the period(s) in which the apprentice or real estate inspector was not sponsored.

(f) License Reinstatement.

(1) If a license has been expired for more than six months ~~[or more]~~, a license holder may not renew the license ~~[-, and must file an original application to reinstate the license and satisfy all requirements for licensure, except as provided in paragraph (3) of this subsection.]~~

(2) A license holder may reinstate an expired license if the license holder: ~~[not continue to practice until the new license is received.]~~

(A) has held a professional inspector or real estate inspector license during the 24 months preceding the date the reinstatement application is filed;

(B) submits evidence satisfactory to the commission of successful completion of the continuing education hours required for the renewal of that license; and

(C) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity.

(3) Applicants for a real estate inspector license must submit evidence of sponsorship by a professional inspector. ~~[- If an applicant for reinstatement has held a professional inspector or real estate inspector license during the 24 months preceding the date the application is filed, no examination is required.]~~

(4) An applicant for reinstatement is not required to take an examination.

(g) Denial of Renewal or Reinstatement. The Commission may deny an application for license renewal or reinstatement if a license holder is in violation of the terms of a Commission order.

(h) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being

subject to any increase in fee, any education or experience requirements or examination if the license holder:

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

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



Agenda Item 20:

Discussion and possible action to adopt amendments to 22 TAC Chapter 537 as follows:

- a. §537.45 Standard Contract Form TREC No. 38-6 (Notice of Buyer's Termination of Contract); and
- b. §537.52 Standard Contract Form TREC No. 45-1 (Short Sale Addendum)

Summary:

The amendments to 22 TAC Chapter 537 were published in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8825).

The Notice of Buyer's Termination of Contract adopted by reference in §537.45 is amended to correct a reference in Paragraph 1. The reference to Paragraph 23 is replaced with a reference to Paragraph 5 to align with the previous changes made to the contract forms.

The Short Sale Addendum adopted by reference in §537.52 is amended to correct a reference in paragraph F. The reference to Paragraph 23 is replaced with a reference to Paragraph 5 to align with the previous changes made to the contract forms.

Comments:

No comments were received.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit for adoption, amendments to 22 TAC Chapter 537, and the forms adopted by reference, as published, to the *Texas Register*, along with any technical or non-substantive changes required for adoption. The revised forms, which are adopted by reference in §537.45 and §537.52, are adopted for voluntary use until April 1, 2021, at which time their use will become mandatory.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.





AGENDA ITEM 20

**ADOPTED RULE ACTION FROM THE FEBRUARY 16, 2021, MEETING OF THE COMMISSION
CHAPTER 537 PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS**

§537.45, Standard Contract Form TREC No. 38-7[~~38-6~~]; and

§537.52, Standard Contract Form TREC No. 45-2[~~45-1~~]

§537.45. Standard Contract Form TREC No. 38-7[~~38-6~~].

The Texas Real Estate Commission (Commission) adopts by reference standard contract form TREC No. 38-7[~~38-6~~] approved by the Commission in 2021[~~2018~~] for use as a buyer's notice of termination of contract.

§537.52. Standard Contract Form TREC No. 45-2[~~45-1~~].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 45-2[~~45-1~~] approved by the Commission in 2021[~~2012~~] for use as an addendum to be added to promulgated forms of contracts in the short sale of property.





PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

02-16-21~~[44-15-18]~~



NOTICE OF BUYER'S TERMINATION OF CONTRACT

CONCERNING THE CONTRACT FOR THE SALE OF THE PROPERTY AT

(Street Address and City)

BETWEEN THE UNDERSIGNED BUYER AND _____

(SELLER)

Buyer notifies Seller that the contract is terminated pursuant to the following:

- ☐ (1) The unrestricted right of Buyer to terminate the contract under Paragraph ~~5~~^[23] of the contract.
- ☐ (2) Buyer cannot obtain Buyer Approval in accordance with the Third Party Financing Addendum to the contract.
- ☐ (3) The Property does not satisfy Property Approval in accordance with the Third Party Financing Addendum to the contract. Buyer has delivered to Seller lender's written statement setting forth the reason(s) for lender's determination.
- ☐ (4) Buyer elects to terminate under Paragraph A of the Addendum for Property Subject to Mandatory Membership in a Property Owners' Association.
- ☐ (5) Buyer elects to terminate under Paragraph 7B(2) of the contract relating to the Seller's Disclosure Notice.
- ☐ (6) Buyer elects to terminate under Paragraph (3) of the Addendum Concerning Right to Terminate Due to Lender's Appraisal. Buyer has delivered a copy of the Appraisal to Seller.
- ☐ (7) Buyer elects to terminate under Paragraph 6.D. of the contract (6.C. for Residential Condominium Contract) because timely objections were not cured by the end of the Cure Period.
- ☐ (8) Other (identify the paragraph number of contract or the addendum): _____

NOTE: This notice is not an election of remedies. Release of the earnest money is governed by the contract.

CONSULT AN ATTORNEY BEFORE SIGNING: TREC rules prohibit real estate license holders from giving legal advice. READ THIS FORM CAREFULLY.

Buyer

Date

Buyer

Date



This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC No. ~~38-7~~^[38-6]. This form replaces TREC No. ~~38-6~~^[38-5].





SHORT SALE ADDENDUM



ADDENDUM TO CONTRACT CONCERNING THE PROPERTY AT

(Street Address and City)

- A. This contract involves a "short sale" of the Property. As used in this Addendum, "short sale" means that:
- (1) Seller's net proceeds at closing will be insufficient to pay the balance of Seller's mortgage loan; and
 - (2) Seller requires:
 - (a) the consent of the lienholder to sell the Property pursuant to this contract; and
 - (b) the lienholder's agreement to:
 - (i) accept Seller's net proceeds in full satisfaction of Seller's liability under the mortgage loan; and
 - (ii) provide Seller an executed release of lien against the Property in a recordable format.
- B. As used in this Addendum, "Seller's net proceeds" means the Sales Price less Seller's Expenses under Paragraph 12 of the contract and Seller's obligation to pay any brokerage fees.
- C. The contract to which this Addendum is attached is binding upon execution by the parties and the earnest money and the Option Fee must be paid as provided in the contract. The contract is contingent on the satisfaction of Seller's requirements under Paragraph A(2) of this Addendum (Lienholder's Consent and Agreement). Seller shall apply promptly for and make every reasonable effort to obtain Lienholder's Consent and Agreement, and shall furnish all information and documents required by the lienholder. Except as provided by this Addendum, neither party is required to perform under the contract while it is contingent upon obtaining Lienholder's Consent and Agreement.
- D. If Seller does not notify Buyer that Seller has obtained Lienholder's Consent and Agreement on or before _____, this contract terminates and the earnest money will be refunded to Buyer. Seller must notify Buyer immediately if Lienholder's Consent and Agreement is obtained. For purposes of performance, the effective date of the contract changes to the date Seller provides Buyer notice of the Lienholder's Consent and Agreement (Amended Effective Date).
- E. This contract will terminate and the earnest money will be refunded to Buyer if the Lienholder refuses or withdraws its Consent and Agreement prior to closing and funding. Seller shall promptly notify Buyer of any lienholder's refusal to provide or withdrawal of a Lienholder's Consent and Agreement.
- F. If Buyer has the unrestricted right to terminate this contract, the time for giving notice of termination begins on the effective date of the contract, continues after the Amended Effective Date and ends upon the expiration of Buyer's unrestricted right to terminate the contract under Paragraph ~~5~~ ~~[23]~~.
- G. For the purposes of this Addendum, time is of the essence. Strict compliance with the times for performance stated in this Addendum is required.
- H. Seller authorizes any lienholder to furnish to Buyer or Buyer's representatives information relating to the status of the request for a Lienholder's Consent and Agreement.
- I. If there is more than one lienholder or loan secured by the Property, this Addendum applies to each lienholder.

Buyer

Seller

Buyer

Seller



The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711 -2188, (512) 936-3000 (<http://www.trec.texas.gov>) TREC No. ~~45-2~~ ~~[45-4]~~. This form replaces TREC No. ~~45-1~~ ~~[45-0]~~.





Agenda Item 21:

Discussion and possible action to propose new 22 TAC §533.50, Petition for Adoption of Rules

Summary:

The proposed new rule §533.50 implements a statutory requirement that state agencies must prescribe by rule the form for a petition for adoption of rules and the procedure for its submission, consideration, and disposition. The proposed new rule is recommended by the Executive Committee.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit the proposed new 22 TAC §533.50, Petition for Adoption of Rules, as presented, along with any technical or non-substantive changes required for proposal, to the *Texas Register*, for publication and public comment.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.





AGENDA ITEM 21
PROPOSED RULE ACTION FROM THE FEBRUARY 16, 2021, MEETING OF THE COMMISSION
CHAPTER 533 PRACTICE AND PROCEDURE
Subchapter E. Petition for Adoption of Rules (New)
§533.50 Petition for Adoption of Rules (New)

§533.50. Petition for Adoption of Rules.

(a) Any interested person, as defined by §2001.021, Government Code, may request a rule be adopted, amended, or repealed by submitting a written petition to the Commission.

(b) The written petition must include:

(1) the person's full name, mailing address, telephone number, and email address;

(2) a brief summary of the proposed action and its desired effect;

(3) a justification for the proposed action set out in narrative form with sufficient particularity to inform the Commission the reasons and arguments on which the person is relying;

(4) if proposing a new rule, the text of the new rule in the exact form that is desired to be adopted; and

(5) if proposing an amendment or repeal, the specific section and text of the rule the person wants to change, with deletions crossed through and additions underlined.

(c) The written petition must be submitted to the Commission by:

(1) delivering the petition in person to the Commission's headquarters;

(2) sending the petition via email to general.counsel@trec.texas.gov; or

(3) sending the petition via fax to (512) 936-3788, ATTN: General Counsel.

(d) Not later than 60 days after the date of submission of a petition that complies with the requirements of this section, the Chair of the

Commission, in consultation with Commission staff, shall review the petition and either:

(1) deny the petition in writing, stating the reasons for the denial; or

(2) initiate a rulemaking proceeding under Chapter 2001, Government Code, by directing that the petition be placed on the next agenda for discussion by:

(A) the Commission; or

(B) the appropriate advisory committee with subject matter jurisdiction.





Agenda Item 22:

Discussion and possible action to propose amendments to 22 TAC §535.220, Professional Conduct and Ethics

Summary:

The proposed amendment adds that the consent an inspector must receive from the inspector's client to receive a fee or other valuable consideration for referring services that are not settlement services or other products to the client, must be in writing. The Texas Real Estate Inspector Committee recommends this proposed amendment.

Staff Recommendation:

Authorize staff, on behalf of the Commission, to submit the proposed amendment to 22 TAC §535.220, Professional Conduct and Ethics, as presented, along with any technical or non-substantive changes required for proposal, to the *Texas Register*, for publication and public comment.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.





AGENDA ITEM 22
PROPOSED RULE ACTION FROM THE FEBRUARY 16, 2021, MEETING OF THE COMMISSION
CHAPTER 535 GENERAL PROVISIONS
Subchapter R. Real Estate Inspectors
§535.220. Professional Conduct and Ethics.

§535.220. Professional Conduct and Ethics.

(a) The responsibility of those persons who engage in the business of performing independent inspections of improvements in real estate transactions imposes integrity beyond that of a person involved in ordinary commerce. Each inspector must maintain a high standard of professionalism, independence, objectivity and fairness while performing inspections in a real estate transaction. Each inspector license holder must also uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession.

(b) The relationship between an inspector and a client should at a minimum meet the following guidelines.

(1) In accepting employment as an inspector, the inspector should protect and promote the interest of the client to the best of the inspector's ability and knowledge, recognizing that the client has placed trust and confidence in the inspector.

(2) In the interest of the client and the inspector's profession, the inspector should endeavor always to maintain and increase the inspector's level of knowledge regarding new developments in the field of inspection.

(3) The inspector should conduct the inspector's business in a manner that will assure the client of the inspector's independence from outside influence and interests that might compromise the inspector's ability to render a fair and impartial opinion regarding any inspection performed.

(c) The relationship between an inspector and the public should at a minimum meet the following guidelines.

(1) The inspector should deal with the general public at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector's, the inspector's business and the inspection industry.

(2) The inspector should attempt to assist the general public in recognizing and understanding the need for inspections, whether the inspector is selected to perform such inspection or not.

(3) The inspector accepts the duty of protecting the public against fraud, misrepresentation or unethical practices in the field of real estate inspections.

(d) The relationship of the inspector with another inspector should at a minimum meet the following guidelines.

(1) The inspector should bind himself to the duty of maintaining fairness and integrity in all dealings with other inspectors and other persons performing real estate inspections.

(2) The inspector should cooperate with other inspectors to insure the continued promotion of the high standards of the real estate inspection profession and pledges himself to the continued pursuit of increasing competence, fairness, education and knowledge necessary to achieve the confidence of the public.

(3) If an inspector has knowledge of a possible violation of the rules of the Commission or Chapter 1102, the inspector should report the possible violation to the Commission.

(e) An inspector shall comply with the following requirements.

(1) An inspector shall not inspect a property when any compensation or future referrals depend on reported findings or on the closing or settlement of a property.

(2) In this section, "settlement service" means a service provided in connection with a prospective or actual settlement, and "settlement service provider" includes, but is not limited to, any one or more of the following:

- (A) federally related mortgage loan originator;
- (B) mortgage broker;
- (C) a lender or other person who provides any service related to the origination, processing or funding of a real estate loan;
- (D) a title service provider;
- (E) an attorney;
- (F) a person who prepares documents, including notarization, delivery, and recordation;
- (G) a person who provides credit report services;
- (H) an appraiser;
- (I) an inspector;
- (J) a settlement agent;
- (K) a person who provides mortgage insurance services;
- (L) a person who provides services involving hazard, flood, or other casualty insurance, homeowner's warranties, or residential service contract;
- (M) a real estate agent or broker; and
- (N) a person who provides any other services for which a settlement service provider requires a borrower or seller to pay.

(3) An inspector shall not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following:

- (A) the referral of inspections;
- (B) inclusion on a list of inspectors, preferred providers, or similar arrangements; or
- (C) inclusion on lists of inspectors contingent on other financial agreements.

(4) An inspector shall not receive a fee or other valuable consideration, directly or indirectly, for referring services that are not settlement services or

other products to the inspector's client without the client's [written](#) consent.

(5) This section does not prohibit an inspector from paying or receiving a fee or other valuable consideration, such as to or from a contractor, for services actually rendered.

(6) An inspector shall not accept employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice under this subchapter on which the inspector has performed an inspection under a real estate contract, lease, or exchange of real property within 12 months of the date of the inspection.

(7) Inspectors shall not disclose inspection results or client information without prior approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible.

(8) This subsection does not prohibit:

(A) normal promotional or educational activity that is not conditioned on the referral of business and that does not involve the defraying of expenses that otherwise would be incurred; or

(B) a payment at market rates to any person for goods actually furnished or for services actually performed.

(f) The inspector should make a reasonable attempt to cooperate with other professionals and related tradespersons at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to the inspector, the inspector's business, and the inspection industry.

(g) Each active licensed inspector shall provide the consumer notice adopted under §531.18 of this title in the manner described by that section.



Agenda Item 23:

Update regarding 87th Legislative Session

Summary:

To be presented.

Agenda Item 24:

Discussion and possible action regarding denying claims made to the Real Estate Recovery Trust Account and Real Estate Inspection Recovery Fund

Summary:

Under the current process, if Commission staff receive a recovery fund claim that does not satisfy the statutory requirements provided in the Real Estate License Act (Chapter 1101, Texas Occupations Code), staff sends the claimant a denial letter. The Commission does not formally vote or rule on these denials at their quarterly meetings.

After consultation with the Executive Committee, staff has developed the attached policy for approval in order to formalize this process. It should be noted that the discussion with the Executive Committee was limited to the Real Estate Recovery Trust Account. However, because the same process should apply to both funds, staff recommends that the policy apply to the Real Estate Inspection Recovery Fund as well.

Staff Recommendation:

Adopt the Policy Regarding the Real Estate Recovery Trust Account and Real Estate Inspection Recovery Fund as presented.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.





**POLICY REGARDING THE
REAL ESTATE RECOVERY TRUST ACCOUNT AND
REAL ESTATE INSPECTION RECOVERY FUND**

The Real Estate Recovery Trust Account and the Real Estate Inspection Recovery Fund (the "Recovery Fund") are governed by Texas Occupations Code, Chapters 1101 and 1102, respectively. These statutes set out numerous requirements that must be satisfied before a claimant may receive payment from the Recovery Fund. If a claimant or claim fails to satisfy any of these requirements, the claim may be denied. Reasons for denial may include the following:

- The claimant is the spouse, personal representative of the spouse or related to the defendant within the first degree of consanguinity; (Tex. Occ. Code §§ 1101.607; 1102.356)
- The claimant is a license holder seeking to recover a commission or compensation related to the transaction; (Tex. Occ. Code § 1101.607)
- The defendant was not engaging in brokerage activity or acting as a principal in a real estate transaction; (Tex. Occ. Code § 1101.602)
- The lawsuit was filed beyond the 2-year limitation period; (Tex. Occ. Code §§ 1101.605; 1102.354)
- The license holder was acting in an exempt capacity (engaging in brokerage activity under circumstances not requiring a license, such as selling homes as an employee of a builder); (Tex. Occ. Code §§ 1101.602; 1102.351)
- The claim seeks lost profits or speculative damages; (Tex. Occ. Code §§ 1101.601; 1102.351)
- The claim seeks punitive or mental anguish damages; (Tex. Occ. Code §§ 1101.601; 1102.351)
- The defendant was not licensed at the time of the transaction; (Tex. Occ. Code §§ 1101.601; 1101.351)
- The suit was for breach of contract, or does not involve a violation of Chapter 1101 or 1102 (as appropriate) listed in the statutes for the Recovery Funds; (Tex. Occ. Code §§ 1101.602; 1102.351)
- The claimant benefited from the misconduct of the license holder or otherwise had "unclean hands";
- The judgment is interlocutory (i.e., not final); (Tex. Occ. Code §§ 1101.606; 1102.351)
- The judgment's appeal timelines have not run or there is an appeal or bill of review pending; (Tex. Occ. Code §§ 1101.606; 1102.351)
- The plaintiff has recovered some or all of his damages prior to applying for payment and has not credited those payments to the actual damages or attorney's fees; (Tex. Occ. Code §§ 1101.611; 1102.360)

- The claimant did not use good faith efforts to protect the judgment from being discharged in bankruptcy (if applicable); (Tex. Occ. Code § 1101.606)
- The judgment was a default judgment and the evidence provided to the Commission does not support recovery; (Tex. Occ. Code §§ 1101.607; 1102.356)
- The judgment was an agreed judgment and process set out in the statute was not followed by claimant. (Tex. Occ. Code § 1101.605)

Once denied, claimants are advised that should they so choose, they may schedule a hearing in coordination with the Office of the Attorney General to contest the denial.

The Texas Real Estate Commission (the "Commission") recognizes that the determination to deny a claim on these or similar bases is largely an administrative function, made in consultation with legal counsel. As a result, the Commission adopts the following policy:

The Commission delegates its authority to Commission staff to deny Recovery Fund claims, if such claims fail to satisfy applicable legal requirements. However, Commission staff shall report any such denials to the Commission at its quarterly meetings.

Approved by the Commission and signed this _____ day of February, 2021.

R. Scott Kesner, Chair
Texas Real Estate Commission



Agenda Item 25:

Discussion regarding FY2021 budget amendment

Summary:

In accordance with the 2021 TREC Budget and Investment Policy, Section 1.05 (a), staff is proposing an amendment to the approved fiscal year 2021 budget to reflect the actual beginning balance for the fiscal year instead of the projected beginning balance.

Staff Recommendation:

Adopt the 2021 Budget amendment as presented.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.



Texas Real Estate Commission

approved by Commissioners August 10, 2020 (updated with FY2020 ACTUAL expenses as of November 30, 2020)

	Budget 2018	Actual 2018	Budget 2019	Actual 2019	Budget 2020	FY2020 Actual Expenditures	Approved Budget 2021	Amended Budget 2021	Budget Variance from FY20 to FY21	Budget 2022	Projected Budget 2023
Projected Beginning Balance							18,729,663	19,732,109		15,489,363	10,112,003
Operating Reserves							(7,432,904)	(7,432,904)		(8,000,212)	(7,956,397)
Available balance within Texas Treasury Safekeeping Trust Account							\$ 11,296,759	\$ 12,299,205		7,489,152	2,155,606
Revenues											
License Fees	10,203,210	11,518,131	9,763,045	12,167,409	\$9,911,294	11,392,401	10,338,009	10,338,009	4.31%	10,338,009	10,234,629
Education Fees	480,668	586,396	497,906	620,203	\$338,742	378,105	400,772	400,772	18.31%	400,772	380,733
Examination Fees	326,280	369,116	333,935	368,982	\$354,938	309,608	369,894	369,894	4.21%	369,894	351,399
Other Miscellaneous Revenue	1,550	4,902	171,460	223,178	\$200,000	249,390	241,888	241,888	20.94%	241,888	229,794
Total Revenues	\$11,011,708	\$12,478,545	\$10,766,346	\$13,379,772	\$10,804,974	\$12,329,504	\$11,350,563	\$11,350,563	5.05%	\$11,350,563	\$11,196,555
Reallocation from Fund Balance			1,740,460	1,740,460	\$3,750,000	\$3,750,000					
Expenditures											
Salaries & Wages	5,902,890	5,525,633	6,742,800	6,054,271	7,186,666	7,876,258	8,284,693	8,284,693	15.28%	8,533,234	8,533,234
Employee Benefits	2,550,414	1,819,725	2,166,921	1,875,180	2,120,964	2,402,262	2,440,254	2,440,254	15.05%	2,562,266	2,474,638
Retiree Insurance		428,046	665,055	511,411	710,042	585,489	633,998	633,998	-10.71%	646,678	646,678
Other Personnel Costs	250,421	156,217	274,428	307,666	290,418	271,034	272,634	272,634	-6.12%	286,265	286,265
Professional Fees & Services	354,037	492,237	907,594	874,892	1,661,398	605,199	1,319,696	1,319,696	-20.57%	824,448	824,448
VERSA Replacement over 3 years							500,000	500,000		1,750,000	1,750,000
Consumables	15,000	9,362	12,000	17,152	14,000	11,361	12,000	12,000	-14.29%	12,600	12,600
Utilities	10,456	3,901	13,212	2,961	14,579	4,923	12,882	12,882	-11.64%	13,527	13,527
Travel	64,000	37,335	61,400	51,848		33,939	0				0
Commission Travel					22,000		40,000	40,000	81.82%	42,000	42,000
Staff Travel					35,000		33,784	33,784	-3.48%	37,000	37,000
Office and Space Rent	111,339	176,140	177,838	198,057	175,178	148,638	171,695	171,695	-1.99%	175,129	175,129
Equipment Rental	56,850	71,550	64,794	71,668	76,284	99,089	116,200	116,200	52.33%	122,010	122,010
Other Expenses											0
Registration & Membership	62,325	22,249	84,905	28,757	88,565	23,169	29,200	29,200	-67.03%	45,000	45,000
Maintenance & Repairs	268,320	156,447	184,128	167,878	286,757	192,433	276,794	276,794	-3.47%	290,634	290,634
Reproduction & Printing	2,600	899	2,600	1,612	4,600	3,997	5,050	5,050	9.78%	1,000	1,000
Contract Services	33,130	43,444	33,008	34,809	46,847	63,595	60,101	60,101	28.29%	45,000	45,000
Postage	17,800	17,765	21,700	17,326	23,600	12,328	28,000	28,000	18.64%	20,000	20,000
Supplies & Equipment	105,352	82,072	80,440	189,769	633,739	328,825	125,705	125,705	-80.16%	90,000	90,000
Communication Services	110,805	105,143	138,415	141,874	192,111	140,331	230,402	230,402	19.93%	241,922	241,922
DPS Criminal History Checks	2,000	5,530	2,000	3,491	19,716	95,007	22,416	22,416	13.69%	718	718
Other Operating	24,700	25,385	25,000	23,783	30,180	259,943	34,312	34,312	13.69%	45,000	45,000
Capital Expenditures	18,200		-								0
Statewide Cost Allocation Plan (SWCAP)	273,271	175,240	180,000	188,582	188,582	215,993	215,993	215,993	14.54%	215,993	215,993
Total Expenditures	10,233,910	9,354,319	11,838,238	10,762,989	13,821,224	13,373,812	14,865,809	14,865,808	7.56%	16,000,423	15,912,795
Contribution to General Revenue	724,725	724,725	724,725	724,725	727,500	727,500	727,500	727,500	0.00%	727,500	727,500
Total Expenditures and GR Contribution	\$10,958,635	\$10,079,044	\$12,562,963	\$11,487,714	\$14,548,724	\$14,101,312	\$15,593,309	\$15,593,308	7.18%	\$16,727,923	\$16,640,295
Revenue Over/(Under) Expenditures (Includes Transfers & Balance carry forward)	\$53,073	\$2,399,501	(\$56,157)	\$3,632,519	\$6,251	\$1,978,192	\$7,054,013	\$8,056,459		\$2,111,791	(\$3,288,134)

FTEs

127.475

127.475

****Budget Amended is proposed because actual beginning balance for FY 2021 was \$19,732,109. This starting balance is \$1,002,446 more than originally approved estimated beginning balance.****





Agenda Item 26:

Discussion and possible action regarding performance review and salary of TREC Executive Director

Summary:

The Executive Committee reviewed and discussed performance review evaluation responses received from Commissioners, Texas Appraiser Licensing and Certification Board Members, and staff regarding Executive Director's performance at their January 13, 2021, meeting.

Agenda Item 27:

Discussion and possible action to approve changes to TREC form FD-1; Fitness Determination

Summary:

The amendment to the Fitness Determination form is recommended by staff in order to combine the Fitness Determination form and the Background History Form. Currently, a requestor needs to submit these two forms when submitting a request for a Fitness Determination for licensure. Occasionally, requestors forget to submit the Background History form with their Fitness Determination form. This causes delays because staff cannot start reviewing these requests until at least both forms are submitted. Combining both forms will better streamline the process when submitting this type of request.

Staff Recommendation:

Approve changes to form as presented.

Motion:

MOVE, that the Commission approve staff's recommendation.

MOVE, that the Commission approve staff's recommendation with the following changes:

_____.

MOVE, that the Commission not approve staff's recommendation.





Texas Real Estate Commission

P.O. Box 12188
Austin, Texas 78711-2188
512-936-3000 www.trec.texas.gov

FITNESS DETERMINATION (FD)

FEE	RECEIPT NUMBER	AMOUNT	MONEY TYPE	App#	File#
Application Fee		\$50.00		Entity#	License #

DO NOT WRITE ABOVE THIS LINE

NOTE: ALL INFORMATION MUST BE TYPED OR PRINTED IN INK

This Fitness Determination should not be filed at the same time as an application for licensure or of an application for a license is pending.

NOTE: A nonrefundable fee of \$50.00 is required with the FD. The fee should be submitted as one check or money order in the exact amount of \$50.00 made payable to the Texas Real Estate Commission. Failure to submit the required fee will cause the FD to be returned. Be sure to provide complete, legible copies of any documentation needed. Be specific and provide exact details. Attach a separate form or additional pages for each additional license, judgment, or crime that you need to report. Attach additional pages for explanations that require more space.

1. FULL NAME:

Last, First, Middle

2. SOCIAL SECURITY NUMBER:

NOTE: Section 231.302 of the Texas Family Code REQUIRES all applicants to disclose their Social Security Numbers The SSN (SSN). that is provided is confidential and is required to enforce Child Support orders.

3. ADDRESS AND CONTACT INFORMATION: (Post Office Box may be used)

Number, Street and Apt. No. or P.O. Box

City State Zip Code Area Code Phone Number

Email Address

4. DATE OF BIRTH:

Month Day Year

5. SEX:(check one)

☐ M ☐ F

6. Indicate which license or registration you would like a fitness determination for (check one):

- ☐ Real Estate Sales Agent or Broker
☐ Apprentice Inspector/Real Estate Inspector/Professional Inspector
☐ Easement or Right-of-Way Agent

7. Are you a citizen of the United States or a lawfully admitted alien?

☐ Yes ☐ No

8. If you are a lawfully admitted alien, are you permitted to work in the United States?

☐ Yes ☐ No

This document is available on the TREC website at www.trec.texas.gov

9.	Have you ever been registered or licensed by the Texas Real Estate Commission?	<input type="checkbox"/> Yes <input type="checkbox"/> No																																			
10.	Have you been licensed as a real estate sales agent, broker, or inspector in a state other than Texas within the last five (5) years?	<input type="checkbox"/> Yes <input type="checkbox"/> No																																			
11. (a)	Have you ever had a professional or occupational license in this state or any other state placed on probation, suspended, canceled or revoked, or ever surrendered such a license?	<input type="checkbox"/> Yes <input type="checkbox"/> No																																			
(b)	Have you ever had an application for a professional or occupational license disapproved or denied in this state or any other state?	<input type="checkbox"/> Yes <input type="checkbox"/> No																																			
(c)	Are there any disciplinary hearings or investigations pending against any professional or occupational licenses you hold in this state or any other state?	<input type="checkbox"/> Yes <input type="checkbox"/> No																																			
12.	Are there any unpaid judgments against you?	<input type="checkbox"/> Yes <input type="checkbox"/> No																																			
13. (a)	Have you ever been convicted of a criminal offense? Include all felonies, all misdemeanors other than minor traffic tickets, and all military tribunal convictions.	<input type="checkbox"/> Yes <input type="checkbox"/> No																																			
(b)	Have you ever been placed on parole, probation, or community supervision (also known as deferred adjudication) regardless of whether the case was dismissed or you were discharged?	<input type="checkbox"/> Yes <input type="checkbox"/> No																																			
(c)	Are there any criminal charges pending against you?	<input type="checkbox"/> Yes <input type="checkbox"/> No																																			
14.	Have you ever acted or attempted to act, as a real estate broker, sales agent, inspector or appraiser in this state or any other state at a time when not properly licensed? (Include all periods in which you acted either before obtaining a license or after a license may have expired.)	<input type="checkbox"/> Yes <input type="checkbox"/> No																																			
15.	List below all names (maiden, aliases, nicknames, etc) by which you have been known.																																				
	<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em;"></div>																																				
16.	EMPLOYMENT HISTORY: Provide employment history for the last five (5) years to the present date. Explain any periods of unemployment for more than thirty (30) days. If additional space is needed, attach a separate sheet of paper to complete your answer.																																				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;">FROM</th> <th style="width: 15%;">TO</th> <th style="width: 30%;">Employer</th> <th style="width: 20%;">City, State</th> <th style="width: 20%;">Position/Duties</th> </tr> <tr> <th>Month/Year</th> <th>Month/Year</th> <th></th> <th></th> <th></th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	FROM	TO	Employer	City, State	Position/Duties	Month/Year	Month/Year																													
FROM	TO	Employer	City, State	Position/Duties																																	
Month/Year	Month/Year																																				
17.	OUT OF STATE REAL ESTATE LICENSE (if applicable): Issuing State: _____ Date Issued: _____ Status: <input type="checkbox"/> Active <input type="checkbox"/> Inactive <input type="checkbox"/> Expired <input type="checkbox"/> Other _____ Action Taken on License (if applicable): <input type="checkbox"/> Revoked <input type="checkbox"/> Surrendered <input type="checkbox"/> Suspended <input type="checkbox"/> Terminated <input type="checkbox"/> Other _____ Effective Date of Action: _____ Explanation of circumstances leading to any action taken: _____ <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div> <div style="border-bottom: 1px solid black; height: 1.2em; margin-top: 5px;"></div>																																				

Documentation Needed: Submit license history signed by state licensing agency.

18. OTHER OCCUPATIONAL/PROFESSIONAL LICENSES:

Issuing State: _____ Type of License: _____ Date Issued: _____

Status: ☐ Active ☐ Inactive ☐ Expired ☐ Other: _____Action Taken on License (if applicable): ☐ Revoked ☐ Surrendered ☐ Suspended ☐ Terminated
☐ Other

Effective Date of Action: _____

Explanation of circumstances leading to any action taken:

_____**Documentation Needed:** Submit license history signed by state licensing agency.**19. OUTSTANDING JUDGMENTS**Status: ☐ Final Judgment ☐ Judgment AppealedExplanation of circumstances leading to judgment and any payment plan for outstanding judgment:

_____**Documentation Needed:** Submit copies of all petitions, responses and judgments.**7. CRIMINAL HISTORY** (include all felonies, all misdemeanors other than traffic tickets, and all military tribunal convictions, even if you have disclosed these offenses on a previous TREC form or application.)

Style and Cause Number: _____

Initial Charge: _____ ☐ Misdemeanor ☐ FelonyUltimate Charge: _____ ☐ Misdemeanor ☐ Felony

Title of Court: _____ County of Court: _____

Plea: ☐ Guilty ☐ Not Guilty ☒ Nolo Contendere ☐ Other _____

Date crime committed: _____ Date sentenced: _____

Disposition (check all that apply): ☐ Adjudicated Guilty ☐ Adjudicated Not Guilty ☐ Probation
☐ Shock Probation ☐ Incarceration: _____ term ☐ Deferred Adjudication ☐ Deferred Prosecution
☐ Restitution Ordered ☐ Community Service OrderedExplanation of circumstances leading to criminal charges: _____

Regarding parole, community supervision or probation:

Have you been released from any of the above:

☐ Yes

☐ No

Have you ever violated the terms of any of the above:

☐ Yes

☐ No

Date of release: _____

Have you had your parole, community supervision or probation revoked:

☐ Yes ☐ No

Date of Revocation: _____

Explanation of circumstances leading to revocation and changes made to your sentence, if any: _____

Documentation Needed: Submit copies of all indictments, information, charges, judgments, orders, motions to revoke and parole/probation/community supervision release, even if you have submitted these documents with a previous TREC form or application.

8. UNLICENSED ACTIVITY

Explanation of circumstances leading to unlicensed real estate brokerage or inspector activity: _____

CERTIFICATION

I certify that I examined this application and that the answers given are true, correct, and complete. If so requested by the Texas Real Estate Commission, I will furnish all additional information or documentation as may be deemed necessary for the verification of the information provided. I authorize and consent to the Commission's conducting an investigation of me and the matters addressed here as it deems necessary. I further understand that information submitted in conjunction with this form is subject to Chapter 552, Texas Government Code (public information). I request the Texas Real Estate Commission to determine if my fitness (based on what I submit) complies with the requirements for licensing under Section 1101.353 or 1102.106, Texas Occupations Code.

Signature

Date

PRIVACY NOTICE

In accordance with Chapter 559, Government code, the following notice about certain information laws and practices is given.

- (1) With few exceptions, an individual on request to be informed about the information that a state governmental body collects about the individual.
- (2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.
- (3) Under Sections 559.004 of the Government Code, the individual is entitled to have the governmental body correct information about the individual is incorrect.



Agenda Item 28:

Discussion and possible action regarding future agenda items

Agenda Item 29:

Discussion and possible action to schedule future meetings

Summary:

The next meeting of the Commission is scheduled for Monday, May 3, 2021. The next workshop meeting is Wednesday, February 17, 2021. The future workshop meeting is tentatively scheduled for Tuesday, May, 4, 2021, if desired. Topic of workshop: TBD.

Agenda Item 30:

Adjourn



Texas Real Estate Commission

February 16, 2021

February 2021						
S	M	T	W	T	F	S
	1	2	3	4	5	6
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14	15	16	17	18	19	20
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28						

March 2021						
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April 2021						
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May 2021						
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23	24	25	26	27	28	29
30	31					

February

16 TREC Meeting
17 TREC Workshop
16-18 TR Winter Meeting (virtual)
15 Presidents' Day

March

April

2 Good Friday
4 Easter

May

3 TREC Meeting
4 TREC Workshop (if desired)
9 Mother's Day

June 2021						
S	M	T	W	T	F	S
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July 2021						
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August 2021						
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September 2021						
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June

20 Father's Day

July

4 Independence Day

August

9 TREC Meeting
10 TREC Workshop (if desired)

September

6 Labor Day

October 2021						
S	M	T	W	T	F	S
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31						

November 2021						
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December 2021						
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January 2022						
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30	31					

October

11 Columbus Day

November

8 TREC Meeting
9 TREC Annual Workshop
11 Veterans Day
25/26 Thanksgiving Holiday

December

24-26 Christmas Holiday

January

1 New Year's Day





AGENDA FOR TEXAS REAL ESTATE COMMISSION (TREC) MEETING
Tuesday, February 16, 2021, at 10:00 a.m. via Microsoft Teams teleconference

The Commission will provide a link to the live stream on the front page of its website the morning of February 16, 2021, at <https://www.trec.texas.gov>

This agenda and any materials will be available on the TREC website before February 16, 2021, at https://www.trec.texas.gov/apps/meetings/view.php?meeting_id=439

To participate by providing public comment during the meeting, contact Vanessa Burgess, General Counsel, at general.counsel@trec.texas.gov before 9:00 a.m. on February 16, 2021, along with the item number you wish to speak on. Anyone wishing to provide public comment will need to have internet access and a computer or device with a microphone or a telephone.

CALL TO ORDER

1. Call to order and pledges of allegiance
2. Discussion and possible action to excuse Commissioner absence(s), if any
3. Opening remarks and report from the Chair
4. Recognition of departing public servants

ELECTIONS AND APPOINTMENTS

5. Election of Vice-Chair and Secretary
6. Discussion and Appointments to:
 - a. Enforcement Committee
 - b. Budget Committee
 - d. Commission liaison to the Texas Real Estate Inspector Committee
 - e. Commission liaison to the Education Standards Advisory Committee
 - f. Commission liaison to the Broker Responsibility Working Group
 - g. Ex-Officio to the Texas A&M Real Estate Center Advisory Committee

STAFF AND COMMITTEE REPORTS

7. Staff reports by Executive Director, Deputy Executive Director, and Division Directors regarding agency operations, initiatives, and division updates
8. Report by the Executive Committee
9. Report by Education Standards Advisory Committee
10. Report by Texas Real Estate Inspector Committee

PUBLIC COMMENTS

11. Members of the public have the opportunity to address the Commission concerning an agenda item or an issue of public interest that is not on the agenda. Anyone wishing to provide public comment on an issue of public interest that is not on the agenda may do so under this section. Members of the public who wish to speak on a matter specifically listed on the agenda may do so at the time that agenda item is heard.

All individuals wishing to provide public comment of any sort should fill out a speaker request form with the agency's designated agent.

CONTESTED CASES

12. Consideration and possible action regarding proposal for decision in the matter of:
- a. SOAH Docket No. 329-20-0455.REC; TREC v. Tiffanie L. Purvis
 - b. SOAH Docket No. 329-20-1699.REC; TREC v. Angelica Reynoso

EXECUTIVE SESSION

13. Executive session to discuss pending litigation or obtain advice of legal counsel on agenda items pursuant to Texas Government Code §551.071 and personnel matters relating to the performance review of the Executive Director pursuant to Texas Government Code §551.074

RECOVERY FUND

14. Discussion and possible action to authorize settlement of recovery fund claims or take other action on:
- a. RF 20017; Gustave Meyner and Sally Meyner v. Jeff Neale
 - b. RF 20020; Craig Garza v. Ed Wiggins Realty, LLC and Edgar Paul Wiggins
 - c. RF 21001; Ameriplex Realtors, Inc. v. Gregory Dicker and Jeffrey Dicker
 - d. RF 21002; Anna M. Salanti and Franklin C. Cook v. Charlene King

RULES FOR POSSIBLE ADOPTION

15. Discussion and possible action to adopt repeal of 22 TAC §534.7, Vendor Protest Procedures
16. Discussion and possible action to adopt 22 TAC §534.7, Vendor Protest Procedures (NEW)
17. Discussion and possible action to adopt amendments to 22 TAC §535.91, Renewal of a Real Estate License
18. Discussion and possible action to adopt amendments to 22 TAC §535.191, Schedule of Administrative Penalties
19. Discussion and possible action to adopt amendments to 22 TAC §535.216, Renewal of License
20. Discussion and possible action to adopt amendments to 22 TAC, Chapter 537, regarding Standard Contract forms as follows:
- a. §537.45; Standard Contract Form TREC NO. 38-6 (Notice of Buyer's Termination of Contract); and
 - b. §537.52; Standard Contract Form TREC No. 45-1 (Short Sale Addendum)

RULES FOR POSSIBLE PROPOSAL

21. Discussion and possible action to propose 22 TAC §533.50, Petition for Adoption of Rules (NEW)
22. Discussion and possible action to propose amendments to 22 TAC §535.220, Professional Conduct and Ethics

OLD BUSINESS

23. Update regarding 87th Legislative Session

NEW BUSINESS

24. Discussion and possible action regarding denying claims made to the Real Estate Recovery Trust Account and Real Estate Inspection Recovery Fund

- 25. Discussion and possible action regarding FY2021 budget amendment
- 26. Discussion and possible action regarding performance review and salary of TREC Executive Director
- 27. Discussion and possible action to approve changes to TREC form FD-1; Fitness Determination

FUTURE MEETINGS

- 28. Discussion and possible action regarding future agenda items
- 29. Discussion and possible action to schedule future meetings
- 30. Adjourn

Pursuant to the Americans with Disabilities Act, any requests for reasonable accommodation needed by persons wishing to attend this meeting should call Amber Hinton at 512-936-3000.

The Texas Real Estate Commission may meet in executive session on any item listed above as authorized by the Texas Open Meetings Act, Chapter 551, Tex. Gov't Code.