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RULES OF THE TEXAS REAL ESTATE COMMISSION

As Revised and in Effect on

June 1, 2001

Texas Real Estate Commission
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This publication contains the Commission's Rules in effect on June 1, 2001. Changes are published in the *Texas Register* through the Secretary of State's Office.

The rules adopted by the Texas Real Estate Commission are located in Title 22 of the Texas Administrative Code. Each rule is identified by a section number in the Code (TAC Section). The rules are also divided into chapters relating to different subjects. For example, Chapter 535 relates to the Provisions of the Real Estate License Act. Lengthy rules may be divided below the subsection level using the following structure:

§ (section)

(a) subsection

(1) paragraph

(A) subparagraph

(i) clause

(I) subclause

For convenience, rules are generally cited to the section level. For example, Subparagraph C, Paragraph 5, Subsection (r) of §535.71, which relates to regulations for providers of approved MCE courses, may be cited as 22 TAC §535.71(r)(5)(C).

Unless noted otherwise, the rules in this pamphlet were first effective January 1, 1976. References are provided to the statutory provision the rule interprets or implements. Unless a different source is indicated, references are to The Real Estate License Act, Article 6573a, Texas Civil Statutes.

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RULES OF THE TEXAS REAL ESTATE COMMISSION

CHAPTER 531 CANONS OF PROFESSIONAL ETHICS AND CONDUCT FOR REAL ESTATE LICENSEES

§531.1. Fidelity. *[Amended February 23, 1998]* A real estate broker or salesperson, while acting as an agent for another, is a fiduciary. Special obligations are imposed when such fiduciary relationships are created. They demand:

(1) that the primary duty of the real estate agent is to represent the interests of the agent's client, and the agent's position, in this respect, should be clear to all parties concerned in a real estate transaction; that, however, the agent, in performing duties to the client, shall treat other parties to a transaction fairly;

(2) that the real estate agent be faithful and observant to trust placed in the agent, and be scrupulous and meticulous in performing the agent's functions; and

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

§531.2. Integrity. *[Amended February 23, 1998]* A real estate broker or salesperson has a special obligation to exercise integrity in the discharge of the licensee's responsibilities, including employment of prudence and caution so as to avoid misrepresentation, in any wise, by acts of commission or omission.

§531.3. Competency. *[Amended February 23, 1998]* It is the obligation of a real estate agent to be knowledgeable as a real estate brokerage practitioner. The agent should:

(1) be informed on market conditions affecting the real estate business and pledged to continuing education in the intricacies involved in marketing real estate for others;

(2) be informed on national, state and local issues and developments in the real estate industry;

(3) exercise judgment and skill in the performance of the work.

§§531.10-531.17. Minimum Appraisal Standards. *[Repealed March 1, 1991]*

§531.18. Consumer Information Form 1-1. *[Adopted February 1, 1990; amended November 1, 1991; Ref: §5(q)]*

(a) The Texas Real Estate Commission adopts by reference Consumer Information Form 1-1 approved by the Texas Real Estate Commission in 1991. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) Each real estate inspector or active real estate broker licensed by the Texas Real Estate Commission shall display Consumer Information Form 1-1 in a prominent location in each place of business the broker or inspector maintains.

§531.19. Discriminatory Practices. *[Adopted February 19, 1990; Ref: AG OP.JM-1093]* No real estate licensee shall inquire about, respond to or facilitate inquiries about, or make a disclosure which indicates or is intended to indicate any preference, limitation or discrimination based on the following: race, color, religion, sex, national origin, ancestry, familial status, or handicap of an owner, previous or current occupant, potential purchaser, lessor, or potential lessee of real property. For the purpose of this section, handicap includes a person who had, may have had, has, or may have AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the United States Public Health Service.

CHAPTER 533 PRACTICE AND PROCEDURE
(Ref: Texas Government Code, Chapter 2001)

§§533.1.-533.30 Practice and Procedure.
[Repealed December 29, 1998]

§533.31. Procedures for Rulemaking and Contested Cases. *[Adopted December 29, 1998]*

The procedures for rulemaking and contested cases before the Texas Real Estate Commission or a presiding officer authorized by the Texas Real Estate Commission are governed by this chapter and by The Administrative Procedure Act, Texas Government Code, §2001.001, et seq.

§533.32. Filing of Documents. *[Adopted December 29, 1998]* When a document is required to be filed in a contested case or rulemaking proceeding, the document is deemed filed when it is received in the office of the Texas Real Estate Commission, Austin, Texas.

§533.33. Computation of Time. *[Adopted December 29, 1998]* In computing any period of time prescribed or allowed by these sections, by an order issued by the Texas Real Estate Commission, or by any applicable statute, the period begins on the day after the act, event or default in controversy and concludes on the last day of the computed period, unless the last day is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday nor a legal holiday.

§533.34. Disapproval of an Application for a License or Registration. *[Adopted December 29, 1998]* Notice and hearings relating to disapproval of an application for a license or registration issued by the Texas Real Estate Commission are governed by the statute under which the application was filed and by The Administrative Procedure Act, Texas Government Code, §§2001.001 et seq. The commission also will notify a sponsoring broker or sponsoring inspector of the disapproval, but a sponsoring broker or sponsoring inspector is not required to request a hearing or to be named or admitted as a party in the proceeding before the commission. A hearing pursuant to this section will be held at a place designated by the commission. Failure to request a hearing timely waives the right to judicial appeal, and the determination becomes final and unappealable.

§533.35. Revocation or other Action against a License or Registration. *[Adopted December 29, 1998]* A license or registration issued by the Texas Real Estate Commission may not be revoked or other action taken against the license or registration

except after notice and opportunity for hearing pursuant to statutory obligation and these sections. If a real estate salesperson is a respondent, the commission also will notify the salesperson's sponsoring broker of the hearing. If an apprentice inspector or real estate inspector is a respondent, the commission also will notify the sponsoring professional inspector of the hearing. The hearing will be held at a time and place designated by the commission, except that upon the written request of a respondent licensed as a Texas real estate broker, real estate salesperson, or inspector, or registered as an easement or right-of-way agent, filed within five days after receipt of the notice of hearing, the hearing will be held in the county where the principal place of business of the respondent is maintained. If the respondent is a licensee or registrant who does not reside within this state, the hearing may be held in any county within this state.

§533.36. Hearings before Presiding Officer or the Members of the Commission. *[Adopted December 29, 1998]*

(a) Hearings in contested cases will be conducted by the presiding officer who shall have authority to administer oaths, to examine witnesses, to rule upon the admissibility of evidence and amendments to pleadings, and to recess any hearing from day to day.

(b) If the presiding officer dies, becomes disabled or withdraws or is removed from employment on the case at any time before the final decision thereon, the agency may appoint another presiding officer who may perform any function remaining to be performed without the necessity of repeating any previous proceedings on the case.

(c) The chairperson of the commission or a member designated by the chairperson shall preside over hearings conducted by the commission membership. The chairperson or designated member shall rule on the admissibility of evidence or amendments to pleadings. The chairperson or designated member may enter proposed orders which have been approved by the commission.

§533.37. Limitations on Number of Witnesses. *[Adopted December 29, 1998]* The presiding officer or the member of the commission, as the case may be, shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§533.38. Motions for Rehearing, Modification of Order, or Probation. *[Adopted December 29, 1998]*

(a) Except in the case of an emergency decision or order, a motion for rehearing is a prerequisite to judicial review. In addition to any motion for rehearing, a party may file a motion to modify the prior order or a motion for probation of the prior order, or both. The filing and consideration of motions shall be governed by the provisions of this section.

(b) If the party filing the motion desires the motion to be considered by, and any rehearing to be before, the members of the commission, the party shall include in the motion a request for consideration by, and any rehearing to be before, the members of the commission. A party shall submit the motion to either the presiding officer or to the members of the commission, as the case may be, for consideration and appropriate action. A motion which requests action by the presiding officer, and in the alternative, action by the members of the commission, will be deemed a motion for consideration of the presiding officer and treated accordingly. A motion that does not include an express request for consideration by the members of the commission will be deemed to be a request for consideration by a presiding officer, and if the party has filed a timely motion for rehearing to be considered by either the presiding officer or the members of the commission, the party need not file any additional motions for rehearing as a prerequisite for judicial review.

(c) A motion for rehearing, modification of order, or probation must set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts was error, such as a violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion or other error of law, or other good cause specifically described in the motion. In the absence of specific grounds in the motion, the presiding officer, or the members of the commission, as the case may be, shall presume that the motion should be overruled.

(d) A motion for rehearing, modification of order, or probation must be filed within 20 days after the date the party or the party's attorney of record is notified of the final decision or order. Replies to the motion must be filed with the commission within 30 days after the party or the party's attorney of record is notified of the final decision or order. The presiding officer or the commission itself, as appropriate, shall act on the motion within 45 days after the party or the party's attorney of record is notified of the final decision or order. The presiding

officer or the members of the commission, as appropriate, may, by written order, extend the time for filing, replying to, and taking action on a motion, not to exceed 90 days after the date the party or the party's attorney of record is notified of the final decision or order. In the event of an extension of time, a motion is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the party or the party's attorney of record is notified of the final decision or order. The presiding officer or the members of the commission, as appropriate, may modify this schedule with the consent of the parties.

(e) Motions for rehearing, modification of order, or probation before the members of the commission will be heard in accordance with this section. Except where the context clearly contemplates a different procedure to be followed before the members of the commission, any hearings before the presiding officer to consider motions will be conducted in the manner required by this section.

(1) The chairperson or the member designated by the chairperson to preside ("the presiding member") shall announce the case. The members shall consider a motion for rehearing prior to considering or acting upon a motion for modification of order or probation. The members shall consider a motion for modification of order prior to considering or acting upon a motion for probation. Upon the request of any party, the presiding member shall conduct a prehearing conference with the parties and their attorneys of record. The presiding member shall announce reasonable time limits for any oral arguments to be presented by the parties. The hearing on the motion shall be limited to a consideration of the grounds set forth in the motion. Testimony by affidavit or documentary evidence such as excerpts of the record before the presiding officer may be offered in support of, or in opposition to, the motion; provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion or reply is filed.

(2) In presenting oral arguments, the party filing the motion will have the burden of proof and persuasion and shall open and close. The party responding to the motion may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(3) After being recognized by the presiding member, the members of the commission may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the

party's attorney. Questions must be limited to the grounds asserted for the motion to be granted and to the arguments made by the parties.

(4) Upon the conclusion of oral arguments, questions by the members of the commission, and any discussion by the members of the commission, the presiding member shall call for a vote on the motion. It will not be in order for a member of the commission to make a separate motion or to second a motion filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled. The granting of a motion for rehearing vacates any prior order in the contested case.

(f) A party filing a motion for modification of order or probation shall specify in the motion the modification or such terms and conditions of probation as are desired by the party. A party replying to a motion may also specify a modification or terms and conditions for probation. In addition to the terms and conditions for probation which are set forth in The Real Estate License Act, Article 6573a, Texas Civil Statutes, (the Act) §15B(d), the members of the commission or a commission employee acting as presiding officer may require a licensee:

(1) to comply with the provisions of the Act and the rules of the Texas Real Estate Commission;

(2) to cooperate with the Enforcement Division of the Texas Real Estate Commission in the investigation of any complaints filed during the probation;

(3) to complete courses of education relevant to the matter which is the basis of the probation;

(4) to repay money belonging to another person or to the State of Texas; or

(5) to comply with such other reasonable terms and conditions as the members of the commission or commission employee acting as presiding officer may impose.

§533.39. Judicial Review. *[Adopted December 29, 1998]* A person who has exhausted all administrative remedies, and who is aggrieved by a final decision in a contested case is entitled to judicial review. The petition must be filed in accordance with the requirements of the statute under which relief is sought.

CHAPTER 534 GENERAL ADMINISTRATION

§534.1. Charges for Copies of Public Records.

[Adopted December 1, 1994; amended January 7, 1997; Ref: §5(h)]

(a) Charge for copies of public information provided by the commission shall be based upon the current charges established by the General Services Commission; provided, however, that the commission shall charge its actual costs if the actual costs of providing copies exceed the established charges, and an exemption has been granted by the General Services Commission.

(b) The commission may furnish copies of public information without charge or at a reduced charge if the commission determines that waiver or reduction of the fee is in the public interest. The commission also may waive the charge if the cost of processing the collection of a charge will exceed the amount of the charge.

§534.2. Processing Fees for Dishonored Checks.

[Adopted December 1, 1994; Ref: §5(h)]

(a) If a check drawn to the commission is dishonored by a payor, the commission shall charge a fee of \$25 to the drawer or endorser for processing the dishonored check. The commission shall notify the drawer or endorser of the fee by sending a request for payment of the dishonored check and the processing fee by certified mail to the last known business address of the person as shown in the records of the commission. If the commission has sent a request for payment in accordance with the provisions of this section, the failure of the drawer or endorser to pay the processing fee within 15 days after the commission has mailed the request is a violation of this section.

(b) Collection of the fee imposed under this section does not preclude the commission from proceeding under Texas Civil Statutes, Article 6573a, §15(a)(4), against a licensee who has within a reasonable time failed to make good a check issued to the commission.

CHAPTER 535 PROVISIONS OF THE REAL ESTATE LICENSE ACT

A. General Provisions Relating to the Requirement of Licensure

§535.1. License Required. *[Amended August 29, 1979; March 11, 1981; June 9, 1981; March 19, 1990; April 14, 1998; July 1, 1999 and October 11, 1999; Ref: §1(b)]*

(a) Texas Civil Statutes, Article 6573a (the Act) applies to persons acting as real estate brokers or salespersons while physically within this state, regardless of the location of the real estate involved or the residence of the person's customers or clients. For the purposes of the Act, a person conducting brokerage business from another state by mail, telephone, the Internet, e-mail or other medium is also considered acting within this state if all the prospective buyers, sellers, landlords, or tenants are legal residents of this state, and the real property concerned is located wholly or in part within this state.

(b) This section does not prohibit cooperative arrangements between non-resident brokers and Texas brokers pursuant to the Act, §14(a) and §535.131 of this title (relating to Unlawful Conduct: Splitting Fees).

(c) Unless otherwise exempted by the Act, a person must be licensed as a real estate broker or salesperson to show a broker's listings, solicit listings of real property perform any act defined as that of a real estate broker by the Act. An unlicensed person may be hired by a broker to act as a host or hostess at a property being offered for sale by the broker, provided the unlicensed person engages in no activity for which a license is required.

(d) The employees, agents or associates of a licensed broker, including a corporation or limited liability company licensed as a broker, must be licensed as real estate brokers or salespersons if they direct or supervise other persons in the performance of acts for which a license is required. A license is not required for the performance of secretarial, clerical, or administrative tasks, such as training personnel, performing duties generally associated with office administration and personnel matters. Unlicensed employees, agents, or associates may not solicit business for the broker or hold themselves out as authorized to act as real estate brokers or salespersons.

(e) As used in this chapter, the terms "property" and "real property" have the same meaning as "real

estate" as that term is defined in the Act.

§535.2. Broker's Responsibility. *[Amended April 14, 1998 and July 1, 1999; Ref: §1(c)]*

(a) A broker is responsible for the authorized acts of the broker's salespersons, but the broker is not required to supervise the salespersons directly.

(b) A real estate broker acting as an agent owes the very highest fiduciary obligation to the agent's principal and is obliged to convey to the principal all information of which the agent has knowledge and which may affect the principal's decision. A broker is obligated under a listing contract to negotiate the best possible transaction for the principal, the person the broker has agreed to represent.

(c) A broker is responsible for the proper handling of escrow monies placed with the broker, although the broker may authorize other persons to sign checks for the broker.

§535.3. Compensation to or paid by a Salesperson. *[Amended October 20, 1983; April 14, 1998 and July 1, 1999; Ref: §1(d)]* A salesperson may not receive a commission or other fee except with the consent of the salesperson's sponsoring broker or the broker who sponsored the salesperson when the salesperson became entitled to the commission or fee. A salesperson may not pay a commission or other fee to another person except with the consent of the salesperson's sponsoring broker.

§535.4. Compensation Paid by Salesperson. *[Repealed July 1, 1999]*

B. Definitions

§535.11. Real estate defined. *[Repealed July 1, 1999]*

§535.12. General. *[Amended April 3, 1977; December 25, 1980; April 14, 1998 and July 1, 1999; Ref: §2(2)]*

(a) A person may invest in real estate or contract to purchase real estate and then sell it or offer to sell it without having a real estate license. A license is not required for a person to buy or sell real property only for the person's own account.

(b) A person who owns property jointly may sell and convey title to his or her interest in the property, but the person must be licensed to act for compensation as an agent for the other owner

unless otherwise exempted by Texas Civil Statutes, Article 6573a, (the Act).

§535.13. Dispositions of Real Estate. *[Amended December 25, 1980; September 7, 1995 and July 1, 1999; Ref: §2(2)(A)]*

(a) Acting as a principal, a person may purchase, sell, lease, or sublease real estate for profit without being licensed as a real estate broker or salesperson.

(b) Unless otherwise exempted by Texas Civil Statutes, Article 6573a (the Act), a person who manages real property or collects rentals for an owner of real property and for a valuable consideration must be licensed if the person also rents or leases the property for the owner.

(c) A person must be licensed as a real estate broker to operate a rental agency. This section does not prohibit employment of an answering service or unlicensed clerical or secretarial employees identified to callers as such to confirm information concerning the size, price and terms of property advertised.

(d) A real estate license is not required for an individual employed by a corporation or other business entity for the purpose of buying real property for the entity or selling real property owned by the entity. An entity is considered to be an owner if it holds record title to the property or has an equitable title or right acquired by contract with the record title holder. A corporation or limited liability company is considered to be acting as a broker and is required to be licensed under the Act if it or its employee receives, or expects to receive, a valuable consideration from the record title holder for negotiating a sale or other disposition of the property.

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

(f) Arranging for a person to occupy a vacant residential property is an act requiring a real estate license if the actor:

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

(2) receives a valuable consideration; and

(3) is not exempted from the requirement of a license by the Act, §3.

§535.14. Offers to Dispose of Real Estate. *[Repealed July 1, 1999]*

§535.15. Negotiations. *[Amended April 3, 1977; April 14, 1998 and July 1, 1999; Ref: §2(2)(C)]*

(a) Locating and bringing together a buyer and seller constitutes negotiation if done from within the borders of Texas.

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

§535.16. Listings. *[Amended April 14, 1998 and July 1, 1999; Ref: §2(2)(D)]*

(a) Trade associations or other organizations which provide a computerized listing service for their members, but which do not receive compensation when the real estate is sold would not be required to be licensed under Texas Civil Statutes, Article 6573a (the Act).

(b) A "net listing" is a listing agreement in which the broker's commission is the difference ("net") between the sales proceeds and an amount desired by the owner of the real property. A broker may not take net listings unless the principal requires a net listing and the principal appears to be familiar with current market values of real property. When a broker accepts a listing, the broker enters into a fiduciary relationship with the principal, whereby the broker is obligated to make diligent efforts to obtain the best price possible for the principal. The use of a net listing places an upper limit on the principal's expectancy and places the broker's interest above the principal's interest with reference to obtaining the best possible price. If a net listing is used, a broker should modify the listing agreement so as to assure the principal of not less than the principal's desired price and to limit the broker to a specified maximum commission.

(c) A real estate licensee is obligated to advise a property owner as to the licensee's opinion of the market value of a property when negotiating a listing or offering to purchase the property for the licensee's own account as a result of contact made while acting as a real estate agent.

§535.17. Appraisals. *[Amended April 3, 1977, March 1, 1991; August 19, 1991; April 14, 1998 and July 1, 1999; Ref: §2(2)(E)]*

(a) A salesperson may make, sign, and present real estate appraisals for the salesperson's sponsoring broker, but the salesperson must submit appraisals in the broker's name and the broker is responsible

for the appraisals.

(b) Texas Civil Statutes, Article 6573a (the Act) does not apply to appraisals performed by the employees of a financial institution or investment firm in connection with a contemplated loan or investment by their employers.

(c) Except as provided by this section, appraisals of real property performed in this state by Texas real estate licensees must be conducted in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect at the time the appraisal is performed. If a real estate licensee, for a separate fee, provides an opinion of value or comparative market analysis which does not conform with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation, the licensee shall also provide the person for whom the opinion or analysis is prepared with a written statement containing the following language: "THIS IS AN OPINION OF VALUE OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have *not* followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."

(d) The statement required by subsection (c) of this section must be made part of any written opinion or analysis report and must be reproduced verbatim.

(e) The exception allowed by subsection (c) of this section does not apply to a transaction in which the Resolution Trust Corporation or a federal financial institutions regulatory agency has required compliance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.

§535.18. Auctions. *[Repealed July 1, 1999]*

§535.19. Locating Property. *[Amended July 17, 1992; Ref: §2(2)(H)]*

(a) Except as provided by this section a real estate license is required for a person to receive a fee or other consideration for assisting another person to locate real property for sale, purchase, rent or lease, such as the operation of a service which finds apartments or homes.

(b) The compilation and distribution of information relating to rental vacancies or property for sale,

purchase, rent or lease is activity for which a real estate license is required if payment of any fee or other consideration received by the person who compiles and distributes the information is contingent upon the sale, purchase, rental or lease of the property. An advance fee is a contingent fee if the fee must be returned if the property is not sold, purchased, rented or leased.

§535.20. Procuring Prospects. *[Amended October 21, 1997; April 14, 1998 and August 26, 1999; Ref: §2(2)(I)]*

(a) Referring a prospective buyer, seller, landlord, or tenant to another person in connection with a proposed real estate transaction is an act requiring the person making the referral to be licensed if the referral is made with the expectation of receiving valuable consideration. For the purposes of this section, the term "valuable consideration" includes but is not limited to money, gifts of merchandise having a retail value greater than \$50, rent bonuses and discounts,

(b) A person is not required to be licensed as a real estate broker or salesperson if all of the following conditions are met.

(1) The person is engaged in the business of selling goods or services to the public.

(2) The person sells goods or services to a real estate licensee who intends to offer the goods or services as an inducement to potential buyers, sellers, landlords or tenants.

(3) After selling the goods or services to the real estate licensee, the person refers the person's customers to the real estate licensee.

(4) The payment to the person for the goods or services is not contingent upon the consummation of a real estate transaction by the person's customers.

§535.21. Unimproved Lot Sales; Listing Publications. *[Amended July 17, 1992 and July 1, 1999; Ref: §2(3)]*

(a) A person must be licensed as a real estate broker or salesperson to advertise for others regarding real property, accept calls received in response to such advertisements, and refer the callers to the owner of the property.

(b) A person may contract to advertise real estate for purchase, sale, lease or rental in a publication without being licensed under Texas Civil Statutes, Article 6573a, (the Act), unless payment of any fee

or consideration the person receives is contingent upon the purchase, sale, lease, or rental of the property advertised in the publication. For the purposes of this section an advance fee is a contingent fee if the person is obligated to return the fee if the property is not purchased, sold, leased or rented. This section shall be narrowly construed to effectuate the purposes for which this section was adopted.

C. Exemptions to Requirement of Licensure

§535.31. Attorneys at Law. *[Amended March 19, 1990; April 14, 1998 and July 1, 1999; Ref: §3(1)]* A licensed attorney is exempt from the requirements of Texas Civil Statutes, Article 6573a, (the Act) but cannot sponsor real estate salespersons or serve as the designated officer or manager of a licensed corporation or limited liability company unless the attorney is also licensed as a real estate broker. This provision is not a waiver of the standards of eligibility and qualification elsewhere established in the Act.

§535.32. Exemptions: Attorneys in fact. *[Amended July 1, 1999; Ref: §3(2)]* A person holding a power of attorney which is recorded in the county in which the particular real property is located and which specifically describes the real property to be sold may act as a real estate agent for the owner of such property without being licensed as a real estate broker or salesperson, provided the person does not use powers of attorney to engage in the real estate agency business.

§535.33. Public officials. *[Amended April 14, 1998 and July 1, 1999; Ref: §3(3)]* Public officials and employees of governmental or quasi-governmental units are exempted from the requirement of being licensed as a real estate broker or salesperson while performing their official duties.

§535.34. Salespersons Employed by an Owner of Land and Structures Erected by the Owner. *[Amended July 1, 1999; Ref: §3(6)]* "Salesperson employed by an owner" means a person employed and directly compensated by an owner.

§535.35. Employees Renting and Leasing Employer's Real Estate. *[Amended July 1, 1999; Ref: §3(9)]* Withholding income and F.I.C.A. taxes from wages paid another person is considered evidence of employment.

D. The Commission

§535.41. Procedures. *[Amended November 14, 1979; May 7, 1992; April 14, 1998 and July 1, 1999;*

Ref: §5(a)]

(a) Meetings.

(1) The commission shall meet in February of each year and at such other times as it deems proper.

(2) Meetings will be held at such places as the commission deems proper.

(3) Meetings must be called by the chairperson on the chairperson's own motion or upon the written request of 5 members.

(b) Quorum. Five members constitutes a quorum.

(c) Officers.

(1) Officers of the commission consist of a chairperson, vice-chairperson and secretary.

(2) The commission shall elect a vice-chairperson and secretary at a regular meeting in February of each year. The governor shall designate one member to serve as chairperson at the pleasure of the governor. Elected officers shall serve until their successors are elected.

(d) Order of business.

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

(2) Proceedings in contested cases will be conducted in accordance with the Administrative Procedure Act, Texas Government Code, §§2001.001 et seq and Chapter 533 of this title (relating to Practice and Procedure).

§535.42. Jurisdiction and Authority. *[Amended March 19, 1990 and July 1, 1999; Ref: §5(b)]*

(a) The commission does not mediate disputes between or among licensees concerning entitlement to sales commissions or recommend individual licensees to the public.

(b) An employee of the commission specifically authorized by it pursuant to Texas Civil Statutes, Article 6573a, (the Act), §5(t), to conduct hearings and render final decisions in contested cases may order issuance of a probationary license under §535.94 of this title (relating to Hearing on Application Disapproval: Probationary Licenses) and may suspend or revoke a license or reprimand or place on probation a licensee for a violation of the

Act or a rule of the commission.

E. Requirements for Licensure

§535.51. General Requirements. *[Amended October 4, 1976; November 7, 1977; November 14, 1979; June 18, 1991, January 1, 1992; September 24, 1993; July 18, 1994; December 1, 1994; January 3, 1996; May 2, 1996; March 14, 1997; April 14, 1998; July 1, 1999 and September 1, 2000 Ref: §6(a)]*

(a) A person who wishes to be licensed by the commission must file an application for the license on the form adopted by the commission for that purpose. Prior to filing the application, the applicant must pay the required fee for evaluation of the education completed by the person and must obtain a written response from the commission showing the applicant meets current education requirements for the license.

(b) If the commission develops a system whereby a person may electronically file an application for a license, a person who has previously satisfied applicable education requirements and obtained an evaluation from the commission also may apply for a license by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Within 60 days after paying the fee, the applicant must complete the application process by submitting a printed copy of the application signed by the applicant and any sponsoring broker and including a photograph of the applicant. If the applicant does not complete the application process as required by this subsection, the commission shall terminate the application.

(c) The commission shall return applications to applicants or the sponsoring broker (in the case of an application for an active salesperson license) when it has been determined that the application fails to comply with one of the following requirements.

(1) The applicant is not 18 years of age.

(2) The applicant does not meet any applicable residency requirement.

(3) An incorrect filing fee or no filing fee is received.

(4) The application is submitted in pencil.

(5) The applicant is not a citizen of the United States or a lawfully admitted alien.

(6) The applicant has not obtained an evaluation from the commission showing the applicant meets education requirements or experience requirements have not been satisfied.

(d) An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1) the applicant fails to satisfy an examination requirement within six months from the date the application is filed;

(2) the applicant, having satisfied any examination requirement, fails to submit a required fee within sixty (60) days after the commission makes written request for payment;

(3) the applicant, having satisfied any examination requirement, fails to provide information or documentation within sixty (60) days after the commission makes written request for correct or additional information or documentation.

(e) The commission adopts by reference the following forms approved by the commission which are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application for a Real Estate Broker License, TREC Form BL-6;

(2) Application for a Real Estate Broker License by a Corporation, TREC Form BLC-3;

(3) Application for Late Renewal of A Real Estate Broker License, TREC Form BLR-5;

(4) Application for Late Renewal of Real Estate Broker License Privileges by a Corporation, TREC Form BLRC-3

(5) Application for Real Estate Salesperson License, TREC Form SL-6 ;

(6) Application for Late Renewal of Real Estate Salesperson License, TREC Form SLR-5;

(7) Application for Moral Character Determination, TREC Form MCD-2;

(8) Application for Real Estate Broker License by

a Limited Liability Company, TREC Form BLLLC-2;

(9) Application of Currently Licensed Real Estate Broker for Salesperson License, TREC Form BSL-2; and

(10) Application for Late Renewal of a Real Estate Broker License by a Limited Liability Company, TREC Form BLRLLC-1.

§535.52. Individuals. [Amended October 4, 1976; February 10, 1977; April 14, 1998 and July 1, 1999; Ref: §6(b)]

(a) The commission may disapprove an application if the applicant fails to satisfy the commission as to the honesty, trustworthiness, or integrity of the applicant.

(b) Texas residents who enter the military service and resume their Texas residence immediately upon separation from the military are not considered to have lost their Texas residence unless they have affirmatively established legal residence elsewhere.

(c) The fact that an individual has had disabilities of minority removed does not affect the requirement that an applicant be 18 years of age to be eligible for a license.

§535.53. Corporations and Limited Liability Companies. [Amended August 29, 1979; September 24, 1993; April 14, 1998 and July 1, 1999; Ref: §6(c)]

(a) For the purposes of qualifying for, maintaining, or renewing a license, a corporation or limited liability company must designate one person holding an active Texas real estate broker license to act for it. The corporation or limited liability company may not act as a broker during any period in which it has not designated a person to act for it who meets the requirements of Texas Civil Statutes, Article 6573a (the Act). A broker may not act as a designated person at any time while the broker's license is inactive, expired, suspended or revoked.

(b) Section 6 of the Act applies only to corporations or limited liability companies which are created under the laws of this state, provided, however, that a corporation or limited liability company formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of this section if it is qualified to do business in Texas; its officers or managers, its principal place of business and all of its assets are located in Texas;

and all of its officers and directors or managers and members are Texas residents.

F. Education, Experience, Educational Programs, Time Periods and Type of License

§535.61. Examinations. [Repealed January 31, 2000.]

§535.61. Examinations. [Adopted January 31, 2000; Ref: §7(a).]

(a) The contents of examinations administered by the commission or by a testing service under contract with the commission are confidential. The following conduct with respect to licensing examinations is prohibited and is grounds to impose disciplinary action against any licensee of the commission or any education provider or instructor approved by the commission, and shall further be grounds for disapproval of an application for any license, accreditation, or approval issued by the commission:

(1) obtaining or attempting to obtain specific questions or answers from an applicant, a commission employee or any person hired by or associated with the testing service, for the purpose of using the information to pass an examination or for the purpose of providing the questions or answers to another person who is either an applicant or a potential applicant;

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

(3) providing or attempting to provide examination questions or answers to another person, knowing the person is an applicant or prospective applicant, or that the person intends to provide the questions or answers to an applicant or potential applicant.

(b) Examinations required for any license issued by the commission will be conducted by the testing service with which the commission has contracted for the administration of examinations. The testing service shall schedule and conduct the examinations in the manner required by the contract between the commission and the testing service. To pass the examination, an applicant must attain a passing score in each section of the examination.

(c) An applicant will not be admitted to the testing service's examination site unless the applicant provides a government issued photo-bearing identification card. The testing service may refuse to admit an applicant who arrives after the time the

examination is scheduled to begin or whose conduct or demeanor would be disruptive to other persons taking examinations at the site. The testing service may confiscate examination materials, dismiss the applicant, and fail the applicant for violating or attempting to violate the confidentiality of the contents of an examination.

(d) Applicants may use slide rules or silent, battery-operated, electronic, pocket sized calculators which are nonprogrammable. If a calculator has printout capability, the testing service must approve use of such calculator prior to the examination. Applicants may not use calculators with alphabetic keyboards.

(e) The testing service administering the examinations is required to provide reasonable accommodations for any applicant with a verifiable disability. Applicants must contact the testing service to arrange for a special examination. The testing service shall determine the method of examination, whether oral or written, based on the particular circumstances of each case.

(f) The commission shall waive the examination of an applicant for a broker license who has been licensed as a broker in this state no more than two years prior to the filing of the application. The commission shall waive the examination of an applicant for a salesperson license who has been licensed in this state as a broker or salesperson no more than two years prior to the filing of the application.

§535.62. Waiver of Examination. *[Repealed January 31, 2000.]*

§535.62. Acceptable Courses of Study. *[Adopted January 31, 2000 Ref: §7(a).]*

(a) Acceptable core real estate courses are those courses prescribed by Texas Civil Statutes, Article 6573(a) (the Act), §7(a) and by this section. Acceptable real estate related courses are those courses which have been determined to be acceptable by the commission. The commission will periodically publish lists of acceptable real estate related courses.

(b) The commission may require an applicant to furnish materials such as course outlines, syllabi and course descriptions in support of credit instruments. The commission may require official transcripts to verify course work. Provided all the requirements of this section are satisfied, the commission shall accept core real estate courses or real estate related courses submitted by an applicant for a real

estate broker or real estate salesperson license if the course was offered by any of the following providers:

(1) a school accredited by the commission or the real estate regulatory agency of another state;

(2) a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, or by a recognized national or international accrediting body;

(3) a post-secondary educational institution established by any state;

(4) the United States Armed Forces Institute or other service-related school; or

(5) a professional trade association.

(c) The commission shall measure classroom hour credits using the following equivalents:

(1) One semester hour: 15 hours.

(2) One quarter hour: 10 hours.

(3) One continuing education unit: 10 hours.

(d) A core real estate course also must meet each of the following requirements to be accepted.

(1) The course contained the content required by Texas Civil Statutes, Article 6573a, (the Act), §7, or this section.

(2) The daily course presentation did not exceed ten hours.

(3) With the exception of courses conducted by correspondence or by an alternative delivery method such as by computer, the student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule.

(4) For a classroom course, successful completion of a final examination or other form of final evaluation was a requirement for receiving credit from the provider.

(5) For a correspondence course, the course must have been offered by an accredited college or university, successful completion of a written final examination was a requirement for receiving credit from the provider, and the examination was

administered under controlled conditions to positively identified students.

(6) For a course offered by an alternative delivery method, the course met the requirements of §535.71(r) of this title (relating to Mandatory Continuing Education: Approval of Providers, Courses and Instructors).

(7) The student must not have completed more than one course with substantially the same course content within a three year period.

(8) The course did not primarily concern techniques or procedures utilized by a particular brokerage or organization.

(9) For a classroom course, the course was offered in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.

(e) Course credits awarded by an accredited college or university for life experience or by examination are acceptable only for real estate related courses.

(f) In addition to the courses of study specified in the Act, §7(a), the following shall be considered core real estate courses.

(1) Promulgated Contract Forms (or equivalent) shall include but not be limited to unauthorized practice of law, broker-lawyer committee, current promulgated forms, commission rules governing use of forms and case studies involving use of forms.

(2) Residential Inspection for Real Estate Agents (or equivalent) shall include but not be limited to repair-related contract forms and addenda, inspector and client agreement, inspection standards of practice and standard inspection report form, tools and procedures, electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations) and structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas).

§535.63. Brokers: Education and Experience.
[Repealed January 31, 2000.]

§535.63. Education and Experience Requirements for a License.*[Adopted January 31, 2000.]*

(a) License or experience in another state. Except as provided by this section, the commission will not accept a person's license in another state or

experience in real estate brokerage or any related business in satisfaction of education or experience required for a license.

(b) Education and experience requirements for a broker license.

(1) Experience as a real estate broker or salesperson is accepted as experience for the purpose of applying for a real estate broker license. Experience is measured from the date a license is issued, and inactive periods caused by lack of sponsorship, or any other reason, cannot be included as active experience.

(2) The commission may waive education and experience required for a real estate broker license if the applicant satisfies each of the following conditions.

(A) The applicant must have been licensed as a Texas real estate broker or salesperson no more than six years prior to the filing of the application.

(B) If the applicant was previously licensed as a Texas real estate broker, the applicant must have completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license. If the applicant was previously licensed as a Texas real estate salesperson, the applicant must satisfy all current education requirements for an original broker license.

(C) The applicant must have had not less than two years of active experience as a licensed real estate broker or salesperson during the eight-year period prior to the filing of the application.

(3) Under the Texas Civil Statutes, Article 6573a (the Act), Section 7(g), a person who is the designated officer of a corporation or limited liability company which is licensed as a real estate broker in another state is deemed to be a licensed real estate broker in another state. The term "state" means one of the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof. A person licensed in another state may derive the required two years' experience from periods in which the person was licensed in two or more states. A person whose real estate broker license is on inactive status is deemed to be a licensed real estate broker in another state.

(4) With respect to the education requirement of 60 semester hours in effect on or after January 1, 1985, the commission shall require not less than 12 semester hours (180 classroom hours) in courses

reflecting course titles or course descriptions in the real estate disciplines including, but not limited to, the statutory subject areas identified in the Act, §7(a) and §7(j). The commission will publish periodically guidelines as to the acceptability of related courses. Provided, however, that an applicant for a broker license who was licensed as a salesperson subject to the annual education requirements set forth in this Act must provide the commission satisfactory evidence of having completed 12 semester hours (180 classroom hours) of core real estate courses that would have been required for the applicant's third annual renewal of a salesperson license.

(c) Education requirements for a salesperson license.

(1) In order to maintain a license, a salesperson subject to annual education requirements shall furnish documentation to the commission of successful completion of appropriate courses no later than the day the salesperson files an application with the commission to renew the salesperson's license.

(2) The commission may waive the education required for a real estate salesperson license if the applicant satisfies each of the following conditions.

(A) The applicant must have been licensed either as a Texas real estate broker or as a Texas real estate salesperson no more than six years prior to the filing of the application.

(B) The applicant must have completed any core real estate courses or real estate related courses which would have been required for a timely renewal of the prior license, or if the renewal of the prior license was not subject to the completion of core real estate courses or real estate related courses, the applicant must have completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license.

§535.64. Salesman: Education. *[Repealed January 31, 2000.]*

§535.64. Accreditation of Schools and Approval of Courses and Instructors. *[Adopted January 31, 2000; amended July 17, 2000.]*

(a) Application. A person desiring to offer educational programs or courses of study under approval of the commission pursuant to Texas Civil Statutes, Article 6573a, (the Act), §7(f), shall file an application on forms adopted by the commission

accompanied by the fee prescribed pursuant to §11(9) of the Act. The commission may request additional information from an applicant which the commission deems to be relevant and material to the consideration of an application.

(b) Standards for approval of application for accreditation. To be accredited as a school, the applicant must satisfy the commission as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If the applicant proposes to employ another person, such as an independent contractor, to conduct or administer the courses, the other person must meet this standard as if the other person were the applicant. The applicant also must demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students attending the school and that the proposed facilities will be adequate and safe for conducting classes. If the applicant is currently accredited, the applicant will be deemed to meet financial requirements imposed by this subsection once the applicant has provided the statutory bond or other security acceptable to the commission under Section 7(f) of the Act and there are no unsatisfied final money judgments against the applicant; otherwise, the application will be subject to the financial review provisions of this section.

(c) Financial review. The commission shall review the financial condition of each proposed school to determine whether the school has sufficient financial resources to conduct its proposed operations on a continuing basis. In making this determination, the commission shall be conservative in the financial assumptions it makes concerning the school's proposed operations and its future cash flows. The applicant shall provide the following information:

(1) business financial statements prepared in accordance with generally accepted accounting principles, which shall include a current statement of financial condition and a current statement of net worth;

(2) on an initial application, a proposed budget for the first year of operation; and

(3) on an initial application, a market survey indicating the anticipated enrollment for the first year of operation.

(d) Approval of application for accreditation. If it determines that the applicant meets the standards

for accreditation and has furnished the bond or other acceptable security required by the Act, §7(f), the commission shall approve the application and provide a written notice of the accreditation to the applicant. Unless surrendered or revoked for cause, the accreditation will be valid for a period of five years.

(e) Subsequent application for accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another five year period. If a school was accredited prior to the effective date of this section, the accreditation of the school expires January 1, 2001, and the school may apply for accreditation at any time.

(f) Disapproval of application. If it determines that an applicant does not meet the standards for accreditation, the commission shall disapprove the application in writing. An applicant may request a hearing before the commission on the disapproval by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Following the hearing, the commission shall issue an order which, in the opinion of the commission, is appropriate in the matter concerned. Venue for any hearing conducted under this section shall be in Travis County. The disapproval and hearing are subject to the Administrative Procedure Act, Texas Government Code, §2001.001, et. seq., and to Chapter 533 of this title (relating to Practice and Procedure).

(g) Forms. The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These documents are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

- (1) Form ED 1-0, Education Provider Application;
- (2) Form ED 2-0, Principal Information Form;
- (3) Form ED 3-0, Course Application;
- (4) Form ED 4-0, Instructor Application;
- (5) Form ED 5-0, Real Estate Provider Bond;
- (6) Form ED 6-0; Evaluation Form; and
- (7) Form ED 7-0, Instructor Manual Guidelines.

(h) Obtaining approval to offer course. An applicant shall submit Form ED 3-0 the first time approval is sought to offer a course. Once a course has been approved, no further approval is required for another accredited school to offer the same course. Prior to advertising or offering the course, however, the subsequent provider shall complete Form ED 3-0, file the form with the commission and receive written or oral acknowledgment from the commission that all necessary documentation has been filed. A school shall submit an instructor's manual for each proposed course. The commission may require a copy of the course materials and instructor's manual to be submitted for each previously approved course the school intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the commission and shall use all materials required in the original or revised course. Each manual must comply with Form ED 7-0, Instructor Manual Guidelines. Schools may offer a course using an alternative delivery method such as computers if the course satisfies the requirements for such a course contained in §535.71(r) of this title (relating to Mandatory Continuing Education: Approval of Providers, Courses and Instructors.)

(i) Standards for instructor approval. The application for commission approval of an instructor must be filed on forms adopted by the commission. To be approved as an instructor, a person must satisfy the commission as to the person's competency in the subject matter to be taught and ability to teach effectively. Each instructor must also possess the following qualifications:

- (1) a college degree in the subject area or five years professional experience in the subject area; and
- (2) three years experience in teaching or training; or
- (3) the equivalent of paragraphs (1) and (2) of this subsection as determined by the commission after due consideration of the applicant's professional experience, research, authorship or other significant endeavors in the subject area.

(j) Approval of instructor. If the commission determines that the applicant meets the standards for instructor approval, the commission shall approve the application and provide a written notice of the approval to the applicant. Unless surrendered or revoked for cause, the approval will be valid for a

period of five years.

(k) Subsequent application for instructor approval. No more than six months prior to the expiration of the current approval, an instructor may apply for approval for another five year period. If an instructor was approved prior to the effective date of this section, the approval of the instructor expires January 1, 2001, and the instructor may apply for approval at any time.

(l) Disapproval of application. The commission may disapprove an application for approval of an instructor for failure to meet the standard imposed by subsection (g) of this section, failure to satisfy the commission as to the applicant's honesty, trustworthiness or integrity, or for any reason which would be a ground to suspend or revoke a real estate license. If an application is disapproved, the commission shall provide written notice to the applicant detailing the basis of the decision. An applicant may request a hearing before the commission by filing a written request for hearing within 10 days following the applicant's receipt of the notice of disapproval. Venue for any hearing conducted under this section is in Travis County. Appeals from application disapprovals will be conducted in the manner required by the Act, §10. Hearings are subject to the Administrative Procedure Act, Texas Government Code, §2001.001, et. seq., and to Chapter 533 of this title (relating to Practice and Procedure).

(m) Additional information related to application. The commission may request an applicant to provide additional information related to the application, and the commission may terminate the application without further notice if the applicant fails to provide the information within 60 days after the mailing of a request by the commission.

(n) Delegation of authority. The commission may authorize its director of licensing and education, or that person's designate, to determine whether applications for schools, courses, and instructors should be approved.

(o) Examination preparation courses. No school may be accredited or operate under commission approval for the sole purpose of offering courses of instruction designed to prepare its students for the state examination for any license issued by the commission. A school may offer an examination preparation course on a non-credit basis, provided the requirements of subsection (e) of this section

have been met.

§535.65. License: Issuance after January 1, 1985. *[Repealed April 23, 1981.]*

§535.65. Changes in Ownership or Operation of School; Presentation of Courses, Advertising, and Records. *[Adopted January 31, 2000.]*

(a) Changes in Ownership or Operation.

(1) A school shall obtain the approval of the commission in advance of any material change in the operation of the school, including but not limited to, ownership, location of main office and any other locations where courses are offered, management, and course formats. A request for approval of a change of ownership will be considered as if each proposed new owner had applied for accreditation of the school, and each new owner must meet the standards imposed by §535.64 of this title (relating to Accreditation of Schools and Approval of Instructors). A school requesting approval of a change in ownership shall provide all of the following information or documents to the commission:

(A) the proportion of ownership of each proposed new owner,

(B) a professional resume of each proposed new owner who would hold at least a 10% interest in the school;

(C) business financial statements of each proposed new owner who would hold at least a 10% interest in the school, which shall include the statement of financial condition and statement of net worth for the accounting period in which the application is made, prepared in accordance with generally accepted accounting principles;

(D) a statement of any proposed changes in the operation or location of the school;

(E) a new bond in the amount of \$10,000 for the proposed new owner(s), a statement from the bonding company indicating that the former bond will transfer to the proposed new owner(s), or other security acceptable to the commission under the Act, §7(f).

(F) a completed Form ED 1-0, Education Provider Application, reflecting all required information for the proposed new owner(s); and

(G) a completed Form ED 2-0, Principal Information Form, for each proposed new owner who would hold at least a 10% interest in the school.

(b) School facilities.

(1) A school shall maintain a fixed office in the State of Texas. The office must be large enough for maintenance of all records, office equipment, files, telephone equipment, and office space for customer service. A school shall ensure that its classroom facilities are adequate for the needs of the school and pose no threat to the health or safety of students.

(2) Except as provided by this section, every school shall be open to the public, and shall advertise all courses publicly so as to encourage reasonably an open enrollment. A school may obtain approval from the commission, however, to hold classes in facilities to which access has been limited by a governmental unit.

(c) Responsibility of schools. A school is responsible to the commission for the conduct and administration of each course presentation, punctuality of classroom sessions, student attendance records, instructor performance and attendance, examination administration, proper student certification, and certification of records. A school shall establish business hours during which school staff are available for public inquiry and assistance. A school shall ensure that instructors or other persons do not recruit or solicit prospective salespersons or brokers in a classroom during class time.

(d) Instructors.

(1) A school shall select each instructor on the basis of expertise in the subject area of instruction and ability as an instructor. Except as provided by this section, a school may not utilize an instructor unless the instructor has been approved by the commission. A school shall require specialized training or work experience for instructors for specialized subjects such as law, appraisal, investments, or taxation. A school may use as a guest speaker a person who has not been approved as an instructor, provided that no more than a total of three hours of instruction in a 30-hour course are taught by persons who are not approved instructors.

(2) An instructor shall teach a course in substantially the same manner represented to the commission in the instructor's manual or other documents filed with the application for course approval.

(3) A school shall provide instructor evaluation forms for completion by students in every class and establish procedures for instructional review. The

school shall file in the school records any comments by the school's management relevant to instructor evaluation reports. On demand by the commission the school shall produce student instructor evaluation forms for inspection.

(4) A school shall ensure that at the beginning of each examination preparation course, the instructor reads aloud to all students the provisions of subsection (a) of §535.61 of this title (relating to Examinations).

(e) Course examinations.

(1) A school shall administer an examination approved by the commission in each course as a component of determining successful completion of a course of study. A school may not permit a student to take a final examination prior to the completion of any makeup required by this section. In the event of failure of a course final examination, a school may permit a student to retake a final examination once after at least a seven day waiting period and completion of additional course work prescribed by the school. A school shall require a student who fails the examination a second time to retake the course. A school shall require makeup final examinations to be completed within 90 days of the termination of the original class or report the students who do not timely complete the examination requirement as dropped from the class with no credit.

(2) Except in the case of math courses which require a minimum of 20 questions, a school shall use final examinations consisting of at least 60 questions with an unweighted passing score of 70%. A school shall revise final course examinations for active courses at least annually and shall furnish the commission copies of all revisions. Each of the subjects required by statute or commission rule for a core course must be covered in the exam of that course. A school shall ensure that an examination proctor who is either a member of the school staff or faculty is present with the class during all regularly scheduled final course examinations.

(f) Pre-enrollment agreements, tuition and fees.

(1) Prior to the start of a course, a school shall provide each student with a pre-enrollment agreement signed by a representative of the school and the student. The agreement must include all of the following information:

(A) the tuition for the course;

(B) any fees charged by the school for

supplies, materials, or books needed in course work, shown in an itemized fashion;

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

(D) attendance requirements;

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

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

(2) If the school cancels a course, the school shall fully refund all fees collected from students or, at the student's option, the school may credit the student for another course. The school shall inform the commission when a student requests a refund because of a withdrawal due to the student's dissatisfaction with the quality of the course.

(3) Any written advertisement by the school which contains a fee charged by the school must display all fees for the course in the same place in the advertisement and with the same degree of prominence.

(g) Course materials.

(1) A school shall update course materials during the period of time a course may be given to ensure that current and accurate information is provided to students. The school shall file updated course materials and revisions of the course outline with the commission prior to implementation, and the commission may direct a school to revise the materials further or cease use of materials. The commission may direct that the school withdraw texts.

(2) A school shall provide each student with copies for the student's permanent use of any printed material which is the basis for a significant portion of the course. The school shall provide ample space on handouts for notetaking or completion of any written exercises.

(h) Presentation of courses.

(1) A school shall present core real estate courses prescribed by the Act, §7(a) and real estate related courses accepted by the commission in no less than 30 classroom hours of instruction. The school shall advertise and schedule a course for the

full clock hours of time for which credit is awarded.

(2) A school may give one hour of credit for a minimum of 50 clock minutes of actual classroom session time. A school shall provide a break of at least 20 minutes to be given at least every two hours. While a school is expected to ensure that each student is present in the classroom for the hours of time for which credit is awarded, this section is not intended to penalize students who must leave the classroom for brief periods of time for personal reasons such as taking medication or responding to the call of nature.

(i) Course credit and records.

(1) Within ten days following the completion of a course, a school shall provide the commission with a class roster in a format approved by the commission. The listing of students must be numbered and in alphabetical order, with each student's last name shown first, and must show after each student's name the final grade of either passed, failed, incomplete, or dropped, in language or symbols that can be correlated with these categories. The school shall explain any other grade concisely but clearly. The school shall list all instructors used in the course on the roster.

(A) "Passed" must be limited to those students who attended all of the scheduled classes or completed acceptable makeup and who successfully passed the final course examination based on passing standards approved by the commission.

(B) "Failed" must be limited to those students who had acceptable classroom attendance but failed the final course examination. If, however, the school permits the student to retake the examination in accordance with subsection (e) of this section, the first failure must be reported as an incomplete grade.

(C) "Incomplete" must be limited to those students who met the attendance requirements, but did not take the final course examination; those who attended at least two-thirds of the scheduled course hours but did not complete acceptable makeup; or those who fail the final course examination but will be permitted to take a second examination. If a student is reported incomplete and later completes acceptable makeup and the final examination, the school shall file a supplemental report with the commission giving the student's name and final grade report and using the same format and course data as the original class report. The school shall file a separate supplemental report for each individual class but may include more than

one student on the report if all students were in the same original class.

(D) "Dropped" must be limited to those students who missed more than one-third of the scheduled class in which they were originally enrolled; those who voluntarily terminated their enrollment; or those whose enrollment was terminated for cause by a school director.

(2) A school may permit a student who attends at least two-thirds of a scheduled course to complete makeup work to satisfy attendance requirements. Acceptable makeup procedures are the attendance in the corresponding class sessions in a subsequent offering of the same course or the supervised presentation by audio or video recording of the class sessions actually missed. A school shall require all class makeup sessions to be completed within 90 days of the completion of the original course, or the student must be considered dropped with no credit for the course. A member of the school's staff must approve the makeup procedure to be followed. A student attending less than two-thirds of the originally scheduled course must automatically be dropped from the course without credit and reported as dropped. Dropped status may not be changed by makeup sessions, and any hours accumulated may not be transferred to any other course.

(3) A school shall issue to the students successfully completing a course of instruction an official certificate which reflects the school's name, branch, course title, course numbers, and the number of classroom hours (or other recognized educational unit) involved in the course. All core course certificates must show the statutory core course title or other identification as prescribed by the commission. Certificates also must show the date of issuance and be signed by an official of the school, or if the certificate is computer printed, the school logo may be substituted for the signature. Letters or other official communications also may be provided to students for submission to the commission as evidence of satisfactory completion of the course. Such letters must fully reflect the school name, the course title and number, educational units, and be dated and signed by an official of the school, or if the letter is computer printed, the school logo may be substituted for the signature. A school shall maintain adequate security for completion certificates and letters. Compliance with this requirement will be determined by the commission during all school audits. A school may withhold a student's certificate of completion of a course until the student has fulfilled the student's financial obligation to the school.

(4) A school shall maintain records of each student enrolled in any course for a minimum of five years. The full class file and student enrollment agreements must be retained for at least 12 months following completion of the class.

(5) A school shall maintain financial records sufficient to reflect at any time the financial condition of the school. A school's financial statement and balance sheets must be available for audit by commission personnel, and the commission may require presentation of financial statements or other financial records.

(j) Advertising. The following practices are prohibited:

(1) using any advertising which does not contain the school's name;

(2) representing that the school's program is the only vehicle by which a person may satisfy educational requirement for licensing;

(3) conveying a false impression of the school's size, importance, location, equipment or facilities;

(4) making unsubstantiated claims that the school's programs are superior to any other course of instruction;

(5) promoting the school directly or indirectly as a job placement agency, unless the school is participating in a program recognized by federal, state, or local government and is providing job placement services to the extent the services are required by the program; or

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

§535.66. Educational Programs: Accreditation.
[Repealed January 31, 2000.]

§535.66. Payment of Annual Fee, Audits, Investigations and Enforcement Actions.
[Adopted January 31, 2000.]

(a) Payment of annual fee. A school shall pay the fee prescribed by Section 11(a)(10) of Texas Civil Statutes, Article 6573a (the Act) and by §535.101 of this title (relating to Fees) no later than the anniversary of the date of the school's accreditation. At least 30 days prior to the day the fee is due, the commission shall send a written notice to the school to pay the fee, but the school's obligation to pay the fee is not affected by any failure to receive the notice.

(b) Audits and evaluations. Schools are subject to audit by commission employees. Commission employees may conduct on-site audits without prior notice to the school, and may enroll and attend a course without identifying themselves as employees of the commission. Commission employees also may evaluate the effectiveness of course materials or instructors through surveys of students. The commission may require a school to furnish students with an evaluation form approved by the commission and to request that the students complete and return the form directly to the licensing and education division of the commission. An audit report or evaluation indicating noncompliance with these sections will be treated as a written complaint against the school or instructor concerned and will be referred to the enforcement division of the commission for appropriate resolution.

(c) Complaints, investigations and hearings. The commission shall investigate complaints against schools or instructors which allege acts constituting violations of these sections. Complaints must be in writing, and the commission may not initiate an investigation or take action against a school or instructor based on an anonymous complaint. Complaints against a school or instructor received by any division of the commission will be referred to the enforcement division for appropriate resolution. Commission employees may file written complaints against a school or instructor if course completion rosters or other documents filed with the commission provide reasonable cause to believe a violation of these sections has occurred. The school or instructor named in the complaint will be provided with a copy of the complaint. Proceedings against schools and instructors will be conducted in the manner required by the Act, §17, the Administrative Procedure Act, Texas Government Code, §2001, et. seq., and Chapter 533 of this title (relating to Practice and Procedure). Venue for any hearing conducted under this section will be in Travis County.

(d) Grounds for disciplinary action against a school. The commission may issue a reprimand, place on probation, suspend or revoke accreditation of a school, or impose an administrative penalty when it has been determined that the school has been guilty of engaging in any of the following acts:

(1) procuring or attempting to procure approval for a school, course or instructor by fraud, misrepresentation or deceit, or by making a material misrepresentation of fact in an application filed with the commission;

(2) making a false representation to the commission, either intentionally or negligently, that

a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(3) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(4) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(5) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against the school or instructor;

(6) disregarding or violating a provision of these sections or of the Act; or

(7) failing to maintain sufficient financial resources to continue operation of the school without placing students at risk of financial loss.

(e) The existence of any of the following conditions shall constitute *prima facie* evidence that a school's financial condition is insufficient for continuing operation:

(1) nonpayment of a liability when due, if the balance due is greater than 5% of the school's current assets in the current or prior accounting period;

(2) nonpayment of three or more liabilities when due, in the current or prior accounting period, regardless of the balance due for each liability;

(3) a pattern of nonpayment of liabilities when due, in two or more accounting periods, even if the liabilities ultimately are repaid;

(4) a current ratio of less than 1.75 for the current or prior accounting period, this ratio being total current assets divided by total current liabilities;

(5) a quick ratio of less than 1.60 for the current or prior accounting period, this ratio being the sum of all cash equivalents, marketable securities, and net receivables divided by total current liabilities;

(6) a cash ratio of less than 1.40 for the

current or prior accounting period, this ratio being the sum of cash equivalents and marketable securities divided by total current liabilities;

(7) a debt ratio of more than .40 for the current or prior accounting period, this ratio being total liabilities divided by total assets;

(8) a debt-to-equity ratio of greater than .60 for the current or prior accounting period, this ratio being total liabilities divided by owners' or shareholders' equity;

(9) a final judgment obtained against the school for nonpayment of a liability which remains unpaid more than 30 days after becoming final; or

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

(f) Grounds for disciplinary action against instructor. The commission may issue a reprimand, place on probation, suspend or revoke approval of an instructor, or impose an administrative penalty when it has been determined that the instructor has been guilty of engaging in any of the following acts:

(1) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or a portion of a course for which credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for course credit;

(2) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination, or any other requirement for course credit;

(3) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(4) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against a school or instructor; or

(5) violating or disregarding any provision of the Act or a rule of the commission.

(g) Probation. An order of suspension or revocation issued under this section may be

probated upon reasonable terms and conditions as determined by the commission.

§535.67. Education and Experience: Nonapplicability. *[Repealed June 22, 1990]*

§535.68. Brokers: Alternative Education and Experience. *[Repealed January 31, 2000.]*

§535.69. Additional Core Real Estate Courses. *[Repealed January 31, 2000.]*

§535.70. Required Coursework. *[Repealed January 31, 2000.]*

G. Mandatory Continuing Education

§535.71. Mandatory Continuing Education: Approval of Providers, Courses and Instructors. *[Adopted May 1, 1990; amended February 8, 1991, March 12, 1991; June 18, 1991; April 8, 1993; December 21, 1993; May 4, 1995; September 7, 1995; April 1, 1996, January 7, 1997; May 27, 1998; March 1, 1999 and June 1, 2000; Ref: §7A]*

(a) The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act - The Real Estate License Act, Texas Civil Statutes, Article 6573a.

(2) Applicant - A person seeking approval to be a provider or instructor of a course for which mandatory continuing education credit is given.

(3) Hour - Fifty minutes of actual session time.

(4) Commission - The Texas Real Estate Commission.

(5) Day - A calendar day.

(6) Instructor - A person approved by the Texas Real Estate Commission to teach mandatory continuing education courses.

(7) MCE - Mandatory Continuing Education.

(8) Person - An individual, partnership, or a corporation, foreign or domestic.

(9) Proctor- A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center,

a librarian, or other person approved by the commission.

(10) Provider- A person approved by the Texas Real Estate Commission to offer courses for which mandatory continuing education credit is given.

(11) Student- An individual taking an MCE course for credit.

(b) A person who wishes to offer courses accepted by the commission for MCE credit shall apply to the commission for approval to be an MCE provider and for approval of each MCE course using application forms prepared by the commission. The commission may refuse to accept any application which is not complete or which is not accompanied by the appropriate filing fee. Each prospective provider shall submit a provider application and at least one principal information form. Only instructors approved by the commission for that subject area may teach that course.

(c) The commission adopts by reference the following forms published and available from the commission, P.O. Box 12188, Austin, Texas, 78711-2188:

- (1) MCE Form 1A-1, MCE Provider Application;
- (2) MCE Form 1B-1, MCE Provider Application Supplement;
- (3) MCE Form 2-2, MCE Principal Information Form;
- (4) MCE Form 3A-1, MCE Course Application;
- (5) MCE Form 3B-2, MCE Course Application Supplement;
- (6) MCE Form 3C-1, MCE Single Course Offering Application;
- (7) MCE Form 8-3, MCE Course Completion Roster;
- (8) MCE Form 9-3, Alternative Instructional Methods Reporting Form;
- (9) MCE Form 10-0, MCE Out of State Course Credit Request;
- (10) MCE Form 11-3, MCE Instructor Credit Request;
- (11) MCE Form 12-1, Individual MCE Credit Request for State Bar Course;

(12) MCE Form 12A-0, Provider MCE Credit Request for State Bar Course; and

(13) MCE Form 13-0, Guidelines for Creating a Course Instructor's Manual for Mandatory Continuing Education Courses.

(d) To be approved as an MCE provider, a person must satisfy the commission as to the person's ability to administer with honesty, trustworthiness and integrity a course of continuing education in MCE subjects approved by the commission. If the person proposes to employ independent contractors to conduct or to administer the courses, any independent contractor named in the application must meet this standard as if the independent contractor were the applicant; however, the applicant is responsible for responding to communications from the commission relating to the application.

(e) To be approved to offer a course for MCE credit, the provider must satisfy the commission that the course subject matter is appropriate for a continuing education course for real estate licensees and that the information provided in the course will be current and accurate.

(1) A provider applicant must submit an MCE Form 3A-1, MCE Course Application, the first time approval is sought to offer an MCE course. Prior to advertising or offering a course offered by another provider the subsequent provider shall complete MCE Form 3B-2, file the form with the commission and receive written acknowledgment from the commission that all necessary documentation has been filed. Except for single course offerings, providers shall submit an instructor's manual for each proposed course. The commission may require a copy of the previously approved instructor's manual to be submitted for each previously approved course the provider intends to offer. Subsequent providers shall offer the course as originally approved or as revised with the approval of the commission and shall use all materials required in the original or revised course.

(2) The commission may approve a course for a single offering without regard to the requirements of paragraph (1) of this subsection. The provider must submit MCE Form, 3C-1, MCE Single Course Offering Application and receive written authorization from the commission to offer the course prior to offering the course. A single course offering approved by the commission may be offered by the provider no more than four times during a period of one year after the course is approved or until the provider's authority to act as a provider expires or is withdrawn for cause, whichever occurs first. At least seven days prior to offering a course more

than once, the provider must notify the commission of the date, time, location, and fee to be charged for the subsequent offerings and pay a fee of \$25 for each subsequent offering.

(f) To be approved as an instructor of any MCE course, a person must satisfy the commission as to the person's competency in the subject matter to be taught and ability to teach effectively. Except for instructors of single course offerings, if the person is not currently approved by the commission to teach the subject areas of the course, the person must submit Form ED 4-0, Instructor Application, and meet the requirements of §535.64(I) of this title (relating to Accreditation of Schools and Approval of Courses and Instructors). A person who has received a credential as a certified real estate instructor (CREI), distinguished real estate instructor (DREI), an instructor of the Realtor Institute (GRI), or an instructor who has received a comparable credential from another organization as determined by the commission will be deemed to have met the requirements of §535.64(I) as regards teaching experience and education. The commission may also approve an instructor for a single offering of a course. The provider must submit an MCE Form 3C-1, MCE Single Course Offering Application, and provide a resume to show that the proposed instructor is qualified to teach the subject matter.

(g) An applicant may be requested to provide additional information, and the commission may terminate an application without further notice if the applicant fails to provide the additional information within 60 days of the mailing of a request by the commission.

(h) Fees shall be established by the commission in accordance with the provisions of the Act, §7A, at such times as the commission deems appropriate. Fees are not refundable and must be submitted in the form of a check or money order, or, in the case of state agencies, colleges or universities, in a form of payment acceptable to the commission.

(i) The commission may authorize the head of the education division of the commission, or a designate, to determine whether applications for MCE providers, courses or instructors should be approved. The commission may disapprove an application for approval as a provider or instructor for the same reasons as the commission may disapprove an application for a real estate license. If an application is disapproved, written notice detailing the basis of the decision shall be provided to the applicant.

(j) An applicant may appeal a disapproval by filing with the commission a written request for a hearing

within 10 days after the receipt of the notice of disapproval. Following the hearing, the commission may sustain or withdraw the disapproval or establish conditions for the approval of a provider, course or instructor. Proceedings involving applications shall be conducted in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. Venue for any hearing conducted under this section shall be in Travis County.

(k) A course offered by a provider to satisfy all or part of the six hours of legal topics required by the Act, §7A, must include one or more of the legal topics listed in the Act or approved by the commission. The commission shall periodically publish lists of additional legal topics approved for MCE credit.

(l) A course must be devoted to one or more of the subjects specified under the course titles in the Act, §7(a)(2)-(4) and §7(a)(7)-(10), to real estate professionalism and ethics or to other subjects approved by the commission for MCE credit. MCE courses must be presentations of relevant issues and changes within the subject areas as they apply to the practice of real estate in the current market or topics which increase or support the licensee's development of skill and competence. Courses approved by the commission for core real estate course credit provided in the Act, §7(d)-(e), may be accepted for satisfying MCE requirements provided the student files a course completion certificate with the commission. MCE courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §7(d)-(e) of the Act. Courses related to technology, such as the use of personal computers, must be primarily devoted to the application of technology to the practice of the licensee.

(m) Providers must furnish students with copies, for students' permanent use, of any printed material which is the basis for a significant portion of the course. Ample space must be provided on handouts for note taking or completion of any written exercises. If a provider charges fees for supplies, materials, or books needed in course work, the fees must be itemized in a written statement provided to each student by the provider before the student registers for the course.

(n) If a provider does not maintain a fixed office in this state for the duration of the provider's approval to offer courses, the provider shall designate a resident of this state as attorney-in-fact to accept service of process and act as custodian of any records in Texas which the

provider is required to maintain by these sections. A power-of-attorney designating the resident must be filed with the commission in a form acceptable to the commission.

(o) Unless withdrawn earlier for cause as provided by these sections, a provider's authority to offer courses for which MCE credit is given expires two years from the date the provider is approved by the commission. Authority to offer any MCE courses ends with the expiration of the provider's approval, and the provider must pay current fees and reapply for approval as a provider in order to offer MCE courses again. Except for a course approved as a single course offering, a course approved by the commission may be offered by the provider for a period of two years after the course is approved or until the provider's authority to act as a provider finally expires or is withdrawn for cause, whichever first occurs. If a course was originally approved for another provider, the approval period is measured from the date of approval for the original provider. A provider may apply for approval to be a provider for another two years no sooner than six months prior to the expiration of existing provider approval. An instructor's approval expires every five years as provided by §535.64 of this title (relating to Accreditation of Schools and Approval of Courses and Instructors).

(p) Correspondence courses. The commission may approve a provider to offer an MCE course by correspondence subject to the following conditions:

(1) the course must be offered by a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, which offers correspondence courses, whether credit or noncredit, in other disciplines;

(2) the content of the course must satisfy the requirements of the Act, §7A, and these sections;

(3) students receiving MCE credit for the course must pass a proctored written examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission;

(4) written course work required of students must be graded by an approved instructor or the provider's coordinator or director, who is available to answer students' questions or provide assistance as necessary, using answer keys approved by the instructor or provider; and

(5) final examinations must be graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider.

(q) An applicant must submit an MCE Form 3A-1, MCE Course Application, the first time approval is sought to offer a MCE correspondence course. Once a course has been approved, no further approval is required for another approved provider to offer the same course. Prior to advertising or offering the course, however, the subsequent provider must complete MCE Form 3B-2, file the form together with the appropriate fee with the commission and receive written acknowledgment from the commission that all necessary documentation has been filed. Each correspondence course must contain the following:

(1) course description;

(2) learning objectives;

(3) evaluation techniques;

(4) lessons;

(5) learning activities;

(6) final examination;

(7) bibliography or source of updated subject matter; and

(8) instructor grading guidelines, including acceptable answers for lessons, assessments and examinations.

(r) The commission may accept courses offered by alternative delivery methods subject to the following conditions.

(1) Every course accepted under this subsection shall teach to mastery. Teaching to mastery means that the course must, at a minimum:

(A) divide the material into major units as approved by the commission;

(B) divide each of the major units of content into modules of instruction for delivery on a computer or other approved interactive audio or audiovisual programs;

(C) specify the learning objectives for each module of instruction. The learning objectives must be comprehensive enough to ensure that if all the objectives are met, the entire content of the course

will be mastered;

(D) specify an objective, quantitative criterion for mastery used for each learning objective;

(E) implement a structured learning method by which each student is able to attain each learning objective;

(F) provide a means of diagnostic assessment of each student's performance on an ongoing basis during each module of instruction, measuring what each student has learned and not learned at regular intervals throughout each module of instruction, and specifically assessing the mastery of each concept covered in the content material;

(G) provide a means of tailoring the instruction to the needs of each student as identified in Subparagraph (E) of this subsection. The process of tailoring the instruction shall ensure that each student receives adequate remediation for specific deficiencies identified by the diagnostic assessment;

(H) continue the appropriate remediation on an individualized basis until the student demonstrates achievement of each mastery criterion; and

(I) require that the student demonstrate mastery of all material covered by the learning objectives for the module before the module is completed.

(2) The commission must approve the method by which each of the above elements of mastery in subparagraphs (A)-(I) of this subsection is accomplished.

(3) The rationale for the education processes implemented in the course must be based on sound instructional strategies which have been systematically designed and proven effective through educational research and development. The basis and rationale for any proposed instructional approach must be specified in the application for approval. The following types of programs will not be approved:

(A) those which consist primarily of text material;

(B) those which primarily consist of questions similar to those on the state licensing examination; or

(C) those which consist primarily of combinations of the elements in subparagraphs (A) and (B) of this paragraph.

(4) An approved instructor or the provider's coordinator/director shall grade the written course work.

(5) Every provider offering an approved course under this subsection shall:

(A) ensure that a qualified person is available to answer students' questions or provide assistance as necessary;

(B) satisfy the commission that procedures are in place to ensure that the student who completes the work is the student who is enrolled in the course; and

(C) certify students as successfully completing the course only if the student;

(i) has completed all instructional modules required to demonstrate mastery of the material;

(ii) has attended any hours of live instruction and/or testing required for a given course; and

(iii) has passed either:

(I) a proctored final examination administered under controlled conditions to positively identified students, at a location and by an official approved by the commission and graded by the instructor or, if the examination is being graded mechanically or by use of a computer, by the provider, using answer keys approved by the instructor or provider; or

(II) an examination by use of a computer under conditions that satisfy the commission that the examinee is the same person who seeks MCE credit.

§535.72. Mandatory Continuing Education: Presentation of Courses, Advertising and Records. *[Adopted May 1, 1990; amended February 8, 1991; March 12, 1991; June 18, 1991; April 8, 1993; December 21, 1993; April 1, 1996; March 1, 1999; June 1, 2000 and January 29, 2001; Ref: §7A]*

(a) Providers shall file course schedules with the commission.

(b) Providers shall notify the commission of changes to their course schedules

(c) The provider offering each MCE course shall file an MCE Course Completion Roster, MCE Form 8-3 with the commission within 10 days following completion of the course. Course completion rosters

may be transmitted for filing by facsimile machine. An authorized representative of the provider who was in attendance and for whom an authorized signature exemplar is on file with the commission shall sign MCE Form 8-3. Providers are responsible for the security of the course completion rosters. The commission may not accept signature stamps, unsigned forms or forms signed by persons for whom an authorized signature exemplar has not been previously filed with the commission. Providers must make every reasonable effort to ensure that no student is certified for MCE credit who has not attended all class sessions. While a provider is expected to ensure that each student is present in the classroom for the hours of time for which credit is awarded, this section is not intended to penalize students who must leave the classroom for brief periods of time for personal reasons such as taking medication or responding to the call of nature. Providers shall make every reasonable effort to ensure that no student is given course credit if the student persists in disrupting the orderly conduct of a class after being cautioned by the provider or the instructor to cease disruptive behavior. Providers may not use students for administration or monitoring duties during the course if the use prevents the student's participation in a significant portion of the course.

(d) Providers of MCE correspondence or alternative delivery method courses shall furnish each student with an Alternative Instructional Methods Reporting Form, MCE Form 9-3, at the time of the final examination. Upon successful completion of the examination the student shall sign MCE Form 9-3. To report successful course completion the provider shall file the completed MCE Form 9-3 with the commission.

(e) A provider shall, prior to commencement of a course, announce that the provider will not certify a student for MCE credit unless the student attends all sessions of the course, that partial credit will not be given for partial attendance, that no makeups or written work will be allowed for MCE credit, and that the student must determine if the course is timely and appropriate for the student's MCE requirement. If the provider has not advertised or otherwise made students aware of the provider's refund policy, the pre-course announcement must also contain the refund policy. The provider may allow a ten-minute break for every 50 minutes of session time, but a break must be given at least every two hours, using all accumulated break time, and the daily course presentation may not exceed ten hours.

(f) Facilities used by providers for classroom presentations must be adequate to accommodate

students. Providers shall ensure each student has seating, a writing surface and writing materials. Rigid tablets or clipboards may be provided as a writing surface.

(g) All MCE courses must be open to enrollment by the general public. Providers may give preference in enrollment to persons who need MCE credit to obtain, renew or activate a license and may enroll all others on a space available basis. For a classroom course, the provider must offer the course in a location conducive to instruction that is separate and apart from the work area, such as a classroom, training room, conference room, or assembly hall.

(h) Advertising of MCE shall be subject to the following conditions.

(1) A provider applicant may not advertise a specific MCE course or represent in advertising that the applicant is a provider until the applicant has received written approval from the commission for the providership and at least one course. A provider applicant may advertise an intention to offer MCE courses if no specific course is described and the advertisement clearly indicates the applicant has not been approved as a provider.

(2) A provider may not advertise that a course has been approved or offer a course until the provider has received written approval of the course.

(3) Any advertisement or promotional material used by a provider must indicate the MCE provider's name or assumed business name as reflected in the commission's records and the MCE provider number assigned by the commission. The advertisement or promotional material also must include either the specific MCE course numbers and course titles or a statement that MCE course numbers and titles are available from the provider. When a provider offers a course that is hosted by another person or organization, the advertisement or promotional material must show clearly that the approved MCE provider is offering the course.

(4) A provider may not publish advertisements which are misleading or which are likely to deceive the public.

(5) Any name a provider uses in advertising must not be deceptively similar to the name of any other approved MCE provider or school accredited by the commission or falsely imply a governmental relationship.

(6) Any written advertisement which contains a fee charged by the provider shall display all fees for the course in the same place in the advertisement and with the same degree of prominence. If a provider requires students to purchase course materials which are not included in the tuition, any such fees must appear in the advertisement of the course.

(i) Providers shall retain student attendance records for a period of three years following the completion of a course and shall make copies of the records available to former students. A provider may charge a reasonable fee to defray the cost of copying student records. A provider's records must be kept at the location designated in the MCE Provider Application. Providers must obtain prior approval from the commission to change the location at which the provider's records are kept.

(j) Providers of MCE courses are responsible to the commission for the conduct and administration of each course presentation, the punctuality of classroom sessions, verification of student attendance, and instructor performance. Providers shall ensure that the courses are administered in substantially the same manner as represented in the application for approval of the course. Instructors must teach a course in substantially the same manner represented to the commission in the instructor's manual filed with the application for course approval. During the presentation of a course, providers may not promote the sale of goods or services by the provider or by a vendor affiliated or associated with the provider.

(k) A provider shall update course materials during the period of time an MCE course may be given to ensure that current and accurate information is provided to students. Updates shall be considered changes to course content which do not alter the accuracy of the course outline. Revisions of the course outline must be filed with the commission prior to implementation, and the commission may direct a provider to revise the materials further or cease use of materials.

(l) In the event of a change of ownership, the provider must obtain approval from the commission prior to the change, and proposed new owners shall submit an MCE Form 2-2, Principal Information Form. Providers shall report a change in business name, street or mailing address, person responsible for records or day-to-day operations, or persons authorized to sign MCE forms at least 15 days prior to the desired date of change. Providers shall report any change in refund policy, attorney-in-fact, address of attorney-in-fact or business telephone number as the change occurs.

(m) Providers may request MCE credit be given to instructors of MCE courses subject to the following guidelines.

(1) The instructors may receive credit for only those portions of the course which they teach by filing a completed MCE Form 11-3, Instructor Credit Request.

(2) The instructors may receive full course credit by attending all of the remainder of the course and signing the course completion roster.

(n) Each provider shall establish written policies governing refunds and contingency plans in the event of course cancellation. If the provider cancels a course, the provider shall fully refund all fees collected from students, or at the student's option, the provider may credit the student for another course of equal or greater credit hours.

(o) If the commission determines that it is in the public interest to cause significant information about changes in the law of agency or other topics to be included in an MCE course previously approved by the commission, the commission may require the provider to furnish each student with a copy of the information. The commission also may require the provider to ensure that the provider's instructors include the material in the presentation of the course. The commission shall furnish the provider with a copy of the information and notify the provider in writing that the commission requires compliance with this subsection in any course offered after the provider's receipt of the notice. Failure to comply with this subsection constitutes grounds for disciplinary action against the provider under Section 535.73 of this title (relating to Compliance and Enforcement) or for disapproval of an application for approval as a provider under §535.71 of this title (relating to Mandatory Continuing Education: Approval of Providers, Courses and Instructors).

§535.73. Compliance and Enforcement. *[Adopted May 1, 1990; amended May 4, 1995 and June 1, 2000; Ref: §7A]*

(a) The commission shall investigate complaints against MCE providers or instructors which allege acts constituting violations of these sections. Complaints must be in writing and the commission shall not initiate an investigation or take action against a provider or instructor based on an anonymous complaint. Commission employees may file written complaints against providers or instructors if documents filed with the commission provide reasonable cause to believe a violation of these sections has occurred.

(b) Complaints received by the MCE section of the education division of the commission or by any other division of the commission shall be referred to the enforcement division for appropriate resolution. The provider or instructor named in the complaint shall be provided with a copy of the complaint. Proceedings involving MCE providers or instructors shall be conducted in accordance with the Administrative Procedure and Texas Register Act, Article 6252-13a, Texas Civil Statutes and the commission's general rules of practice and procedure. Venue for any hearing conducted under this section shall be in Travis County.

(c) Audits and evaluations. Commission employees may conduct on-site audits of any course offered by an approved MCE provider. Audits shall be conducted without prior notice to the MCE provider and commission employees may enroll and attend an MCE course without identifying themselves as employees of the commission. Commission employees also may evaluate the effectiveness of course materials or instructors through surveys of students. An audit report indicating noncompliance with these sections will be treated as a written complaint against the provider or instructor concerned and will be referred to the enforcement division for appropriate resolution.

(d) A provider or instructor shall fully assist any employee of the commission engaged in the performance of an audit or investigation of a complaint and shall provide records in his possession for examination by the commission or provide such information as is requested by the commission within 15 days of receiving a request for examination of records or information.

(e) The commission may reprimand, suspend or revoke the authority of a provider to offer MCE courses or suspend or revoke the approval of an instructor to teach MCE courses when it has been determined that the provider or instructor has been guilty of:

(1) procuring or attempting to procure approval for a provider, course or instructor by fraud, misrepresentation or deceit, or by making a material misrepresentation of fact in an application filed with the commission;

(2) making a false representation to the commission, either intentionally or negligently, that a person had attended a course or portion of a course for which MCE credit was awarded, that a person had completed an examination, or that the person had completed any other requirement for an

MCE course;

(3) aiding or abetting a person to circumvent the requirements for attendance established by these sections, the completion of any examination or any other requirement for completion of an MCE course;

(4) failing to provide within 15 days information requested by the commission as a result of a complaint which would indicate a violation of these sections;

(5) disregarding or violating a provision of these sections or the Act; or

(6) making a materially false statement to the commission in response to a request from the commission for information relating to a complaint against the provider or instructor.

(f) An order of suspension or revocation issued under this section may be probated upon reasonable terms and conditions as determined by the commission.

H. Recovery Fund

§535.81. Recovery fund: Fee. *[Amended May 27, 1998; Ref: §8(b)]* If a person licensed as a real estate salesperson has paid the recovery fund fee, the person would not be required to pay a recovery fund fee in connection with the processing of an application for real estate broker licensure.

I. Licenses

§535.91. Renewal Applications. *[Amended July 20, 1981; June 1, 1990; August 19, 1991 July 18, 1994; July 16, 1996 and September 1, 2000. Ref: §9(a)]*

(a) Each real estate license expires on the date shown on the face of the license certificate issued to the licensee. The licensee has the responsibility to apply for renewal of a license by making proper application, paying the fee set by the commission and completing mandatory continuing education (MCE) courses within the time periods required by the Act, §7A. The commission shall mail a renewal application form to the licensee's last known business address or, if the licensee is in an inactive status, to the licensee's last known permanent mailing address as shown in the commission's computerized records. An inactive licensee shall furnish a permanent mailing address at the time the licensee becomes inactive and report all subsequent address changes within 10 days after a change of address. If a licensee fails to provide a permanent

mailing address at the time the licensee's license status becomes inactive, the last known mailing address provided by the licensee will be deemed to be the licensee's permanent mailing address. Applications must be made on the current renewal application form approved by the commission accompanied by the required fee. Failure to receive a license renewal application form does not relieve a licensee of the obligation to obtain the appropriate form and to apply for renewal of a license. A licensee shall provide information requested by the commission in connection with an application to renew a license within 30 days after the commission requests the information. Failure to provide information requested by the commission in connection with a renewal application within the required time is grounds for disciplinary action under the Act, §15B(b).

(b) The Texas Real Estate Commission adopts by reference Renewal Application Form 1-3, approved by the commission in 2000. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§535.92. Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements. *[Amended November 14, 1979; July 20, 1981; October 13, 1981; April 7, 1983; June 1, 1990; June 18, 1991; October 28, 1991; January 1, 1992; April 8, 1993; November 23, 1993; May 27, 1998; October 5, 1998; March 1, 1999 and September 1, 2000. Ref: §9(a)]*

(a) A renewal application is timely filed if it is received by the commission or postmarked on or before the expiration date of the license. If the license expires on a Saturday, Sunday or other day on which the headquarters office of the commission is not open for business, the renewal application is timely filed if the application is received or postmarked no later than the first business day after the expiration date of the license.

(b) If an application is filed within one year after the expiration of an existing license, the commission may issue the new license prior to completing the investigation of any complaint pending against the applicant or of any matter revealed by the application. The commission may thereafter initiate an action to suspend or revoke the license after notice and hearing in accordance with Texas Civil Statutes, Article 6573a, (the Act, §17).

(c) The commission shall advise each licensee of the time period for filing a renewal application and paying the renewal fee by mailing an appropriate

notice to the licensee's last known business address, or if the licensee is in an inactive status, to the licensee's last known permanent mailing address. The notice shall be mailed three months before expiration of the current license. If the licensee is subject to mandatory continuing education (MCE) requirements, the notice must also contain the number of MCE hours for which the licensee has been given credit and the number of additional MCE hours required for renewal of the license. The commission shall have no obligation to so notify an inactive licensee who has failed to furnish the commission with the person's permanent mailing 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 Real Estate License Act (the Act).

(d) If the commission develops a system whereby licenses may be renewed electronically, a licensee also may renew an unexpired license by accessing the commission's Internet web site, entering the required information on the renewal application form, satisfying applicable education requirements and paying the appropriate fee in accordance with the instructions provided at the site by the commission.

(e) The commission may not renew a license issued to a corporation, limited liability company or partnership unless the corporation, limited liability company or partnership has designated an officer, manager or partner who meets the requirements of the Act, including satisfaction of MCE requirements. No person may act as designated officer, manager or partner if the person has failed to meet MCE requirements. For the purpose of this section, MCE requirements for the designated officer, manager or partner must be satisfied during the term of any individual broker license held by the officer, manager or partner. A designated partner who is not licensed individually as a broker must complete MCE required for a two-year license within the term of the partnership's license in order to renew the license of the partnership. If the individual real estate broker license of a designated partner expires, the partnership may only renew its license if the designated partner has satisfied MCE requirements that would have been imposed if the license of the designated partner had not expired.

(f) Notwithstanding any provisions of the Act to the contrary, when a licensee in an active status files a timely application to renew a current license and has satisfied all requirements other than the completion of applicable MCE requirements, the

commission shall renew the current license in an active status and notify the licensee in writing that if the licensee has not completed the required number of hours of MCE courses prior to the expiration date of the current license, the licensee must pay an additional fee of \$200 and complete the required number of hours of MCE courses within 60 days after the effective date of the new license. For the purpose of this section, a renewed license is effective the day following the expiration of the current license. If the licensee does not complete the required number of hours of MCE courses prior to the expiration date of the current license, the licensee shall complete the required number of hours of MCE courses and pay the additional fee within 60 days after the effective date of the new license. MCE courses completed after expiration of the current license under this provision may not be applied to the following renewal of the license. Original applications and return to active status are subject to MCE requirements imposed by the Act.

(g) A real estate licensee may not receive MCE credit for a license renewal unless the licensee attends all of the MCE course. Credit will not be given for attendance of the same course more than once during the term of the current license or during the two-year period preceding the filing of an application for late renewal or return to active status. Each licensee attending all sessions of a course shall sign the course completion roster, MCE Form 8-3 and provide the information required for each licensee on the form. A false statement to the commission concerning attendance at an MCE course will be deemed a violation of the Act, §15(a)(2) and of this section.

(h) A course taken by a Texas licensee to satisfy continuing education requirements of another state may be approved on an individual basis for MCE credit in this state upon the commission's determination that:

(1) the Texas licensee held an active real estate license in the other state at the time the course was taken;

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

(3) the Texas licensee's successful completion of the course has been evidenced by a course

completion certificate, a letter from the provider or such other proof as is satisfactory to the commission;

(4) the subject matter of the course was predominately devoted to a subject acceptable for MCE credit in this state; and

(5) the Texas licensee has filed MCE Form 10-0, MCE Out of State Course Credit Request, with the commission.

(i) To request MCE credit for real estate related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit, a licensee shall either file MCE Form 12-1, Individual MCE Credit Request for State Bar Course or sign MCE Form 12A-0, Provider MCE Credit Request for State Bar Course, which may be filed by the course provider with the commission.

(j) Real estate licensees may receive MCE credit for core real estate courses or core real estate inspection courses that have been approved by TREC or that are accepted by TREC for satisfying educational requirements for obtaining or renewing a license. Core real estate courses must be at least 30 classroom hours in length to be accepted for MCE credit.

§535.93. Licensing: Possession of License as Prerequisite. *[Repealed September 1, 2000.]*

§535.94. Hearing on Application Disapproval. Probationary Licenses. *[Adopted February 5, 1981; amended June 22, 1990 and September 20, 2000. Ref: §10]*

(a) For the purposes of Texas Civil Statutes, Article 6573a, (the Act), §10, "declines or fails to register or license an applicant" means to disapprove an applicant for a real estate license for failure to comply with the requirement of the Act, §6(b) to satisfy the commission as to the applicant's honesty, trustworthiness and integrity, or, if the applicant seeks registration as an easement or right-of-way agent, to disapprove an application for registration under §535.400 of this title (relating to Registration of Easement or Right-of-Way Agents).

(b) If the commission or an employee of the commission authorized by it to conduct hearings and render final decisions in contested cases determines that issuance of a probationary license is appropriate, the order entered with regard to the

application must set forth the terms and conditions for the probationary license. Terms and conditions for a probationary license may include any of the following:

(1) that the probationary licensee comply with Texas Civil Statutes, Article 6573a and with the rules of the Texas Real Estate Commission;

(2) that the probationary licensee fully cooperate with the enforcement division of the Texas Real Estate Commission in the investigation of any complaint filed against the licensee;

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

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

(5) that the probationary licensee report regularly to the commission on any matter which is the basis of the probationary license; or

(6) that the probationary licensee comply with any other terms and conditions contained in the order which have been found to be reasonable and appropriate by the commission or commission employee rendering the final decision after due consideration of the circumstances involved in the particular application.

(c) The commission or an employee of the commission authorized to render final decisions in contested cases may, after notice and hearing as provided in §533.17 of this title (relating to Contested Case: Notice of Hearing) and the Administrative Procedure Act, Texas Government Code, §§2001.001, et seq, reprimand a probationary licensee or suspend or revoke a probationary license if the probationary licensee fails to comply with a term or condition of the probationary license.

(d) Unless the order granting a probationary license specifies otherwise, a probationary licensee may renew the license after the probationary period by filing a renewal application, satisfying applicable education requirements and paying the prescribed renewal fee.

§535.95. Miscellaneous Provisions Concerning License Renewals. [Adopted February 11, 1992; May 27, 1998 and September 1, 2000. Ref: H.B. 1393, 72nd Leg.; §57.491 Education Code]

(a) As used in this section, the term "license" includes a registration issued by the commission, and the term "licensee" includes registrants.

(b) A licensee on active duty in the United States armed forces serving outside the State of Texas may renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the licensee:

(1) provides a copy of official orders or other official documentation acceptable to the commission showing that the licensee was on active duty outside the state during the licensee's last renewal period;

(2) applies for the renewal within 90 days after the licensee's active duty ends; and

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

(c) Education requirements that would have been imposed for a timely renewal shall be deferred under this section to the next renewal of the license.

(d) Renewals of licenses issued by the commission are subject to the policies established by the Texas Education Code, §57.491. Before the commission declines to renew a license due to a default on a loan guaranteed by Texas Guaranteed Student Loan Corporation (TGSLC), a default on a repayment agreement with TGSLC or a failure to enter a repayment agreement with TGSLC, the commission shall give notice and provide an opportunity for a hearing in accordance with the provisions of the Administrative Procedure Act, Texas Government Code, §§2001.001, et seq. The commission shall advise licensees in renewal notices and license application forms that default on a loan guaranteed by the TGSLC may prevent a subsequent renewal of a license.

J. Fees

§535.101. Fees. [Amended October 27, 1978; November 14, 1979, March 19, 1990; July 1, 1992 and August 31, 1992; August 31, 1993; September 1, 1995; May 27, 1998; October 11, 1999 and September 1, 2000. Ref: §11]

(a) Fees for the issuance of a license due to a change of address, additional place of business or change of sponsoring broker are due when requests for such licenses are received. A change of address or name submitted with an application to renew a license, however, does not require payment of a fee

in addition to the fee for renewing the license. If the commission receives a request for issuance of a license certificate which requires payment of a fee, and the appropriate fee was not filed with the request, the commission shall return the request and notify the person filing the request that the person must pay the fee before the certificate will be issued. The commission may require written proof of a licensee's right to use a different name prior to issuing a license certificate reflecting a change of name. As used in this section, the term "license" includes a certificate of registration.

(b) The commission shall charge and collect the following fees:

(1) a fee of \$75 for the filing of an original application for a real estate broker license;

(2) a fee of \$30 for annual renewal of a real estate broker license;

(3) a fee of \$50 for the filing of an original application for a real estate salesperson license;

(4) a fee of \$30 for annual renewal of a real estate salesperson license;

(5) a fee of \$35 for an application for a license examination;

(6) a fee of \$20 for filing a request for a license for each additional office or place of business;

(7) a fee of \$20 for filing a request for a license for a change of place of business change of name, return to active status or change of sponsoring broker;

(8) a fee of \$20 for filing a request to replace a license lost or destroyed;

(9) a fee of \$400 for filing an application for accreditation of an education program under Texas Civil Statutes, Article 6573a (the Act), §7(f);

(10) a fee of \$200 a year for operation of a real estate education program under the Act, §7(f);

(11) a fee of \$15 for transcript evaluation;

(12) a fee of \$10 for preparing a license history; and

(13) a fee of \$25 for the filing of an application for a moral character determination.

K. Place of Business

§535.111. Residence. *[Repealed September 1, 2000.]*

§535.112. Branch Office. *[Amended November 8, 1977; May 28, 1984; June 22, 1990; May 27, 1998 and September 1, 2000. Ref: §12(b)]* A broker shall apply for a branch office license if the broker maintains more than one place of business. A "place of business" means a place where the licensee meets with clients and customers to transact business. A license is required for each branch office maintained by the broker, and the license certificate for each branch office must display the address at which the broker's office is located.

§535.113. Display of Licenses. *[Amended May 27, 1998 and September 1, 2000. Ref: §12(c)(d)]* If a broker maintains more than one office, the broker shall display the license of any salesperson sponsored by the broker either in the broker's main office or in one of the broker's branch offices.

L. Termination of Salesman's Association with Sponsoring Broker

§535.121. Inactive License. *[Amended November 14, 1979; July 20, 1981; March 19, 1990; February 1, 1993; May 27, 1998 and September 1, 2000. Ref: §13(a)]*

(a) The license of a salesperson immediately becomes inactive upon each of the following circumstances:

(1) the death of the salesperson's sponsoring broker;

(2) the expiration, suspension, revocation or inactivation of the license of the sponsoring broker;

(3) if the sponsoring broker is a corporation, the dissolution of the corporation or the forfeiture of its charter, which also places the license of the entity on inactive status; or

(4) if the sponsoring broker is a corporation, limited liability company or partnership, the expiration, suspension, revocation or inactivation of the license of the person designated as broker, manager, or partner on the license certificate of the entity, which also places the license of the entity on inactive status.

(b) When the sponsorship of a salesperson ends, the broker shall immediately return the salesperson's license certificate to the commission. The commission will no longer consider the broker to

sponsor the salesperson upon receipt of the license certificate or upon receipt of a written request from a new sponsoring broker to sponsor the salesperson, whichever first occurs. If the sponsorship has ended because the broker has terminated the sponsorship, the broker shall immediately so notify the salesperson in writing. If the sponsorship has ended because the salesperson has left the sponsorship, the salesperson shall immediately so notify the broker in writing. If the commission receives a request from a broker to sponsor a salesperson shown in the commission's records as sponsored by another broker, the commission shall notify the former broker of the change in sponsorship and request the former broker to return the license certificate to the commission.

§535.122. Reactivation of License. *[Amended June 1, 1990, January 3, 1991; March 19, 1991; June 18, 1991; May 27, 1998 and September 1, 2000. Ref: §13(b)]*

(a) When a salesperson whose license status is active enters the sponsorship of a broker, the salesperson and broker whose sponsorship the salesperson has entered shall notify the commission within 10 days, submit the appropriate fee, and request issuance of a new license reflecting the new association. The salesperson may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission.

(b) When a salesperson whose license status is inactive enters the sponsorship of a broker and the salesperson is subject to mandatory continuing education (MCE) requirements, the salesperson is not returned to active status until MCE requirements are satisfied and the commission has received documentation of course completion in a form satisfactory to the commission. A salesperson whose original application or renewal application was subject to educational requirements imposed by the Real Estate License Act (Act) §7, is not subject to MCE requirements as a condition of returning to active status during the term of the license issued from the original application or renewal application.

§535.123. Inactive Broker Status. *[Adopted November 18, 1991; Amended May 27, 1998; Ref: §13A]*

(a) For the purposes of this section, "inactive broker" means a licensed broker who does not sponsor salespersons or perform any activities for which a broker license is required and who has been placed on inactive status by the commission.

(b) To be placed on inactive status, a broker must

do the following:

(1) apply to the commission on a form approved by the commission for that purpose or by a letter providing the broker's name, license number and current mailing address;

(2) confirm in writing that the broker has given any salespersons sponsored by the broker written notice of termination of sponsorship at least 30 days prior to filing the request for inactive status; and

(3) return the broker's current license certificate to the commission.

(c) To return to active status a broker who has been placed on inactive status must apply to the commission for return to active status on a form approved by the commission, pay the appropriate fee and satisfy mandatory continuing education (MCE) requirements specified in Texas Civil Statutes, Article 6573a, (the Act) §7A.

(d) A broker who has been on inactive status may resume practice once the broker has satisfied MCE requirements, and the application for return to active status and appropriate fee have been mailed to or delivered to the commission. A broker on inactive status is not subject to the requirements of the Act, §12(c), regarding display of license.

M. Nonresidents

§535.131. Unlawful Conduct; Splitting Fees. *[Amended March 11, 1981; May 27, 1998; and October 1, 2000; Ref: §14(a)]*

(a) The Real Estate License Act, Texas Civil Statutes, Article 6573a, (the Act) permits Texas-licensed brokers to cooperate with and share earned commissions with persons licensed as brokers in other states, but all negotiations physically conducted within Texas must be handled by Texas licensees.

(b) As used in §14 of the Act, the word "state" refers to the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.

(c) An unlicensed person may share in the income earned by a real estate brokerage operation if the person engages in no acts for which a license is required and does not lead the public to believe that the person is in the real estate brokerage business.

(d) If a member of a partnership or an officer of a corporation does not engage in acts for which a

license is required, the person is not required to be licensed and may share in the income earned by the partnership or corporation.

(e) A resident of a foreign state that does not require a person to be licensed to act as a real estate broker is considered to be licensed as a broker for the purposes of the Act, §14(a), if the person complies with the law of the foreign state and practices there as a real estate broker.

§535.132. Eligibility for Licensure. *[Amended November 14, 1979; July 20, 1981, April 15, 1982; November 23, 1993; April 1, 1996; December 1, 1997; and October 1, 2000; Ref: §14(b)]*

(a) A person residing in another state may apply for a license under the provisions of Texas Civil Statutes, Article 6573a, (the Act), §14(b) and this section if the person:

(1) is licensed as a broker by the other state; or

(2) was licensed as a Texas real estate salesperson or broker no more than six years prior to the filing of the application. The commission may waive examination, education and experience requirements if the applicant satisfies the conditions established by §535.61 of this title (relating to Waiver of Examinations) and by either §535.62 of this title (relating to Brokers: Education and Experience) or §535.63 of this title (relating to Salespersons: Education).

(b) A limited liability company created under the laws of another state or a corporation chartered in a state other than Texas may apply for a Texas real estate broker license if the entity meets one of the following requirements.

(1) The entity is licensed as a broker by the state in which it was created or chartered.

(2) The entity is licensed as a broker in a state in which it is permitted to engage in real estate brokerage business as a foreign limited liability company or corporation.

(3) The entity was created or chartered in a state that does not license limited liability companies or corporations, as the case may be, and the entity is lawfully engaged in the practice of real estate brokerage in another state and meets all other requirements for applications for a license in Texas.

(c) An individual licensed as a broker who subsequently moves to another state is not required

to maintain an office in Texas unless the individual sponsors a salesperson in this state.

(d) The word "state" refers to the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.

(e) To be eligible to receive a license and maintain an active license, a limited liability company or corporation created or chartered in another state must designate a person to act for it who meets the requirements of the Act, §6(c), although the designated person is not required to be a resident of Texas. Foreign corporations and limited liability companies also must be permitted to engage in business in this state to receive a Texas real estate broker license.

§535.133. Consent to be Sued; Exception to Requirements. *[Amended April 7, 1983 and May 27, 1998; Ref: §14(c)]* A consent to service of legal process must be filed with the commission by a broker or salesperson who moves to another state.

N. Suspension and Revocation of Licensure

§535.141. Initiation of Investigation. *[Amended October 20, 1983; February 8, 1991; May 7, 1992; November 23, 1993; May 27, 1998; and October 1, 2000; Ref: §15(a)]*

(a) As used in this section, the term "licensee" includes a person registered as an easement or right-of-way agent and the term "license" includes a registration issued by the commission.

(b) If the Texas Real Estate Commission (the commission) receives a complaint, and such complaint on its face alleges a possible violation of the Real Estate License Act, Texas Civil Statutes, Article 6573a, (the Act), the commission shall investigate the complaint. The commission, on its own motion, with reasonable cause, may initiate an investigation of the actions and records of a licensee.

(c) A real estate broker is responsible for all acts and conduct performed by a real estate salesperson associated with or acting for the broker. A complaint which names a licensed real estate salesperson as the subject of the complaint but does not specifically name the salesperson's sponsoring broker, is a complaint against the broker sponsoring the salesperson at the time of any alleged violation for the limited purposes of determining the broker's involvement in any alleged violation and whether the broker fulfilled his or her professional responsibilities

to the commission, members of the public, and his or her clients, provided the complaint concerns the conduct of the salesperson as an agent for the broker.

(d) The person designated by a licensed corporation, limited liability company or partnership to act as its officer, manager or partner is responsible for all acts and conduct as a real estate broker performed by or through the business entity. A complaint which names a corporation, limited liability company or partnership licensed as a broker as the subject of the complaint but which does not specifically name the designated officer, manager or partner of the business entity, is a complaint against the broker acting as the designated officer, manager or partner at the time of any alleged violation for the limited purposes of determining the designated person's involvement in any alleged violation and whether the designated person fulfilled his or her professional responsibilities to the commission, members of the public, and his or her clients. A complaint which names a salesperson sponsored by a licensed corporation, limited liability company or partnership but which does not specifically name the designated person of the business entity is a complaint against the broker who was acting as designated person at the time of any alleged violation by the salesperson for the limited purposes of determining the designated person's involvement in any alleged violation and whether the designated person fulfilled his or her professional responsibilities to the commission, members of the public, and his or her clients, provided the complaint concerns the conduct of the salesperson as an agent of the business entity.

(e) Once a complaint has been filed with the commission, the commission has jurisdiction to consider, investigate and take action based on the complaint. Complaints may be withdrawn only with the consent of the commission.

(f) If information obtained by the commission in the course of the investigation of a complaint or as a result of an investigation authorized by the members of the commission constitutes reasonable cause to believe the respondents to the complaint may have committed other violations of the Act or a rule of the commission, no additional authorization shall be required for the commission to investigate and take appropriate action based on the information.

(g) If the commission suspends or revokes a license or probates an order of suspension or revocation against a licensee, the commission may

monitor compliance with its order and initiate action based on the authority of the original complaint or original authorization by the members of the commission.

(h) A person whose license has been suspended may not during the period of any suspension:

(1) perform or attempt to perform any act for which a license is required by law or commission rule; or

(2) unless instructed otherwise by the principals to the transaction, continue to hold any funds received in a real estate transaction in which the person acted as a real estate broker or salesperson.

(i) A person whose license is subject to an order suspending the license must prior to the suspension taking effect:

(1) if the person is a real estate salesperson, notify his or her sponsoring broker in writing that his or her license will be suspended;

(2) if the person is a real estate broker, notify in writing any salespersons he or she sponsors, or any corporation, limited liability company or partnership for which the person is designated as an officer, manager or partner that:

(A) his or her real estate broker license will be suspended; and,

(B) once the suspension is effective any salesperson he or she sponsors or who are sponsored by the corporation, limited liability company or partnership will not be authorized to engage in real estate brokerage unless the salespersons associate with another broker and file a change of sponsorship with the commission or the business entity designates a new person and files a change of designated officer, manager or partner with the commission;

(3) if the person has a contractual obligation to perform services for which a license is required by law or commission rule, notify in writing all other parties to the contract that the services cannot be performed due to the suspension;

(4) if the person is a real estate salesperson and is directly involved in any real estate transaction in which the salesperson acts as an agent, notify in writing all other parties, including principals and other real estate brokers, that the person cannot continue performing real estate brokerage services

due to the suspension; and

(5) if the person holds money in trust in any transaction in which the person is acting as a real estate broker, remit such money in accordance with the instructions of the principals.

(j) A person may not assign to another licensee a personal service contract to which the person is a party and which obligates the person to perform acts for which a license is required without first obtaining the written consent of the other parties to the contract.

§535.142. Outstanding judgment. *[Repealed March 19, 1990]*

§535.143. Fraudulent Procurement of License. *[Amended March 19, 1990; May 27, 1998; and October 1, 2000; Ref: §15(a)(2)]* A violation of the Act, §15(a)(2), occurs if an applicant for licensure for the applicant or a salesperson omits material information or makes material misstatements, written or oral, in connection with the filing of an application to obtain licensure. This does not include an unintentional mistake of fact; however, a broker submitting an application as sponsor of a proposed salesperson has an affirmative duty to ascertain that all information called for in the application is given and is true, correct and complete, whether the application is filled out by the broker or the prospective salesperson.

§535.144. When acquiring or disposing of own property. *[Amended March 22, 1978; August 6, 1980; October 20, 1983; May 27, 1998; and October 1, 2000; Ref: §15(a)(3)]* A licensee, when engaging in a real estate transaction on his or her own behalf, or on behalf of a business entity in which the licensee is more than a 10% owner, is obligated to inform any person with whom the licensee deals that he or she is a licensed real estate broker or salesperson acting on his or her own behalf either by disclosure in any contract of sale or rental agreement, or by disclosure in any other writing given prior to entering into any contract of sales or rental agreement. A licensee shall not use the licensee's expertise to the disadvantage of a person with whom the licensee deals.

§535.145. False promise. *[Amended October 1, 2000; Ref: §15(a)(6)(B)]* "False promise" includes both oral and written promises. The fact that a written contract between the parties to a real estate transaction does not recite a promise made by a real estate licensee to one of the parties or

that a person did not detrimentally rely on the false promise will not prevent the commission from determining that a false promise was made. When deciding whether this section has been violated, neither a written contractual provision disclaiming oral representations nor the parol evidence rule shall prevent the commission from considering oral promises made by a licensee.

§535.146. Failure to Properly Account for Money; Commingling. *[Amended August 7, 1977; May 27, 1998; and October 1, 2000; Ref: §15(a)(6)(E)]*

(a) For the purposes of this section, "trust account" includes any trust, escrow, custodial, property management account, or other account in which a licensee holds money on behalf of another person.

(b) A licensee maintaining a trust account shall retain for a period of four years a documentary record of each deposit or withdrawal from the account.

(c) If a licensee accepts money belonging to others, the licensee holds such money in a fiduciary capacity. If any or all of the parties to a real estate transaction make demand for the money, the licensee must, within a reasonable time, properly account for or remit the money. "Reasonable time" means within 30 days after demand is made for an accounting or for remittance of money belonging to others.

(d) "Properly account for or remit" means to pay the money to the party or parties entitled to the money if it can be reasonably determined to which party or parties the money should be paid. A licensee may pay the money into the registry of a court and interplead the parties if it cannot be reasonably determined to which party or parties the money should be paid.

(e) If, by written agreement of the parties to the real estate transaction, the licensee holding money belonging to others has the right to require the receipt, release and authorization in writing from all parties before paying the money to any party or parties, and if the licensee chooses to exercise that right, "properly account for or remit" means to furnish every party with a written statement requesting such receipt, release and authorization and detailing the amount and place of custody of the money and to pay the money to the party or parties in accordance with the receipts, releases and authorizations, if obtained. A licensee may pay the money into the registry of a court and interplead

the parties if the receipts, releases and authorizations that the licensee has the right to require cannot be obtained.

(f) If escrow or other money belonging to another is held by a licensee, it must be maintained in a trust account. Placing such money in a licensee's operating account constitutes commingling.

(g) If a licensee acquires ownership of money in the licensee's trust account that was originally held in trust for another, such money must be removed from the trust account within a reasonable time. "Reasonable time" in this context means within 30 days after the licensee acquires ownership of the money.

(h) Paying operating expenses or making withdrawals from a broker's trust account for any purpose other than proper disbursement of money held in trust is prima facie evidence of commingling money held in trust with the broker's own funds.

§535.147. Splitting Fee with Unlicensed Person. *[Amended March 11, 1981; and October 1, 2000; Ref: §15(a)(6)(F)]*

(a) "Any other state" means the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.

(b) "Commission or fees" includes any form of compensation received for engaging in an act for which a license is required by Texas Civil Statutes, Article 6573a.

(c) It is not a violation of this section for a licensee to pay a portion of the licensee's fee or commission to a party in the transaction. A licensee who intends to pay a portion of the licensee's fee or commission to a party the licensee does not represent must obtain the consent of the party represented by the licensee prior to making the payment.

§535.148. Failing to Specify Date of Termination of Listing Contract or Other Contract for Services. *[Repealed October 1, 2000.]*

§535.148. Receiving an Undisclosed Commission or Rebate. *[Adopted October 1, 2000; Ref: §15(a)(6)(H)]* A licensee may not receive a commission, rebate, or fee in a transaction from a person other than the person the licensee represents without first disclosing to all parties to the transaction that the licensee intends to receive the commission, rebate or fee, and obtaining the consent of all parties. This section does not apply

to referral fees paid by one real estate licensee to another licensee.

§535.149. Lottery or Deceptive Trade Practice. *[Ref: §15(a)(6)(I)]*

(a) The elements of a "lottery" are the award or distribution of a prize or prizes by chance and the payment of consideration for the opportunity to win the prize.

(b) The giving of gifts as an inducement for prospective clients is not violative of this section.

§535.150. Acting in Dual Capacity. *[Repealed October 1, 2000.]*

§535.151. Guaranteeing Profits. *[Repealed October 1, 2000.]*

§535.152. Offering Property Without Owner's Consent. *[Repealed October 1, 2000.]*

§535.153. Violating an Exclusive Agency. *[Amended June 22, 1990; Ref: §15(a)(6)(N)]*

Although a licensee, including one acting as agent for a prospective buyer or prospective tenant, may not attempt to negotiate a sale, exchange, lease, or rental of property under exclusive listing with another broker, the Real Estate License Act (Act), §15(a)(6)(N) does not prohibit a licensee from soliciting a listing from the owner while the owner's property is subject to an exclusive listing with another broker.

§535.154. Misleading Advertising. *[Amended March 22, 1978; March 1, 1980; June 24, 1984; June 26, 1990, February 8, 1991; January 1, 1997; May 27, 1998; March 15, 1999; and October 1, 2000; Ref: §15(a)(6)(P)]*

(a) For the purposes of this section, an "advertisement" is a written or oral statement which induces or attempts to induce a member of the public to use the services of a real estate licensee. The term "advertisement" includes, but is not limited to all publications, radio or television broadcasts, all electronic media including E-mail and the Internet, business stationary, business cards, signs and billboards. The provisions of this section apply to all advertisements by a real estate licensee unless the context of a particular provision indicates that it is intended to apply to a specific form of advertisement. Provided, however, a communication from a licensee to a member of the public after the member of the public agreed for the licensee to provide services is not an advertisement for the purposes of this section.

(b) A licensee may not utilize a copyrighted trade name unless the licensee has legal authority to use the name.

(c) A broker shall notify the commission in writing within 30 days after the broker, or a salesperson sponsored by the broker, starts or stops using a name in business other than the name in which the person is licensed. Licensees may not use the name of a salesperson, including an assumed name, in advertisements unless the sponsoring broker's name or assumed name also appears. If the commission is notified of a licensee's use of an assumed name which contains only the name of a salesperson, including an assumed name, the commission shall notify the licensee, and the licensee's sponsoring broker, if any, that use of the name alone in advertising is grounds for disciplinary action under this section.

(d) In an advertisement placed by a licensee that does not readily identify the licensee as a real estate agent, the advertisement must include an additional designation such as "agent," "broker" or a trade association name which serves clearly to identify the advertiser as a real estate agent.

(e) Because salespersons may lawfully engage in brokerage activity only when they are associated with, and acting for, a broker, a listing may be solicited and accepted only in a broker's name. Advertisements concerning a broker's listings must include information identifying the advertiser as a real estate broker or agent. The name of a salesperson sponsored by the broker may also be included in the advertisement, but in no case shall a broker or salesperson place an advertisement which in any way implies that the salesperson is the person responsible for the operation of a real estate brokerage.

(f) A corporation or limited liability company licensed as a real estate broker may do business in the name in which it was chartered or registered by the Secretary of State.

(g) A licensee's advertising must not cause a member of the public to believe that a person not authorized to conduct real estate brokerage is personally engaged in real estate brokerage, provided that an advertisement of a trade, business, or assumed name does not constitute a holding out that a specific person is engaged in real estate brokerage.

(h) An advertisement placed where it is likely to

attract the attention of passing motorists or pedestrians must contain language that clearly and conspicuously identifies as a real estate broker or agent the person publishing the advertisement. Advertisements in which the required language is not clear and conspicuous shall be deemed by the commission to be deceptive and likely to mislead the public for the purposes of Texas Civil Statutes, Article 6573a (the Act), §15(a)(6)(P). The commission shall consider language as clear and conspicuous if it is in at least the same size of type or print as the largest telephone number in the advertisement, or it otherwise clearly and conspicuously identifies as a real estate broker or agent the person who published it. The commission shall consider advertisements not to be in compliance with this subsection if the required language is in print or type so small that it cannot be easily read from the street or sidewalk. This subsection does not apply to signs placed on real property listed for sale, rental or lease with the broker who has placed the sign, provided the signs otherwise comply with this section and the provisions of the Act regarding advertising.

(i) A real estate licensee placing an advertisement on the Internet, electronic bulletin board, or similar mechanism must include on each page on which the licensee's advertisement appears any information required by this section and the disclosure relating to the advertiser's status as a broker or agent required by §15(a)(6)(P) of the Act.

(j) A real estate licensee placing an advertisement by using any electronic communication, including but not limited to E-mail and E-mail discussion groups, must include in the communication and in any attachment which is an advertisement the information required by this section and the disclosure relating to the advertiser's status as a broker or agent required by §15(a)(6)(P) of the Act.

(k) An advertisement containing an offer to rebate to a principal a portion of a licensee's commission must disclose that payment of the rebate is subject to the consent of the party the licensee represents in the transaction. If payment of the rebate is contingent upon a party's use of a selected service provider, the advertisement also must contain a disclosure that payment of the rebate is subject to restrictions.

(l) If an advertisement offers, recommends or promotes the use of services of a real estate service provider other than the licensee and the licensee expects to receive compensation if a party

uses those services, the advertisement must contain a disclosure that the licensee may receive compensation from the service provider.

§535.155. Associating with Unlicensed Person; Conspiring to Violate Act. *[Repealed October 1, 2000.]*

§535.156. Dishonesty; Bad Faith; Untrustworthiness. *[Amended May 24, 1976; June 9, 1981; May 27, 1998; and October 1, 2000; Ref: 15(a)(6)[V]]*

(a) A licensee's relationship with the licensee's principal is that of a fiduciary. A licensee shall convey to the principal all known information which would affect the principal's decision on whether or not to make, accept or reject offers; however, if the principal has agreed in writing that offers are not to be submitted after the principal has entered into a contract to buy, sell, rent, or lease a property, the licensee shall have no duty to submit offers to the principal after the principal has accepted an offer.

(b) The licensee must put the interest of the licensee's principal above the licensee's own interest. A licensee must deal honestly and fairly with all parties; however, the licensee represents only the principal and owes a duty of fidelity to such principal.

(c) A licensee has an affirmative duty to keep the principal informed at all times of significant information applicable to the transaction or transactions in which the licensee is acting as agent for the principal.

(d) A licensee has a duty to convey accurate information to members of the public with whom the licensee deals.

§535.157. Negligence; Incompetence. *[Repealed October 1, 2000.]*

§535.158. Violation of Act. *[Repealed October 1, 2000.]*

§535.159. Failing to Properly Deposit Escrow Monies. *[Amended April 3, 1980; May 27, 1998; and October 1, 2000; Ref: 15(a)(6)(Y)]*

(a) A broker is not required to maintain a trust account unless the broker undertakes to accept monies belonging to others.

(b) When money is deposited with a broker to be held in escrow, the broker becomes the trustee

accountable both to the party making the deposit and to the party for whose benefit said funds are deposited.

(c) It is up to principals to a transaction to decide who shall act as escrow agent for them. A broker may not require the principals to a real estate transaction to designate the broker as their escrow agent.

(d) Nonresident brokers acting as real estate agents in Texas who accept money as escrow agents must deposit said funds in a custodial, trust or escrow account at a banking institution or title company authorized to do business in Texas.

(e) It is permissible for a broker to establish a savings account as an escrow account, provided said funds may be withdrawn at the appropriate time for disbursement. In the absence of an agreement to the contrary signed by the person depositing the funds with the broker, any interest earned on a savings account must be distributed to the person or persons who are the equitable owners of the funds during the time the interest is earned.

(f) A salesperson may not maintain an escrow account or act as an escrow agent. Any money received by a real estate salesperson which is to be held in trust pursuant to a real estate transaction must be delivered to the salesperson's sponsoring broker to be deposited in accordance with the agreement of the principals in the transaction.

(g) A trust or escrow account may contain any money held by the real estate broker as a trustee for another pursuant to a real estate transaction in which the broker acted as agent, provided the principals have agreed that the broker is to act as trustee. A broker may, but is not required to, maintain separate trust accounts for earnest money deposits, security deposits received for the management of rental property, and for other money received in trust.

(h) If a broker maintains a trust or escrow account, that account must be identified as such.

(i) Unless a different time to deposit money is expressly agreed upon in writing by the principals to the transaction, "reasonable time" as used in this section means by the close of business of the second working day after execution of the contract by the principals. If all principals agree, a deposit may be delayed in accordance with their agreement.

(j) If money held in trust by a broker is held in a

noninterest bearing account, the broker is not liable for interest or for charges on the funds unless there is an agreement to the contrary.

(k) If a broker accepts a check as escrow agent and later finds that such check has been dishonored by the bank on which it was drawn, the broker shall immediately notify all parties to the transaction.

§535.160. Failing to Properly Disburse Escrow Money. *[Amended May 27, 1998; Ref: 15(a)(6)(Z)]*
A broker shall make no disbursement from the broker's escrow account except in accordance with the agreement under which the money was received.

§535.161. Failing to Provide Information. *[Ref: 15(a)(8)]* As used in this section "reasonable time" means ten (10) working days from receipt of a request made by the commission.

§535.164. Disclosure of Agency. *[Repealed January 1, 1996.]*

§535.165. Disclosure of Buyer or Tenant Agency. *[Repealed November 23, 1993]*

O. Hearing on Suspension or Revocation of Licensure

§535.171. Hearing: Subpoenas and Fees. *[Amended December 25, 1980; Ref: 17(b)]*

(a) Process may be served by an employee of the Texas Real Estate Commission if that person is designated by the commission.

(b) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding is entitled to receive mileage of \$.20 a mile for going to and returning from the place of the hearing or where the deposition is taken, if the place is more than 25 miles from the person's place of residence and a fee of \$20 a day for each day or part of a day the person is necessarily present as a witness or deponent.

P. Penalty for Unlicensed Activity

§535.181. Penalty. *[Amended December 25, 1980; Ref: §19]* If the Texas Real Estate Commission receives information that indicates that a person has engaged in unlicensed activity, it shall conduct an investigation to determine if such information is accurate. If the information establishes evidence to

indicate a probable violation of the Act, the commission may file a complaint, alleging unlicensed activity, with the appropriate law enforcement official or take such other action as may be necessary and proper.

Q. Suit for Compensation

§535.191. Prerequisites. *[Repealed October 1, 2000.]*

§535.192. Written Agreement Required. *[Repealed October 1, 2000.]*

R. Real Estate Inspectors

§535.201. Registered Real Estate Inspectors: Registration and Certification: Fees. *[Repealed May 15, 1986]*

§535.202. Licensed Real Estate Inspectors. *[Repealed October 28, 1991]*

§535.203. Licensed Real Estate Inspectors: Violations. *[Repealed October 28, 1991]*

§535.204. Licensed Real Estate Inspectors: Voiding of Applications. *[Repealed October 28, 1991]*

§535.205. Inspectors Licensed Under Prior Law. *[Repealed January 1, 2001.]*

§535.206. The Texas Real Estate Inspector Committee. *[Adopted on an emergency basis October 28, 1991; adopted on permanent basis January 1, 1992; amended January 1, 2001; Ref: §23]*

(a) The composition and functions of the committee are as prescribed by Texas Civil Statutes, Article 6573a, §23.

(b) A quorum of the committee consists of five members.

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

(d) The secretary of the committee, or in the secretary's absence, a member designated by the chairman, shall prepare minutes of each meeting and submit the minutes to the committee for approval and for filing with the commission.

(e) The committee shall submit semiannual reports to the commission on or before March 1 and September 1 of each year detailing the performance of the committee. The commission may require the report to be submitted on a form approved by the commission for that purpose. The committee may submit its written recommendations concerning the licensing and regulation of real estate inspectors to the commission at any time the committee deems appropriate. If the commission submits a proposed rule to the committee for development, the chairman of the committee or the chairman's designate shall report to the commission on a monthly basis with regard to the committee's consideration of the rule.

(f) Hearings before the committee concerning the licensing or discipline of real estate inspectors will

be conducted in accordance with §535.224 of this title (relating to Proceedings before the Committee).

§535.208. Application for a License. *[Adopted on an emergency basis October 28, 1991; adopted on permanent basis January 1, 1992; amended December 21, 1993; September 15, 1994; January 3, 1996; May 2, 1996; March 14, 1997; December 1, 1999; and January 1, 2001; Ref: §23]*

(a) A person desiring to be licensed shall file an application using forms prescribed by the commission. Prior to filing an application for a real estate inspector license or for a professional inspector license, the applicant must pay the required fee for evaluation of the education completed by the person and must obtain a written response from the commission showing the applicant meets current education requirements for the license. The commission may require an applicant to furnish materials such as source outlines, syllabi, course descriptions or official transcripts to verify course content or credit. The commission may not accept an application for filing if the application is materially incomplete or the application is not accompanied by the appropriate fee. The commission may not issue a license unless the applicant:

(1) pays the fee prescribed by the commission;

(2) satisfies any experience or education requirements established by the Real Estate License Act (the Act), §23, or by these sections;

(3) successfully completes any qualifying examination required by the Act;

(4) provides all supporting documentation or information requested by the commission in connection with the application.

(b) If the commission develops a system whereby a person may electronically file an application for a license, a person who has previously satisfied applicable education requirements and obtained an evaluation from the commission also may apply for a license by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Within 60 days after paying the fee, the applicant must complete the application process by submitting to the commission a printed copy of the application signed by the applicant and any sponsoring inspector and including a photograph of the applicant. If the applicant does not complete

the application process as required by this subsection, the commission shall terminate the application.

(c) The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Inspection Log, Form REI 1-3;

(2) Application for a License as an Apprentice Inspector, Form REI 2-6 ;

(3) Application for a License as a Real Estate Inspector, Form REI 4-7; and

(4) Application for a License as a Professional Inspector, Form REI 6-7.

(d) An application shall be considered void and subject to no further evaluation or processing when one of the following events occurs.

(1) The applicant fails to satisfy a required examination within six months from the date the application is accepted for filing.

(2) The applicant fails to provide information or documentation within 60 days after the commission makes written request for the information or documentation.

(3) The applicant fails to submit a required fee within 60 days after the commission makes written request for payment of the fee.

(e) An application for a license may be denied if the commission determines that the applicant has failed to satisfy the commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines). Notice of the denial and any hearing on the denial shall be as provided in the Act, §10 and §533.34 of this title (relating to Disapproval of an Application for a License or Registration). For the purposes of this section, the term "late renewal" means an application for a license by a person who held the same type of license no more than two years prior to the filing of the application.

(f) Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is

grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the commission in an application for a license or late renewal of a license for an apprentice or a real estate inspector.

§535.210. Fees. *[Adopted on an emergency basis October 28, 1991; adopted on permanent basis January 1, 1992; amended December 31, 1993; and October 11, 1999; Ref §23]*

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

(1) a fee of \$35 for filing an original application for a license as an apprentice inspector;

(2) a fee of \$45 for filing an original application for a license as a real estate inspector;

(3) a fee of \$60 for filing an original application for a license as a professional inspector;

(4) a fee of \$20 for the annual renewal of the license of an apprentice inspector;

(5) a fee of \$25 for the annual renewal of the license of a real estate inspector;

(6) a fee of \$25 for the annual renewal of the license of a professional inspector;

(7) a fee of \$35 for taking a license examination;

(8) a fee of \$10 for requesting a change of address or replacement of a lost or destroyed license certificate; and

(9) a fee of \$100 for deposit in the real estate inspection recovery fund upon an applicant's successful completion of an examination.

(b) Fees established by this section which are paid when an application is filed are not refundable once an application has been accepted for filing.

§535.212. Education and Experience Requirements for a License. *[Repealed January 1, 2001]*

§535.212. Education and Experience Requirements for an Inspector License. *[Adopted January 1, 2001; Ref: §23]*

(a) Educational requirements.

(1) To be accepted for inspector licensing, a

course must meet each of the following requirements.

(A) The course was devoted to a subject listed in Texas Civil Statutes, Article 6573a (the Act), §23(a)(3); provided, however, no more than 30 cumulative classroom hours in course credit may be accepted by the commission for inspection-related business, legal, report writing or ethics courses.

(B) The student was present in the classroom for the hours of credit granted by the course provider, or completed makeup in accordance with the requirements of the provider, or by applicable commission rule.

(C) Successful completion of a final examination or other form of final evaluation was a requirement for receiving credit from the provider.

(D) The daily course presentation did not exceed ten hours.

(E) The course was offered by one of the following providers:

(i) a school accredited by the commission;

(ii) a school accredited by an inspector regulatory agency of another state;

(iii) a college or university accredited by a regional accrediting association, such as the Commission on Colleges of the Southern Association of Colleges and Schools, or its equivalent, or by a recognized national or international accrediting body;

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

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

(vi) a professional trade association; or

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

(2) The term "code organization" means a non-profit organization whose members develop and advocate scientifically based codes and standards relating to one or more of the systems found in an improvement to real estate. The term "professional trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing

with mutual business or professional problems and in promoting the common interest of its members.

(3) Except as provided to the contrary by this section, the review and acceptance of correspondence courses or courses offered by alternative delivery systems such as computers will be conducted in the manner prescribed by §535.62 of this title (relating to Acceptable Courses of Study). Correspondence courses are acceptable only if offered by an accredited college or university.

(4) Providers may obtain prior approval of a classroom course by submitting the following items to the commission:

(A) a course description, including the number of hours of credit to be awarded;

(B) a timed course outline;

(C) a copy of any textbook, course outline, syllabus or other written course material provided to students; and

(D) a copy of the written final examination which measures a student's mastery of the course.

(b) Experience requirements.

(1) An applicant may substitute the following experience or additional education in lieu of the number of real estate inspections required by the Act and in lieu of the requirement that the applicant has previously been licensed for a specified time as an apprentice inspector or a real estate inspector:

(A) For a real estate inspector license, the applicant must have completed at least 30 additional hours of core real estate inspection courses acceptable to the commission, with at least 10 hours of credit each for the structural, mechanical (including appliances, plumbing, and HVAC components) and electrical systems found in improvements to real property, or the applicant must provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least three years as an architect, professional engineer, or engineer-in-training, or has at least five years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must be in verified form and from persons other than the applicant who have personal knowledge of the applicant's occupation and work.

(B) For a professional inspector license, the applicant must have completed at least 60 additional hours of core real estate inspection courses acceptable to the commission, with at least 20 hours of credit each for the structural, mechanical (including appliances, plumbing, and HVAC components) and electrical systems found in improvements to real property, or provide documentation satisfactory to the commission to establish that the person has been licensed or registered at least five years as an architect, professional engineer, or engineer-in-training, or has at least seven years of personal experience inspecting, installing, servicing, repairing or maintaining each of the structural, mechanical and electrical systems found in improvements to real property. Documentation of experience must be in verified form and from persons other than the applicant who have personal knowledge of the applicant's occupation and work.

(2) For the purpose of measuring the number of inspections required to receive a license or to sponsor apprentice inspectors or real estate inspectors, the commission will consider an improvement to real property to be any unit which is capable of being separately rented, leased or sold. Subject to the following restrictions, an inspection of an improvement to real property which includes the structural and equipment/systems of the unit will constitute a single inspection.

(A) Half credit will be given for an inspection limited to structural components only or to equipment/systems only.

(B) No more than 80% of the inspections for which experience credit is given may be limited to structural components only or to equipment/systems components only.

(C) A report which covers two or more improvements will be considered a single inspection.

(D) Real estate inspectors and professional inspectors may not receive experience credit for an inspection performed by an apprentice under their supervision.

(E) The commission may not give experience credit to the same applicant or professional inspector for more than three complete or six partial inspections per day. No more than three applicants may receive credit for the inspection of the same unit within a 30 day period, and no more than three apprentice inspectors may receive credit for an inspection of the same unit on the same day.

(F) For the purpose of satisfying any requirement that a license be held for a period of time prior to an applicant's being eligible for a license as a real estate inspector or professional inspector, the commission may not give credit for periods in which a license was on inactive status. An applicant for a real estate inspector license must have been licensed on active status for a total of at least three months within the 12 month period prior to the filing of the application. An applicant for a professional inspector license must have been licensed on active status for a total of at least 12 months within the 24 month period prior to the filing of the application.

§535.213. Schools and Courses of Study in Real Estate Inspection. *[Adopted September 15, 1994; amended January 1, 2001; Ref: §23]*

(a) Except as provided by this section, the accreditation and regulation of schools and courses of study in real estate inspection and the approval of instructors will be conducted as required for real estate schools by §535.64 of this title (relating to Accreditation of Schools and Approval of Courses and Instructors, §535.65 of this title (relating to Changes in Ownership or Operation of School; Presentation of Courses, Advertising, and Records) and §535.66 of this title (relating to Payment of Annual Fee, Audits, Investigations and Enforcement Actions). If an instructor was approved prior to the effective date of this section, the approval of the instructor expires May 1, 2001, and the instructor may apply for approval at any time.

(b) A person applying for accreditation of a real estate inspection school shall use application forms approved by the commission. All courses must be approved by the commission prior to being offered for credit. A school accredited by the commission to offer real estate courses is not required to apply for an accreditation under this section to offer real estate inspection courses, provided all courses offered by the school have been approved by the commission. The commission may submit proposed courses to the Texas Real Estate Inspector Committee for review and recommendation.

§535.214. Examinations. *[Adopted on an emergency basis October 28, 1991; adopted on permanent basis January 1, 1992; amended December 21, 1993; September 15, 1994 and January 1, 2001; Ref: §23]*

(a) There shall be an examination for a real estate inspector license and for a professional inspector license. Questions shall be used which will measure competency in the subject areas required for a license by Texas Civil Statutes, Article 6573a, §23,

(the Act) and which will demonstrate an awareness of its provisions relating to inspectors. Each applicant must achieve a score of at least 75% on the examination. The examination for a professional inspector license shall measure a higher level of competency than that required of a real estate inspector.

(b) Except as otherwise required by the Act or this section, examinations shall be conducted as provided by §535.61 of this title (relating to Examinations).

§535.215. Inactive Inspector Status.*[Adopted September 15, 1994; Ref: §23]*

(a) For the purposes of this section, an "inactive" inspector is a licensed professional inspector, real estate inspector, or apprentice inspector who does not engage in the business of performing real estate inspections as defined by Texas Civil Statutes, Article 6573a, §23, (the Act), and who has been placed on inactive status by the commission either at the inspector's request, or as otherwise provided by this section.

(b) To be placed on inactive status by request, an inspector must do the following:

(1) apply to the commission on a form approved by the commission for that purpose, or by a letter containing the inspector's name, license number and current mailing address;

(2) if the inspector is a licensed professional inspector, confirm in writing that the inspector has given any real estate inspectors or apprentice real estate inspectors sponsored by the inspector written notice that the inspector will no longer be their sponsor at least 30 days prior to filing the request for inactive status; and

(3) return the inspector's license certificate to the commission.

(c) A professional inspector who has been placed on inactive status may apply to the commission for return to active status on a form approved by the commission. A professional inspector may apply on a form approved by the commission to sponsor an apprentice inspector or real estate inspector who has been on inactive status. The commission may not return an inspector to active status or issue a license certificate to the inspector unless the inspector has completed within one year prior to the filing the request for return to active status any

applicable continuing education courses required for renewal of the type of license held by the inspector or satisfied the continuing education requirements in order to obtain the current license.

(d) An inspector who applies to renew a license and pays the applicable fee but who fails to complete any continuing education required by the Act as a condition of license renewal shall be placed on inactive status by the commission. The inspector must comply with the requirements of this section in order to return to active status.

(e) If a professional inspector terminates the sponsorship of an apprentice real estate inspector or real estate inspector, the license of the apprentice inspector or real estate inspector becomes inactive. The apprentice real estate inspector or real estate inspector must be sponsored by a professional inspector in order to return to active status.

(f) An professional inspector who has been placed on inactive status may not return to practice or sponsor apprentices or inspectors until the professional inspector has received a new license certificate from the commission. An apprentice inspector or real estate inspector who has been placed on inactive status may return to practice if the inspector has completed applicable continuing education requirements, and the inspector's sponsoring professional inspector has requested that the apprentice inspector or real estate inspector be returned to active status under the professional inspector's sponsorship in accordance with the provisions of this section.

§535.216. Renewal of License or Registration.*[Adopted February 11, 1992; amended December 21, 1993; September 15, 1994; December 1, 1999 and January 1, 2001; Ref: §23]*

(a) A person licensed by the commission under Texas Civil Statutes, Article 6573a (the Act), §23, may renew the license by timely filing the prescribed application for renewal, paying the appropriate fee to the commission and satisfying applicable continuing education requirements as required by the Act, §23(k), and by §535.218 of this title (relating to Continuing Education).

(b) The commission shall mail the prescribed renewal application form to the last known business address of the licensee at least 90 days prior to the expiration of the license. If the license is on inactive status, the form will be mailed to the licensee's last

known permanent mailing address as shown in the commission's computerized records. An inactive licensee shall furnish a permanent mailing address at the time the licensee becomes inactive and report all subsequent address changes within 10 days after a change of address. If a licensee fails to provide a permanent mailing address, the last known mailing address for the licensee will be deemed to be the licensee's permanent mailing address. An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license on an active status. It is the responsibility of the licensee to apply for renewal, and failure to receive a renewal application form does not relieve the licensee of the responsibility of applying for renewal.

(c) If the commission develops a system whereby licenses may be renewed electronically, a licensee also may renew an unexpired license by accessing the commission's Internet web site, entering the required information on the renewal application form, satisfying applicable education requirements and paying the appropriate fee in accordance with the instructions provided at the site by the commission.

(d) A licensee shall provide information requested by the commission in connection with an application to renew a license within 30 days after the commission requests the information. Failure to provide information requested by the commission in connection with a renewal application within the required time is grounds for disciplinary action under the Act, §15B(b).

(e) Renewal applications filed after expiration of the license are subject to the increased fees provided by the Act, §23(f).

(f) A renewal application is deemed filed when placed in the mail properly addressed to the commission with appropriate postage paid.

(g) An inspector licensed on active status who timely files a renewal application together with the applicable fee and evidence of completion of any required continuing education courses may continue to practice prior to receiving a new license certificate from the commission. If the license has expired and the licensee files an application to renew the license, the licensee may not practice until the new certificate is received.

§535.217. Dishonest Conduct as Grounds for Disciplinary Action. *[Adopted January 1, 2001; Ref: §23]* For the purposes of Texas Civil Statutes, Article 6573a, (the Act), §23(l), the commission deems the following conduct by a licensed inspector

to be dishonest and grounds for disciplinary action:

(1) accepting a fee or other valuable consideration in a transaction from a person, other than the inspector's client, without first disclosing to all parties in the transaction that the inspector intends to receive the fee or other valuable consideration, and obtaining the consent of the inspector's client.

(2) paying a portion of any fee received by the inspector to a service provider or a participant in a real estate transaction, other than the inspector's client, without the consent of the inspector's client.

§535.218. Continuing Education. *[Adopted February 11, 1992; amended December 21, 1993; September 15, 1994 and January 1, 2001; Ref: §23]*

(a) Except as provided by this section, core real estate inspection courses submitted by professional inspectors or real estate inspectors to satisfy the requirements of Texas Civil Statutes, Article 6573a (the Act), §23(k) for continuing education must comply with §535.212 of this title (relating to Education and Experience Requirements for a License).

(b) Courses submitted for continuing education credit must be successfully completed during the 12 month period immediately preceding the expiration date of the license which is being renewed. The commission may not grant continuing education credit twice for the same course taken by a licensee within a 12 month period.

(c) Other than for correspondence courses or courses offered by alternative delivery methods, such as by computer, completion of a final examination is not required for a licensee to obtain continuing education credit for a course.

(d) A professional inspector or real estate inspector who fails to renew a license which was subject to continuing education requirements and who files an application for renewal within one year after the previous license has expired must provide evidence satisfactory to the commission that the applicant has completed any continuing education that would have been required for renewal of the previous license. Continuing education courses submitted as part of the application must have been completed within a 24-month period prior to the filing of the application.

(e) In addition to the core real estate inspection courses defined in the Act, the commission also will accept a course related to wood-destroying insects,

radon, asbestos, lead, or other hazardous substances to satisfy continuing education requirements.

(f) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status. Professional inspectors and real estate inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status. Continuing education requirements for return to active status must be satisfied as provided by §535.215 of this title (relating to Inactive Inspector Status).

§535.220. Professional Conduct and Ethics.

[Adopted March 6, 1992; Ref: §23]

(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 and fairness while performing inspections in a real estate transaction.

(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 his client to the best of his ability and knowledge, recognizing that the client has placed his trust and confidence in the inspector.

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

(3) The inspector should conduct his business in a manner that will assure his client of the inspector's independence from outside influence and interests that might compromise his 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 himself, his 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 Texas Real Estate Commission or Texas Civil Statutes, Article 6573a, §23, the inspector should report the possible violation to the Texas Real Estate Commission.

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

§535.221. Advertisements.*[Adopted February 1, 1993; amended December 21, 1993; March 12, 1997 and January 1, 2001; Ref. §23]*

(a) For the purposes of this section advertisements include, but are not limited to, inspection reports, business cards, invoices, signs, all electronic media including E-mail and the Internet, purchased telephone directory displays and advertising by newspaper, radio and television.

(b) Advertisements by a person licensed as an inspector must contain the name or assumed business name of the licensee. The advertisements must also contain the license number of the person. If the person is licensed as a real estate inspector or as an apprentice inspector, the advertisements must also contain the following:

(1) the name or assumed name of the person's sponsoring professional inspector; and

(2) a statement indicating that the person is sponsored by that professional inspector.

(c) A licensed professional inspector, real estate inspector or apprentice inspector shall immediately notify the commission in writing of the licensee's use of an assumed name in the inspection business.

(d) The commission may reprimand or suspend or revoke the license of a person who is found to have engaged in false or misleading advertising or to have failed to comply with provisions of this section.

§535.222. Standards of Practice. *[Repealed September 1, 2000]*

§535.223. Standard Inspection Reports. *[Effective January 1, 1998; Amended July 8, 1998; January 1, 1999 and January 1, 2001; Ref: §23(r)]*

(a) The Texas Real Estate Commission adopts by reference Property Inspection Report, REI 7A-0, approved by the Texas Real Estate Commission in 1998 and published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of one-to-four family residential property must be reported on Form REI 7A-0 ("the form"). Licensed inspectors shall complete the applicable portions of the form and provide the report within a reasonable period of time to the persons for whom the inspection has been performed. If necessary to report the inspection of a part, component or system not contained in the form, or space provided on the form is inadequate for a complete reporting of the inspection, such as when the inspector provides a higher level of inspection performance than that required by the standards of practice adopted by the commission, the inspector may attach additional pages to the form. When providing comments or additional pages to report on items listed on a form, the inspector shall arrange the comments or additional pages to follow the sequence of the items listed in the form adopted by the commission. If a part, component or system contained in the form is present in the property and has not been inspected under the departure provisions of §535.227 of this title (relating to Standards of Practice: General Provisions), the inspector shall make an appropriate notation on the form, clearly indicating the reason the part, component, or system has not been inspected.

(c) Inspectors may reproduce the form adopted by the commission from printed copies obtained from the commission and by computer. With the exception of the changes to the form which are permitted by this section, the inspector shall reproduce the text of the form *verbatim* and the spacing, length of blanks, borders, fonts and placement of text on the page must appear to be identical to that used by the commission in the printed version of the form. Inspectors may insert information in the spaces provided for that purpose.

(d) When using form REI 7A-0, the inspector may make the following changes.

(1) The inspector may select the type and size of the fonts, provided the fonts are no smaller than those used in the printed version of the form adopted by the commission.

(2) The inspector may use legal sized (8 1/2" by 14") paper.

(3) The inspector may select the information to be inserted below the caption "Property Inspection Report" and above the text of the form relating to TREC rules; however, the inspector must include the name of the inspector's client, the address or other identification of the inspected property, the date the inspection was performed, and the name and license number of any inspector participating in the inspection. If the person performing the inspection is licensed as an apprentice inspector or real estate inspector, the license number and name of the inspector's sponsor also must be included, and the inspector supervising an apprentice must sign the report.

(4) The inspector may select other information to be inserted in the space on the first page of the report reserved for that purpose; provided the caption "Additional Information Provided By Inspector" is not deleted.

(5) The inspector may delete inapplicable provisions relating to the optional systems and re-letter the remaining provisions.

(6) The inspector may add footers to each page of the report except the first page and may add headers to each page of the report.

(7) Whether the form is reproduced by computer or is preprinted by the inspector, the inspector may allocate such space for comments as the inspector deems necessary or may attach additional pages of comments to the report.

(8) The inspector may renumber the pages of the form to correspond with any changes made necessary due to adjusting the space for comments or deleting text.

(9) The inspector may list other built-in appliances and additional captions, letters and check boxes for those items.

(10) The inspector may add numbers or letters in parentheses to the right of the caption for each item and may place the property identification and page number either at the top or bottom of the page.

(e) This section does not apply to the following:

(1) inspections performed for a lender or for a person other than the prospective buyer or prospective seller;

(2) quality control construction inspections of new homes, including phased construction inspections, inspections performed solely to determine compliance with building codes, warranty or underwriting requirements, or inspections required by a municipality;

(3) inspections of remodeling or re-inspections;

(4) inspections for which federal or state law requires use of a different report; or

(5) inspections for which a relocation company or a seller's employer requires use of a different report, and the first page of the report contains a notice either in bold or underlined print reading substantially similar to the following: "This report was prepared for a relocation company or seller's employer in accordance with the company's requirements. The report is not intended as a substitute for an inspection of the property by an inspector of the buyer's choice. Standard inspection reports required by the Texas Real Estate Commission may contain additional information a buyer should consider in making a decision to purchase." If the report form required by the relocation company or seller's employer does not contain the notice, the inspector may attach the notice to the first page of the report at the time the report is prepared by the inspector. If the inspector attaches the notice, the inspector is not required to use a form adopted by the commission to report the inspection.

(f) Failure to comply with this section is grounds for the suspension or revocation of an inspector's license or the imposition of an administrative penalty

by the commission.

§535.224. Proceedings before the Committee.

[Adopted on an emergency basis October 28, 1991; adopted on permanent basis January 1, 1992; amended December 21, 1993 and January 1, 2001; Ref: §23]

(a) The committee may be authorized by the commission to conduct administrative hearings or recommend the entry of final orders by the commission, or both, in contested cases regarding:

(1) professional inspectors, real estate inspectors, or apprentice inspectors who are alleged to have violated a provision of Texas Civil Statutes, Article 6573a, (the Act), §23 or a rule of the commission;

(2) persons whose applications for licensing as professional inspectors, real estate inspectors or as apprentice inspectors have been initially denied by the commission on a ground relating to the applicant's honesty, trustworthiness and integrity; and

(3) professional inspectors, real estate inspectors, or apprentice inspectors who have been convicted of a criminal offense listed in §541.1 of this title (relating to Criminal Offense Guidelines).

(b) If the committee determines after a hearing that disciplinary action is warranted, the committee may recommend that the commission issue a reprimand, or suspend or revoke a license. The committee may recommend that an order of suspension or revocation be probated in whole or in part by the commission or that the probation be subject to reasonable terms and conditions in the manner contemplated by the Act, §15B(d). The committee may recommend that the commission enter a final order denying a license or that a probationary license be issued in the manner contemplated by §535.94 of this title (relating to Hearing on Application Disapproval; Probationary License).

(c) Proceedings before the committee shall be conducted by the committee in the manner contemplated by §§535.31-533.39 of this title (relating to Practice and Procedure) and with the Government Code, Chapter 2001, et. seq.. The chairman of the committee or a member designated by the chairman shall act as presiding officer and may vote as any other member.

(d) In addition to the grounds for disciplinary action provided in the Act, §23(l), a license of an

inspector may be suspended or revoked by the commission if the inspector:

(1) fails to make good a check issued to the commission within 30 days after the commission had mailed a request for payment by certified mail to the inspector's last known business address as reflected by the commission's records;

(2) fails or refuses on demand to produce a document, book or record in his possession concerning a real estate inspection conducted by him for examination by the commission or its authorized agent; or

(3) fails within 10 days to provide information requested by the commission or its authorized agent in the course of an investigation of a complaint.

§535.226. Sponsorship of Apprentice Inspectors and Real Estate Inspectors. *[Adopted on an emergency basis October 28, 1991; adopted on permanent basis January 1, 1992; amended February 1, 1993; December 21, 1993; September 15, 1994 and January 1, 2001; Ref: §23]*

(a) An apprentice inspector may be sponsored by only one licensed professional inspector. A real estate inspector may be sponsored by only one licensed professional inspector.

(b) A change in sponsorship shall be reported to the commission immediately. If the sponsorship has ended because the professional inspector has terminated the sponsorship, the professional inspector shall immediately so notify the apprentice or real estate inspector in writing. If the sponsorship has ended because the apprentice inspector or real estate inspector has left the sponsorship, the apprentice inspector or real estate inspector shall immediately so notify the professional inspector in writing.

(c) An apprentice inspector or real estate inspector who is on active status may act for the new sponsoring professional inspector once the written notice has been placed in the mail to the commission along with the fee for reporting any change of address. If the apprentice or real estate inspector is on inactive status, the return to active status shall be subject to the requirements of §535.215 of this title (relating to Inactive Inspector Status).

(d) Written inspection reports must be signed by the apprentice inspector who performed the inspection and by the real estate inspector or professional inspector who directly supervised the

inspection.

(e) A licensed professional inspector is responsible for the conduct of a licensed apprentice inspector sponsored by the professional inspector. At a minimum, a licensed professional inspector shall provide direct supervision of the apprentice inspector by the following means:

(1) accompanying the apprentice inspector during the performance of all inspections performed by the apprentice or arranging for a real estate inspector to accompany the apprentice; and

(2) reviewing any written inspection report prepared by the apprentice inspector for compliance with the provisions of the standards of practice adopted by the commission.

(f) A licensed professional inspector is responsible for the conduct of a licensed real estate inspector sponsored by the professional inspector. A licensed professional inspector shall provide indirect supervision in a manner which protects the public when dealing with the real estate inspector and any licensed apprentice inspectors directly supervised by the real estate inspector. At a minimum a professional inspector shall provide indirect supervision of the real estate inspector by doing the following:

(1) communicating with the real estate inspector on a regular basis about the inspections being performed by the real estate inspector and

(2) reviewing on a regular basis written inspection reports prepared by the real estate inspector for compliance with the provisions of the standards of practice adopted by the commission.

§535.227. Standards of Practice: General Provisions. *[Adopted September 1, 2000; Ref: §23(b)(1)(G)]*

(a) Definition of terms. The following words have the following meanings, unless the context clearly indicates otherwise.

(1) Act - The Real Estate License Act, Article 6573a, Texas Civil Statutes.

(2) Functioning - Performing in an expected or required manner; carrying out the design purpose or intended operation of a part, system, component, member.

(3) Inaccessible - Not having access without the use of special tools, equipment, or instruments, or

removing doors, walls, stored items or similar obstructions, or by causing damage to a structure, finish or component, equipment or system, or by virtue of inadequate clearance, walkways, passageways, or hazardous condition.

(4) In Need of Repair - Does not adequately function or perform.

(5) Inspect - To look at and examine accessible items, parts, systems or components without, except as required by the rules of the Texas Real Estate Commission, laboratory, scientific or engineering evaluation or testing, destructive tests or the dismantling or removal of parts, members or components.

(6) Inspector - A person licensed as a professional inspector, a person licensed as an apprentice inspector or a person licensed as a real estate inspector.

(7) Performance - The act of carrying out, completing, executing or achievement of an operation, design or function in a manner consistent with the intent of the manufacturer, designer or accepted industry practice.

(8) Report - A written or oral communication of the inspector's opinions, observations, determinations, and findings in an inspection.

(9) Standards of Practice - §535.227 of this title (relating to Standards of Practice: General Provisions), §535.228 of this title (relating to Standards of Practice: Inspection Guidelines for Structural Systems, §535.229 of this title (relating to Standards of Practice: Inspection Guidelines for Mechanical Systems: Appliances, Cooling Systems, Heating Systems, Ducts, Vents and Flues, and Plumbing Systems), §535.230 of this title (relating to Standards of Practice: Inspection Guidelines for Electrical Systems) and §535.231 of this title (relating to Standards of Practice: Optional Systems).

(b) Scope.

(1) The standards of practice are the minimum levels of inspection practice required of inspectors for the accessible parts, components, and systems typically found in improvements to real property, excluding detached structures, decks, docks and fences. The inspector may provide a higher level of inspection performance than required by the standards of practice and may inspect parts, components, and systems in addition to those described by the standards of practice.

(2) The inspector shall:

(A) inspect items, parts, systems, components and conditions which are present and visible at the time of the inspection, but the inspector is not required to determine or estimate the remaining life expectancy or future performance of any inspected item, part, system or component;

(B) operate mechanical and electrical equipment, systems, and appliances during an inspection in normal modes and operating range at the time of the inspection;

(C) report which of the parts, components, and systems present in the property have or have not been inspected;

(D) report as in need of repair inspected parts, components or systems that are not functioning or that the standards of practice require the inspector to report as in need of repair;

(E) address all of the parts, components, and systems contained in the standards of practice in the property being inspected.

(F) complete the standard inspection report form under §535.223 of this title (relating to Standard Inspection Reports) if that section applies;

(G) identify in any written report the inspector who performed the inspection by name and license number;

(H) comply with any other law or license requirement necessary to perform inspections or services other than what is required by the standards of practice, such as an air-conditioning and refrigeration contractor license which may be required for the inspector to make a direct in-line connection to a refrigerant system, or a structural pest control license which may be required to perform a wood-destroying-insect inspection;

(3) In the event of a conflict between a specific provision and a general provision in the standards of practice, the specific provision controls. The standards of practice do not apply to the following:

(A) parts, components or systems other than those specifically described;

(B) conditions other than those specifically described, such as environmental conditions, presence of toxic or hazardous wastes or substances, presence of termites or other wood-destroying insects or organisms, compliance

with codes, ordinances, statutes or restrictions or the efficiency, quality, durability of any item inspected;

(C) any part, component or system the inspector excludes under the departure provision in this section; and

(D) any determination of insurability or warrantability of any part, component or system.

(c) Departure Provision.

(1) An inspector shall exclude from the inspection any part, component or system which the inspector is not competent or qualified to inspect.

(2) An inspector may exclude any part, component or system required for inspection by the standards of practice which is inaccessible, cannot be inspected due to circumstances beyond the control of the inspector, or the inspector's client has agreed is not to be inspected.

(3) This departure provision does not prohibit an inspector from specializing nor require the inspector to specifically exclude other parts, components or systems not ordinarily considered a part of the inspector's specialty. However, the inspector shall comply with the standards of practice for the items being inspected.

(4) If an inspector excludes any part, component or system listed in the standards of practice, other than one which the client has agreed is not to be inspected, the inspector shall:

(A) advise the client at the earliest practicable time that the specific part, component or system will not be included in the inspection; and

(B) state in any written inspection report that the excluded part, component or system was not inspected.

(d) Enforcement. Failure to comply with §535.227 of this title (relating to Standards of Practice: General Provisions), §535.228 of this title (relating to Standards of Practice: Inspection Guidelines for Structural Systems), §535.229 of this title (relating to Standards of Practice: Inspection Guidelines for Mechanical Systems: Appliances, Cooling Systems, Heating Systems, Ducts, Vents and Flues, and Plumbing Systems), §535.230 of this title (relating to Standards of Practice: Inspection Guidelines for Electrical Systems) and §535.231 of this title (relating to Standards of Practice: Optional

Systems) is a ground for disciplinary action as prescribed by the Act, §23 (1)(7) and §535.224 of this title (relating to Proceedings before the Committee).

§535.228. Standards of Practice: Inspection Guidelines for Structural Systems. [Adopted September 1, 2000; Ref: §23(b)(1)(G).]

(a) Foundations. The inspector shall:

(1) report the type of foundation (for example, slab-on-grade or pier and beam);

(2) inspect the foundation, related structural components and/or slab surfaces;

(3) inspect the crawl space area to determine the general condition of foundation components and report the method used to observe the crawl space if the inspector did not enter the crawl space because the space was inaccessible, hazardous conditions were present, or access or visibility was limited;

(4) render a written opinion as to the performance of the foundation;

(5) report general indications of foundation movement that are present and visible, such as sheetrock cracks, brick cracks, out-of-square door frames or floor slopes;

(6) report as in need of repair any post tensioned cable ends that are not protected;

(7) report as in need of repair a crawl space that does not appear to be adequately ventilated;

(8) report as in need of repair conditions or symptoms that may indicate the possibility of water penetration that are present and visible, such as improper grading around foundation walls or plumbing leaks; and

(9) report as in need of repair conditions that are present and visible and may be adversely affecting foundation performance, such as erosion or water ponding.

(b) Specific limitations for foundations. The inspector is not required to enter a crawl space or any areas where headroom is less than 18 inches and the width of the access opening is less than two feet, or where the inspector reasonably determines conditions or materials are hazardous to health or safety of the inspector.

(c) Interior walls, doors, ceilings and floors. The inspector shall:

(1) report as in need of repair deficiencies of the surfaces of walls, ceilings and floors as related to structural performance or water penetration that are present and visible;

(2) report as in need of repair accessible doors that do not operate properly, excluding locks and latches;

(3) report as in need of repair deficiencies in steps, stairways, balconies and railings,

(4) report as in need of repair spacings between intermediate balusters, spindles, or rails for steps, stairways, balconies, and railings that permit passage of an object greater than four inches in diameter; and

(5) report as in need of repair the absence of safety glass in hazardous locations.

(d) Specific limitations for Interior walls, doors, ceilings and floors. The inspector is not required to do the following:

(1) determine the condition of floor, wall or ceiling coverings unless such conditions affect structural performance or indicate water penetration;

(2) report obvious damage to floor, wall or ceiling coverings;

(3) determine the condition of paints, stains and other surface coatings; or

(4) determine condition of cabinets.

(e) Exterior walls and doors, windows and door glazing. The inspector shall:

(1) report as in need of repair present and visible deficiencies of exterior walls that are related to structural performance and water penetration;

(2) report as in need of repair deficiencies in the condition and operation of exterior doors and garage doors, including door locks and latches when present;

(3) report as in need of repair damaged glazing in windows and exterior doors;

(4) report as in need of repair any insulated

windows that are obviously fogged or display other evidence of broken seals;

(5) report as in need of repair the absence of safety glass in hazardous locations;

(6) report as in need of repair missing or damaged window and door screens;

(7) report as in need of repair in homes having burglar bars the absence of functional keyless burglar bars in appropriate locations;

(8) report as in need of repair inoperable windows at burglar bar locations of sleeping rooms or egress areas and any inoperable windows at other randomly sampled accessible burglar bar locations; and

(9) report as in need of repair spacings between intermediate balusters, spindles and rails that permit passage of an object greater than four inches in diameter.

(f) Specific limitations for exterior walls and doors, windows and door glazing. The inspector is not required to do the following:

(1) report the condition or presence of storm windows or doors, awnings, shutters or security devices or systems;

(2) determine the condition of paints stains or other surface coatings; or

(3) determine the presence of, or extent or type of, insulation or vapor barriers in exterior walls.

(g) Fireplace and chimney. The inspector shall:

(1) report as in need of repair deficiencies in the visible components and structure of the chimney and fireplace;

(2) inspect the interior of the firebox and the visible flue area, and report as in need of repair built up creosote in visible areas of the firebox and flue (the inspector is not required to determine the adequacy of the draft or perform a chimney smoke test);

(3) report as in need of repair a damper that does not operate;

(4) report as in need of repair the absence of non-combustible hearth extension;

(5) report as in need of repair deficiencies in the

lintel, hearth and material surrounding the fireplace, including clearances from combustible materials;

(6) report as in need of repair the absence of firestopping at the attic penetration of the chimney flue, where accessible;

(7) report as in need of repair any gas log lighter valves that do not function or leak gas;

(8) report as in need of repair any circulating fan that does not operate, if present;

(9) report as in need of repair deficiencies in combustion air vent, if present; and

(10) report as in need of repair deficiencies in chimney coping or crown, caps or spark arrestor (inspected from ground level at a minimum).

(h) Roof, roof structure and attic. The inspector shall:

(1) report the type of roof covering and report as in need of repair:

(A) a roof covering that is not appropriate for the slope of the roof;

(B) fasteners that are not present or that are not appropriate, (where it can be reasonably determined); and

(C) roof jacks, flashing and counter flashing that are not present or not properly installed.

(2) inspect the general condition of, and report evidence of previous repairs to, flashing, skylights and other roof penetrations;

(3) report as in need of repair inadequate attic space ventilation;

(4) report as in need of repair deficiencies in the roof covering, structure and sheathing;

(5) report any visible evidence of moisture penetration;

(6) report as in need of repair the lack of or inappropriate installation of components such as purlins, struts, collar ties or rafter ties, where necessary;

(7) report as in need of repair excessive deflections or depressions in the roof's surface relating to the performance of the framing and the roof deck;

(8) enter and inspect attic space(s) except when inadequate access or hazardous conditions exist as reasonably determined by the inspector and report the method used to inspect the attic if the inspector did not enter the attic;

(9) report the method used to inspect the roof if the inspection is performed from other than roof level;

(10) inspect for the presence, and report the approximate depth of, insulation where visible; and

(11) report as in need of repair deficiencies in visible installed gutter and downspout systems.

(i) Specific limitations for roof, roof structure and attic. The inspector is not required to do the following:

(1) determine the remaining life expectancy of the roof covering; or

(2) inspect the roof from the roof level if the inspector reasonably determines that the inspector cannot safely reach or stay on the roof, or that damage to the roof or roof covering may result from walking on the roof.

(j) Porches and decks. The inspector shall:

(1) report as in need of repair structural deficiencies in porches, decks, steps, balconies and carports as to visible footings, joists, deckings, railings and attachment points, where applicable; and

(2) report as in need of repair (except for decks which are not higher than 30 inches as measured from the adjacent grade) spacings between intermediate balusters, spindles or rails that permit passage of an object greater than four inches in diameter.

(k) Specific limitations for porches and decks. The inspector is not required to inspect detached structures or waterfront structures and equipment, such as docks or piers.

§535.229. Standards of Practice: Inspection Guidelines for Mechanical Systems: Appliances, Cooling Systems, Heating Systems, Ducts, Vents and Flues, and Plumbing Systems.
[Adopted September 1, 2000; Ref: §23(b)(1)(G).]

(a) Dishwasher. The inspector shall:

(1) report as in need of repair any deficiencies in the door gasket, control knobs and interior parts, including the dish tray, rollers, spray arms and the soap dispenser;

(2) report as in need of repair any interior signs of rust;

(3) report as in need of repair a door spring that does not operate properly;

(4) report as in need of repair deficiencies in the discharge hose or piping or the lack of back flow prevention;

(5) report as in need of repair units that are not securely mounted;

(6) report as in need of repair any water leaks;

(7) inspect the unit's operation in normal mode with the soap dispenser closed; and

(8) report as in need of repair spray arms that do not turn, soap dispensers that do not open or drying elements that do not operate.

(b) Food waste disposer. The inspector shall:

(1) report as in need of repair any deficiencies in the splash guard, grinding components, wiring and exterior;

(2) report as in need of repair a unit that is not securely mounted; and

(3) inspect the operation of the unit and report as in need of repair any unusual noise or vibration level and any signs of water leaks.

(c) Range exhaust vent. The inspector shall:

(1) report as in need of repair any deficiencies in the filter, vent pipe, light and switches;

(2) inspect the operation of the blower and report as in need of repair any unusual sounds or vibration levels, or if the blower does not operate at all speeds;

(3) report as in need of repair a vent pipe that does not terminate outside the structure when the unit is not of recirculating type or configuration.

(4) report as in need of repair a vent pipe that is of inadequate material; and

(5) report as in need of repair the absence of a

range exhaust vent.

(d) Electric or gas ranges. The inspector shall:

(1) report as in need of repair broken or missing knobs, elements, drip pans or other parts, inadequate clearance from combustible material, or the absence of an anti-tip device;

(2) report as in need of repair signal lights and elements or burners that do not operate at low and high settings;

(3) report as in need of repair improper materials that are used for the gas branch line and the connection to the appliance; and

(4) report as in need of repair the absence of a gas shut-off valve, or valve that is not properly located, is inaccessible, or leaks.

(e) Electric or gas ovens. The inspector shall:

(1) report as in need of repair any broken or missing knobs, handles, glass panels, door hinges, lights or light covers or other parts, or inadequate clearance from combustible material;

(2) report as in need of repair deficiencies in the door gasket, tightness of closure and operation of the latch;

(3) report as in need of repair an oven that is not securely mounted;

(4) report as in need of repair heating elements and thermostat sensing elements that are not properly supported;

(5) report as in need of repair deficiencies in the operation of the heating elements or the lighting, operation and condition of the flame;

(6) report as in need of repair deficiencies in the operation of the clock and timer, thermostat and door springs; and

(7) report as in need of repair any inaccuracy of the thermostat more than a 25 degree range plus or minus of a 350 degree setting, as measured by a thermometer.

(f) Microwave oven. The inspector shall:

(1) report as in need of repair any broken or missing knobs, handles, glass panels, or other parts, or a unit that is not securely mounted;

(2) report as in need of repair any deficiencies in the door and seal (the inspector is not required to test for radiation);

(3) report as in need of repair an oven that does not operate by heating a container of water or with other test equipment, as reasonably determined by the inspector; and

(4) report as in need of repair a light that does not operate.

(g) Trash compactor. The inspector shall:

(1) inspect the overall condition of the unit;

(2) report as in need of repair a unit that does not operate or operates with unusual noise or vibration levels; and

(3) report as in need of repair a unit that is not securely mounted in place.

(h) Other built-in appliances. The inspector shall report as in need of repair any deficiencies in condition or operation of other built-in appliances not listed in this section.

(i) Bathroom exhaust vents and electric heaters. The inspector shall operate the unit, and report as in need of repair unusual sounds, speed and vibration levels or, when possible, vent pipes that do not terminate outside the structure.

(j) Whole house vacuum system. The inspector shall:

(1) inspect the condition of the main unit;

(2) report as in need of repair a unit that does not operate; and

(3) inspect the system from all accessible outlets throughout the house.

(k) Water heaters. The inspector shall:

(1) report the energy source;

(2) inspect the unit and report as in need of repair fittings that leak or are corroded;

(3) report as in need of repair temperature and pressure relief valve piping that lacks gravity drainage, is improperly sized (no smaller than the outlet fittings), has deficiencies in material, or lacks a correct termination;

(4) report as in need of repair a temperature and pressure relief valve that does not operate when the valve is of an operable type and operation will not cause damage to persons or property as reasonably determined by the inspector (for example, it would be reasonable not to operate the valve if there is improper or undetermined termination of the drain pipe, a corroded or damaged valve, improper installation of valve or drain pipe, the drain pipe is of inappropriate material or there is no water supply cut-off valve at the unit);

(5) report as in need of repair any broken or missing parts, covers or controls;

(6) report as in need of repair deficiencies in the burner, flame and burner compartment, the operation of heating elements and the condition of wiring;

(7) report as in need of repair deficiencies in materials used for the gas branch line and the connection to the appliance, the absence of a gas shut-off valve, or a valve that is not properly located, is inaccessible, or leaks;

(8) if applicable, report as in need of repair deficiencies in the vent pipe, draft diverter, draft hood and their condition, draft, proximity to combustibles and vent termination point, observing for adequate combustion and draft air;

(9) report as in need of repair the lack of a safety pan and drain (including the termination of the drain line) when applicable;

(10) report as in need of repair an unsafe location or installation; and

(11) inspect garage units or units which are located in rooms or enclosures opening into a garage and report as in need of repair the following:

(A) a lack of protection for physical damage to the unit; and

(B) burners, burner ignition devices or heating elements, switches or thermostats that are not a minimum of 18 inches above the lowest garage floor elevation.

(l) Doorbell and chimes. The inspector shall:

(1) inspect the condition of the unit and report as in need of repair a unit that does not operate; and

(2) report as in need of repair any deficiencies in visible and accessible parts.

(m) Attic power vents. The inspector shall:

(1) report as in need of repair deficiencies in the operation and installation of the unit, including the wiring and mounting of the thermostat control, if so equipped and accessible; and

(2) report as in need of repair unusual sounds or speed and vibration levels.

(n) Garage door operator. The inspector shall:

(1) report as in need of repair deficiencies in the installation, condition and operation of the garage door operator;

(2) operate the door both manually and by an installed automatic door control;

(3) report as in need of repair a door that does not automatically reverse during closing cycle, any installed electronic sensors that are not operable or not installed at the proper heights above the garage floor ; and

(4) report as in need of repair door locks or side ropes that have not been removed or disabled.

(o) Hydrotherapy or whirlpool equipment. The inspector shall:

(1) report as in need of repair a unit that does not operate, leaks, or is inaccessible;

(2) report as in need of repair a unit that lacks a ground fault circuit interrupter or has an interrupter that does not operate;

(3) report as in need of repair switches that are not in a safe location or do not operate;

(4) report evidence of leaks under the tub if the access cover is available and accessible, reporting when the cover is absent or inaccessible (the inspector is not required to determine the adequacy of self-draining features of the circulation system); and

(5) report as in need of repair deficiencies in the ports, valves, grates and covers.

(p) Specific limitations for appliances. The inspector is not required to do the following:

(1) operate or determine the condition of other auxiliary components of inspected items; or

(2) inspect self-cleaning functions.

(q) Cooling systems other than evaporative coolers. The inspector shall:

(1) report the type of system and energy sources;

(2) operate the system using normal control devices except when the outdoor temperature is less than 60 degrees Fahrenheit;

(3) inspect for proper performance; such as by observing the temperature difference between the supply air and the return air or noticeable vibration of the blower fan and report as in need of repair any deficiencies;

(4) report as in need of repair the lack of, or deficiencies in drainage of, condensate drain line and secondary drain line when applicable, including pipes made of inadequate material;

(5) report as in need of repair a primary drain pipe that terminates in a sewer vent, if the termination is visible;

(6) report as in need of repair a safety pan that is not appropriately sized for the evaporator coil or free of water or debris;

(7) report as in need of repair a return chase and plenum that are not free of improper and hazardous conditions, such as gas pipes, sewer vents, refrigerant piping or electrical wiring.

(8) report as in need of repair the lack of insulation on refrigerant pipes and the primary condensate drain pipe;

(9) report as in need of repair a condensing unit that does not have adequate clearances, or air circulation, or that has deficiencies in the condition of fins, location, levelness and elevation above ground surfaces; and

(10) report as in need of repair conductor sizing and over-current protective devices that are not appropriately sized for the unit.

(r) Evaporative coolers. The inspector shall:

(1) operate the motor and report as one or two speed;

(2) observe the electrical pigtail connection at the motor;

(3) inspect the power source in the unit;

(4) report as in need of repair a pump that does not function or deficiencies in the spider tubes, tube clips and bleeder system;

(5) report as in need of repair deficiencies in the water supply line and float bracket;

(6) report as in need of repair the absence of a minimum one-inch air gap between water discharge at float and water level;

(7) report as in need of repair deficiencies in the fan (blower) and squirrel cage or rust build-up, deterioration or corrosion;

(8) report as in need of repair deficiencies in the fan belt and pulleys;

(9) report as in need of repair deficiencies in the housing side panels, the water trays, the exterior housing and the roof frame;

(10) report as in need of repair deficiencies in the roof jack or other mounting point and the location of the seasonal damper at the unit; and

(11) report as in need of repair deficiencies in the interior registers and the supply duct.

(s) Specific limitations for cooling systems. The inspector is not required to do the following:

(1) inspect for the pressure of the system coolant or determine the presence of leaks;

(2) program digital-type thermostats or controls; or

(3) operate setback features on thermostats or controls.

(t) Heating systems. The inspector shall:

(1) report the type of heating system and its energy sources;

(2) report as in need of repair a system that does not operate properly using normal control devices;

(3) report as in need of repair deficiencies in the controls and accessible operating components of the system;

(4) in gas units, inspect the burner, and report as in need of repair deficiencies in the burner compartment, type, condition, draft and termination of the vent pipe, or proximity to combustibles; the

lack of combustion and draft air or inappropriate location, or the lack of forced air in the burner compartment (full evaluation of the integrity of a heat exchanger requires dismantling of the furnace and is beyond the scope of a visual inspection);

(5) report as in need of repair gas units that display flame impingement, uplifting flame, improper flame color or excessive scale buildup;

(6) report as in need of repair gas units that use improper materials for the gas branch line and the connection to the appliance;

(7) report as in need of repair in gas units deficiencies in materials used for the gas branch line and the connection to the appliance, the absence of a gas shut-off valve, or a valve that is not properly located, is inaccessible, or leaks; and

(8) report as in need of repair elements in electric furnaces that do not operate;

(9) report as in need of repair a return chase or plenum that are not free of improper and hazardous conditions, such as gas pipes, sewer vents, refrigerant piping or electrical wiring; and

(10) report if the inspector deemed the furnace to be inaccessible.

(u) Specific limitations for heating systems. The inspector is not required to do the following:

(1) inspect accessories such as humidifiers, air purifiers, motorized dampers, heat reclaimers, electronic air filters or wood-burning stoves;

(2) determine the efficiency or adequacy of a system;

(3) program digital-type thermostats or controls; or

(4) operate radiant heaters, steam heat systems or unvented gas-fired heating appliances.

(v) Ducts, vents (including dryer vents) and flues. The inspector shall:

(1) report as in need of repair deficiencies such as damaged ducting or insulation, improper material or improper routing of ducts where visible and accessible;

(2) report as in need of repair the absence of air flow at all accessible supply registers in the habitable areas of the structure;

(3) report as in need of repair deficiencies in accessible duct fans and filters;

(4) report as in need of repair deficiencies in installation, such as gas piping, sewer vents, electrical wiring or junction boxes in the plenum, returns or chases or improper sealing, where visible;

(5) report as in need of repair deficiencies in the flue system components;

(6) report as in need of repair a flue or vent pipe that does not properly terminate; and

(7) report as in need of repair deficiencies in materials used for the venting systems.

(w) Specific limitations for ducts and vents. The inspector is not required to do the following:

(1) determine the efficiency, adequacy or capacity of the systems;

(2) determine the uniformity of the supply of conditioned air to the various parts of the structure;

(3) determine the types of materials contained in insulation, wrapping of pipes, ducts, jackets, boilers and wiring;

(4) operate venting systems unless ambient temperatures or other circumstances, in the reasonable opinion of the inspector, are conducive to safe operation without damage to the equipment; or

(5) operate a unit outside its normal operating range as reasonably determined by the inspector.

(x) Plumbing systems. The inspector shall:

(1) inspect and report as in need of repair deficiencies in the type and condition of all accessible and visible water supply and waste-water and vent pipes;

(2) inspect and report as in need of repair deficiencies in the operation of all fixtures and faucets where the flow end of the faucet is not connected to an appliance;

(3) report as in need of repair the lack of back-flow devices, anti-siphon devices or systems or air gaps when applicable;

(4) report as in need of repair incompatible materials in connecting devices between differing metals in the supply system, where visible;

(5) report as in need of repair deficiencies in water supply by viewing functional flow in two fixtures operated simultaneously;

(6) report as in need of repair deficiencies in functional drainage at accessible plumbing fixtures;

(7) report as in need of repair deficiencies in installation and identification of hot and cold faucets;

(8) report as in need of repair mechanical drainstops that are missing or do not operate if installed on sinks, lavatories and tubs;

(9) report as in need of repair commodes that have cracks in the ceramic material, are improperly mounted on the floor, leak or have tank components which do not operate;

(10) report as in need of repair accessible supply and drain pipes that leak;

(11) report as in need of repair the lack of a visible vent pipe system to the exterior of the structure or improper routing or termination of the vent system;

(12) report as in need of repair a shower enclosure that leaks; and

(13) report as in need of repair any exterior faucet attached or immediately adjacent to the structure that does not operate properly.

(y) Specific limitations for plumbing systems. The inspector is not required to do the following:

(1) operate any main, branch or shut-off valves;

(2) inspect any system that has been shut down or otherwise secured;

(3) inspect any components that are not visible or accessible;

(4) inspect any exterior plumbing components such as water mains, private sewer systems, water wells, sprinkler systems or swimming pools;

(5) inspect fire sprinkler systems;

(6) inspect or operate drain pumps or waste ejector pumps;

(7) inspect the quality or the volume of well water;

- (8) determine the potability of any water supply;
- (9) inspect water-conditioning equipment, such as softeners or filter systems;
- (10) inspect solar water heating systems;
- (11) determine the effectiveness of anti-siphon devices on appropriate fixtures or systems;
- (12) operate free-standing appliances;
- (13) inspect private water supply systems, swimming pools, or pressure tanks;
- (14) inspect the gas supply system for leaks; or
- (15) inspect for sewer clean-outs;

§535.230. Standards of Practice: Inspection Guidelines for Electrical Systems. *[Adopted September 1, 2000; Ref: §23(b)(1)(G).]*

(a) Service entrance and panels. The inspector shall:

- (1) inspect service entrance cables and report as in need of repair deficiencies in the integrity of insulation, drip loop, separation of conductors at weatherheads and clearances;
- (2) report as in need of repair a drop, weatherhead or mast that is not securely fastened;
- (3) report as in need of repair the lack of a grounding electrode conductor in the service where visible, or the lack of secure connection to the grounding electrode or grounding system;
- (4) report as in need of repair accessible main or subpanels that are not secured to the structure or appropriate for their location (weather-tight if exposed to weather, appropriate clearances and accessibility), do not have inside covers (dead fronts) in place, do not have conductors protected from the edges of metal panel boxes, do not have trip ties installed on labeled 240 volt circuits, do not have proper fasteners or do not have knockouts filled;
- (5) inspect and report as in need of repair deficiencies in the type and condition of the wiring in the panels, in the compatibility of overcurrent protectors for the size of conductor being used and in sizing of listed equipment of overcurrent protection and conductors, when power requirements for listed equipment are readily available and breakers are labeled;

(6) report as in need of repair a panel that is installed in a hazardous location, such as a clothes closet;

(7) report as in need of repair the absence of appropriate connections, such as copper/aluminum approved devices, pig-tailed connections or crimp connections; and the absence of anti-oxidants on aluminum conductor terminations; and

(8) report as in need of repair the lack of main disconnect(s).

(b) Specific limitations for service entrance and panels. The inspector is not required to do the following:

(1) determine service capacity amperage or voltage or the capacity of the electrical system relative to present or future use;

(2) determine the insurability of the property;

(3) conduct voltage drop calculations; or

(4) determine the accuracy of breaker labeling.

(c) Branch circuits, connected devices and fixtures. The inspector shall:

(1) report the type of branch circuit wiring;

(2) inspect all accessible receptacles and report as in need of repair a receptacle in which:

(A) power is not present;

(B) polarity is incorrect;

(C) the unit is not grounded, if applicable;

(D) there is evidence of arcing or excessive heat;

(E) the unit is not secured to the wall;

(F) the cover is not in place; or

(G) ground fault circuit interrupter devices are not properly installed as set forth by the current edition of the National Electric Code, publication 70A of the National Fire Protection Association, or do not operate properly as shown by use of a separate testing device;

(3) operate all accessible wall and appliance switches and report as in need of repair a switch that:

(A) does not operate or is damaged;

(B) displays evidence of arcing or excessive heat; or

(C) is not fastened securely with cover in place.

(4) inspect installed fixtures including lighting devices and ceiling fans;

(5) report as in need of repair an inoperable or missing fixture;

(6) report as in need of repair deficiencies in exposed wiring, wiring terminations, junctions and junction boxes;

(7) report as in need of repair deficiencies or absences of conduit in appropriate locations or conduit that is not terminated securely;

(8) report as in need of repair appliances and electrical gutters that do not have proper bonding;

(9) report as in need of repair subpanels that are not properly bonded and grounded;

(10) report as in need of repair the lack of disconnects in appropriate locations;

(11) inspect (if branch circuit aluminum wiring is discovered in the main or subpanels) a random sampling of accessible receptacles and switches and report as in need of repair the absence of appropriate connections, such as copper/aluminum approved devices, pig-tailed connections or crimp connections;

(12) report as in need of repair the improper use of extension cords; and

(13) report as in need of repair the absence of, or deficiencies in, the installation and operation of smoke or fire detectors not connected to a central alarm system.

§535.231. Standards of Practice: Optional Systems.*[Adopted September 1, 2000; Ref: §23(b)(1)(G).]*

(a) Scope. This section covers other systems and attachments that an inspector may inspect. The inspector may need special knowledge or tools to perform these inspections. It is the responsibility of the inspector to be properly informed and know current and safe procedures for inspecting the items

described in this section. The inspector shall determine and provide a report of the condition of the equipment, systems, parts or components by visual observation and operation in normal modes and operating range noted at the date and time of the inspection. If an inspector agrees to inspect a component described in this section, §535.227 of this title (relating to Standards of Inspection: General Provisions) applies to the inspection.

(b) Inspection guidelines for gas lines. The inspector shall:

(1) inspect and report as in need of repair deficiencies in the condition and type of all accessible and visible gas piping; and

(2) test gas lines by using a local or an industry-accepted procedure.

(c) Specific limitations for gas lines. The inspector is not required to inspect sacrificial anode bonding or for its existence.

(d) Inspection guidelines for outbuildings. The inspector shall:

(1) inspect the building and report as in need of repair water penetration or deficiencies in structural performance; and

(2) report as in need of repair deficiencies in electrical, plumbing, heating, ventilation or air-conditioning systems that the standards of practice would require the inspector to report for the principal structure.

(e) Inspection guidelines for outdoor cooking equipment. The inspector shall:

(1) report the energy source and operate the unit;

(2) report as in need of repair deficiencies in operation, control knobs, handles, burner bars, grills, box, rotisserie (if present) and heat diffusion material;

(3) report as in need of repair a unit or pedestal that is not stable;

(4) report as in need of repair gas units that use improper materials for the gas branch line and the connection to the appliance; and

(5) report as in need of repair a gas unit that has no shut-off valve, an inaccessible valve or a valve

that leaks;

(f) Inspection guidelines for lawn and garden sprinkler system. The inspector shall:

(1) operate all zones or stations on the system manually;

(2) report as in need of repair deficiencies in water flow or pressure at the circuit heads;

(3) report as in need of repair surface water leaks, the absence or improper installation of anti-siphon valves and backflow preventers or the absence of shut-off valves;

(4) inspect and report as in need of repair deficiencies in the condition and mounting of the control box and visible wiring; and

(5) report as in need of repair deficiencies in the operation of each zone and associated valves, spray head patterns and areas of non-coverage within the zone.

(g) Specific limitations for lawn and garden sprinkler system. The inspector is not required to inspect the automatic function of the timer or control box, the rain sensor or the effectiveness and sizing of anti-siphon valves or backflow preventers.

(h) Inspection guidelines for private water wells. The inspector shall:

(1) operate at least two fixtures simultaneously;

(2) report the type of pump and type of storage equipment;

(3) report as in need of repair deficiencies in water pressure and flow and operation of pressure switches;

(4) inspect and report as in need of repair deficiencies in the condition of visible and accessible equipment and components;

(5) report as in need of repair wiring that is improper or lacks circuit protection;

(6) report as in need of repair deficiencies in the well head, including improper site drainage;

(7) recommend, or arrange to have performed, a coliform analysis; and

(8) report the proximity of any known septic system.

(i) Specific limitations for private water wells. The inspector is not required to do the following:

(1) open, uncover or remove the pump, heads, screens, lines or other component parts of the system;

(2) determine water quality or potability or the reliability of the water supply or source; or

(3) locate or verify underground water leaks.

(j) Inspection guidelines for individual private sewage systems (septic systems). The inspector shall:

(1) report as in need of repair deficiencies in accessible or visible components of the system at the time of the inspection;

(2) operate plumbing fixtures and report as in need of repair deficiencies in functional flow;

(3) walk over the area of tanks and fields or beds and report as in need of repair any visual or olfactory evidence of effluent seepage or flow at the surface of the ground;

(4) report as in need of repair areas of inadequate site drainage around or adjacent to the system;

(5) report the proximity of any known water wells; underground cisterns; water supply lines; streams, ponds and lakes; sharp slopes or breaks; easement lines; property lines; soil absorption systems; swimming pools or sprinkler systems.

(6) inspect the operation of the system;

(7) report the lack of visible access to tanks;

(8) report the type of the system, if possible, and the location of the drainfield; and

(9) report as in need of repair aerators or dosing pumps that do not operate or equipment that is improperly wired.

(k) Specific limitations for individual private sewage systems (septic systems). The inspector is not required to do the following:

(1) excavate or uncover the system or its components to determine the size, adequacy or efficiency of the system; or

(2) determine the type of construction used

unless readily known without excavation or destructive examination.

(l) Inspection guidelines for swimming pools and equipment (spas and hot tubs). The inspector shall:

(1) report the type of pool construction;

(2) report as in need of repair deficiencies in pool surfaces,

(3) report as in need of repair deficiencies in tiles, copings and decks;

(4) report as in need of repair deficiencies in slides, steps, diving boards and other equipment;

(5) report as in need of repair deficiencies in drains, skimmers and valves;

(6) report as in need of repair pool lights that are missing, do not function or lack ground fault circuit interrupter protection;

(7) report as in need of repair pump motors, controls, and sweeps that do not function or lack proper wiring and circuit protection;

(8) when inspecting a heater, report as in need of repair deficiencies that the standards of practice would require the inspector to report for a heating system;

(9) report as in need of repair gas heaters that use improper materials for the branch line and the connection to the appliance;

(10) report as in need of repair a gas unit that has no shut-off valve, an inaccessible valve or a valve that leaks;

(11) report as in need of repair a pump motor, blower or other electrical equipment, if visible, that lacks external grounding;

(12) report as in need of repair above-ground water leaks or deficiencies in the filter tank or pressure gauge; and

(13) report as in need of repair the absence of, or deficiencies in, fences, gates or enclosures.

(m) Specific limitations for swimming pools and equipment (spas and hot tubs). The inspector is not required to the following:

(1) dismantle or otherwise open any components or lines;

(2) uncover or excavate any lines or otherwise concealed components of the system or determine the presence of sub-surface leaks;

(3) fill the pool, spa or hot tub with water;

(4) determine the presence of sub-surface water tables; or

(5) inspect ancillary equipment such as computer controls, covers, chlorinators or other chemical dispensers, or water ionization devices or conditioners other than required by this section.

S. Residential Rental Locators

§535.300. Advertising by Residential Rental Locators. *[Adopted April 1, 1996; Amended October 1, 1996 and May 27, 1998; Ref: §24]*

(a) This section is intended to establish standards relating to permissible forms of advertising by a person licensed as a real estate broker or salesperson and functioning as a residential rental locator ("locator"). For the purposes of this section, the term "residential rental locator" shall have the meaning provided by Texas Civil Statutes, Article 6573a, (the Act), §24. For the purposes of this section, the term "advertisement" includes, but is not limited to advertising in printed form, signs, or advertising using radio, television or personal computers.

(b) If a locator advertises more than one apartment unit in the same advertisement and lists amenities or features generally without providing the features or amenities available at a specific rent for a specific unit, the advertisement must include a statement having a meaning substantially equivalent to one of the following.

(1) "All units do not have the advertised features or amenities."

(2) "The rent is \$___ or more, depending on the features of the unit."

(3) "The rent quoted is the minimum for a unit which may not have all the features advertised."

(c) Advertisements in a printed publication shall be deemed to be in compliance with the requirements of subsection (b) of this section if the publication in which an advertisement appears contains this notice at the beginning of the section in which the advertisement appears: Notice. Residential rental locators are required to be licensed by the Texas Real Estate Commission (P. O. Box 12188, Austin, Texas 78711-2188 1-800-250-8732 or 512-465-3960). Locators may advertise apartment units in general terms, and all units may not have the same features. The amount of rent quoted in an advertisement may be the starting rent for a basic unit or for a unit which does not have all advertised features.

(d) An advertisement by a locator of an apartment unit by general terms is misleading unless at the time the advertisement is placed at least one unit meeting the description of the unit contained in the advertisement is available through the locator at the lowest rent stated in the advertisement within either

a time stated in the advertisement or within 30 days after the advertisement is submitted for publication if no time is stated. Prior to offering a unit for rent or lease, the locator also must also obtain the consent of the unit's owner or of the owner's authorized agent.

(e) Advertising by locators must also comply with the provisions of the Act, §15(a)(6)(P) and §535.154 of this title (relating to Misleading Advertising).

(f) Failure to comply with this section is grounds for the commission to reprimand a licensee, to suspend or revoke a license, or to impose an administrative penalty in accordance with the Act, §19.

T. Easement or Right-of-Way Agents

§535.400. Registration of Easement or Right-of-Way Agents. *[Adopted November 30, 1997; amended August 18, 1998 and January 1, 2001; Ref §9A]*

(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission in 2000. These forms are published by and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188.

(1) ERW 1-2, Application For Easement Or Right-of-Way Agent Registration For An Individual; and

(2) ERW 2-2, Application For Easement Or Right-of-Way Agent Registration For A Business.

(b) An individual desiring to be registered by the commission as an easement or right-of-way agent must file form ERW 1-2 with the commission. If the applicant is a business, the applicant must file form ERW 2-2. All applicants must submit the applicable fees set forth in The Real Estate License Act, Texas Civil Statutes, Article 6573a, (the Act). The commission will not accept an application which has been submitted without the correct filing fees or which has been submitted in pencil. If the commission develops a system whereby a person may electronically file an application for registration, a person also may apply for registration by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Within 60 days after paying the fee, the applicant must complete the application process by submitting a printed copy of the application signed by the applicant and including a photograph of the applicant. If the applicant does not complete the application process as required by this subsection, the commission shall terminate the application.

(c) After the commission has accepted an application for filing, the commission shall process the application and promptly issue a certificate of registration, request any information required to complete the registration, or advise the applicant that the application has been terminated or disapproved, as the case may be.

(d) The commission shall assign a registration number to each registrant and shall provide each registrant with a certificate of registration. Each

registration issued by the commission is valid until the last day of the month one year from the day the registration was issued. Each registrant shall display the certificate of registration issued by the commission in a prominent location in the registrant's place of business, as required by the Act, § 12(e). If the registrant maintains more than one place of business, the registrant shall display either the certificate or a copy of the certificate in each place of business.

(e) The commission may terminate an application with written notice to the applicant for failure to submit information or documentation within 60 days after the commission makes written request for the information or documentation.

(f) The commission may disapprove an application for registration with written notice to the applicant if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines) or the applicant has engaged in conduct prohibited by the Act. Provided a timely written request for a hearing is made by the applicant in accordance with the Act, §10, an applicant whose application for registration has been disapproved is entitled to a hearing. The hearing on the application will be conducted in accordance with the provisions of the Act, §10, and Chapter 533 of this title (relating to Practice and Procedure).

§535.401. Required Notices. *[Adopted November 30, 1997; Ref §9A]*

(a) The Texas Real Estate Commission adopts by reference the following forms approved by the Texas Real Estate Commission. These forms are published by and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188.

(1) Form ERW 3-0, Registrant's Office Notice; and

(2) Form ERW 4-0, Notice Regarding Easements and Rights-of-Way.

(b) Each registrant shall display form ERW 3-0 in a prominent location in each place of business the registrant maintains.

(c) Each registrant shall, before a party in a transaction other than the party the registrant represents is obligated to sell, buy, lease, or

transfer a right-of-way or easement, provide to the party a copy of form ERW 4-0 completed by the registrant.

§535.402. Complaints, Disciplinary Action and Appeals. *[Adopted November 30, 1997; Ref §9A]*

(a) The investigation of complaints and disciplinary action by the commission against registrants will be conducted in accordance with the Act and §535.141 of this title (relating to Initiation of Investigation). In addition to the grounds for revoking or suspending a registration listed in the Act, the commission may revoke or suspend the registration of a registrant on the following grounds:

(1) procuring or attempting to procure a registration by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application;

(2) failing or refusing on demand to produce a document, book, or record in the registrant's possession concerning an easement or right-of-way transaction involving the registrant for examination by the commission or its authorized agent; and

(3) failing within 10 days to provide information requested by the commission or its authorized agent in course of an investigation of a complaint.

(b) Appeals from disciplinary orders against a registrant will be governed by the Act, §18 and by Chapter 533 of this title (relating to Practice and Procedure).

§535.403. Renewal of Registration. *[Adopted August 18, 1998; amended January 1, 2001; Ref §9A]*

(a) The commission shall establish a time period for renewal of each registration, which shall end with the expiration date of the current registration. Each registrant has the responsibility to apply for renewal of a registration by making proper application as specified by this section. Applications must be made on the current renewal application form approved by the commission accompanied by the fee required by Section 11(a)(16) of The Real Estate License Act (the Act). Failure to receive a registration renewal application form from the commission does not relieve a registrant of the obligation to obtain the appropriate form and to apply for renewal to maintain registration. If the commission develops a system whereby registrations may be renewed

electronically, a registrant also may renew an unexpired registration by accessing the commission's Internet web site, entering the required information on the renewal application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. Failure to provide information requested by the commission in connection with a renewal application is grounds for disciplinary action under the Act, §9A(c)(4). A registrant who fails timely to pay a renewal fee must apply for and receive a new registration in order to act as an easement or right-of-way agent.

(b) The Texas Real Estate Commission adopts by reference Renewal Application Form ERW 5-1, approved by the commission in 2000. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(c) The commission shall advise each registrant of the time period for filing a renewal application and paying the renewal fee by mailing a renewal application form to the registrant's last known business address at least three months before expiration of the current registration. The commission shall have no obligation to so notify a business entity such as a corporation, limited liability company or partnership, that has failed to designate an officer, manager or partner who meets the requirements of Section 6(d) of the Act. The commission may not renew a registration issued to a business entity unless the entity has designated an officer, manager or partner who meets the requirements of the Act.

(d) An application for renewal will be deemed to have been timely filed if it shows a postmark on or before the expiration date of the registration. When the last day of the renewal period falls on a non-business day, renewal applications also will be deemed to have been timely filed if received or postmarked no later than the first business day following the last day of the renewal period. "Non-business" days are Saturday, Sunday and any other day upon which the commission offices are closed due to a state holiday designated in the General Appropriations Act or by other law.

(e) Renewals by registrants who are on active duty in the United States armed forces or who are subject to the provisions of the Texas Education Code, §57.491, concerning certain student loans also will be governed by §535.92 of this title (Relating to Miscellaneous Provisions Concerning License Renewals).

CHAPTER 537 PROFESSIONAL AGREEMENT AND STANDARD CONTRACTS(Ref: §16)
Professional Agreements

§537.1. Statement of Principles by the State Bar of Texas and the Texas Real Estate Commission. *[Repealed January 3, 1983]*

§537.2. Special Advisory Committee on Standardized Forms. *[Repealed October 20, 1983]*

§537.11. Use of Standard Contract Forms. *[Adopted March 3, 1976; amended April 5, 1979; October 23, 1983; February 27, 1985; May 16, 1985; May 15, 1986; October 5, 1990; September 1, 1992; February 1, 1994; September 1, 1994; March 1, 1995; January 3, 1996; September 1, 1998; March 1, 1999; September 1, 1999; January 1, 2000; April 20, 2000; September 1, 2000 and April 1, 2001.]*

(a) Standard Contract Form TREC No. 9-4 is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC No. 10-3 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 11-3 is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC No. 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC No. 15-2 is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC No. 16-2 is promulgated for use as a residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-4 is promulgated for use in the resale of residential real estate where there is all cash or owner financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC No. 21-4 is promulgated for use in the resale of residential real estate where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC No. 23-4 is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC No. 24-4 is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC No. 25-3 is promulgated for use in the sale of a farm or ranch. Standard

Contract Form TREC No. 26-3 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC No. 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC No. 29-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where an abstract of title is to be furnished. Standard Contract Form TREC No. 30-2 is promulgated for use in the resale of a residential condominium unit where there is all cash or seller financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC No. 31-2 is promulgated for use in the resale of a residential condominium unit where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC No. 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC No. 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form No. 34-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. Standard Contract Form TREC No. 35-2 is promulgated for use as an addendum to be added to promulgated forms of contracts as an agreement for mediation. Standard Contract Form TREC Form No. 36-1 is promulgated for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 37-1 is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 38-0 is promulgated for use as a notice of termination of contract. Standard Contract Form TREC Form No. 39-2 is promulgated for use as an amendment to promulgated forms of contracts.

(b) When negotiating contracts binding the sale, exchange, option, lease or rental of any interest in real property, a real estate licensee shall use only those contract forms promulgated by the Texas Real Estate Commission for that kind of transaction with the following exceptions:

(1) transactions in which the licensee is functioning solely as a principal, not as an agent;

(2) transactions in which an agency of the United States government requires a different form to be used;

(3) transactions for which a contract form has been prepared by the property owner or prepared by an attorney and required by the property owner;

(4) transactions for which no standard contract form has been promulgated by the Texas Real Estate Commission, and the licensee uses a form prepared by an attorney at law licensed by this state and approved by the attorney for the particular kind of transactions involved or prepared by the Texas Real Estate Broker-Lawyer Committee and made available for trial use by licensees with the consent of the Texas Real Estate Commission.

(c) A licensee may not practice law, offer, give nor attempt to give advice, directly or indirectly; the licensee may not act as a public conveyancer nor give advice or opinions as to the legal effect of any contracts or other such instruments which may affect the title to real estate; the licensee may not give opinions concerning the status or validity of title to real estate; and the licensee may not attempt to prevent nor in any manner whatsoever discourage any principal to a real estate transaction from employing a lawyer. However, nothing herein shall be deemed to limit the licensee's fiduciary obligation to disclose to the licensee's principals all pertinent facts which are within the knowledge of the licensee, including such facts which might affect the status of or title to real estate.

(d) A licensee may not undertake to draw or prepare documents fixing and defining the legal rights of the principals to a transaction. In negotiating real estate transactions, the licensee may fill in forms for such transactions, using exclusively forms which have been approved and promulgated by the Texas Real Estate Commission or such forms as are otherwise permitted by these rules. When filling in such a form, the licensee may only fill in the blanks provided and may not add to or strike matter from such form, except that licensees shall add factual statements and business details desired by the principals and shall strike only such matter as is desired by the principals and as is necessary to conform the instrument to the intent of the parties. A licensee may not add to a promulgated earnest money

contract form factual statements or business details for which a contract addendum, lease or other form has been promulgated by the commission for mandatory use. Nothing herein shall be deemed to prevent the licensee from explaining to the principals the meaning of the factual statements and business details contained in the said instrument so long as the licensee does not offer or give legal advice. It is not the practice of law as defined in this Act for a real estate licensee to complete a contract form which is either promulgated by the Texas Real Estate Commission or prepared by the Texas Real Estate Broker-Lawyer Committee and made available for trial use by licensees with the consent of the Texas Real Estate Commission. Contract forms prepared by the Texas Real Estate Broker-Lawyer Committee for trial use may be used on a voluntary basis after being approved by the commission. Contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and approved by the commission to replace previously promulgated forms may be used by licensees on a voluntary basis prior to the effective date of rules requiring use of the replacement forms.

(e) Where it appears that, prior to the execution of any such instrument, there are unusual matters involved in the transaction which should be resolved by legal counsel before the instrument is executed or that the instrument is to be acknowledged and filed for record, the licensee shall advise the principals that each should consult a lawyer of the principal's choice before executing same.

(f) A licensee may not employ, directly or indirectly, a lawyer nor pay for the services of a lawyer to represent any principal to a real estate transaction in which the licensee is acting as an agent. The licensee may employ and pay for the services of a lawyer to represent only the licensee in a real estate transaction, including preparation of the contract, agreement, or other legal instruments to be executed by the principals to the transactions.

(g) A licensee shall advise the principals that the instrument they are about to execute is binding on them.

(h) Forms approved or promulgated by the commission may be reproduced only from the following sources:

(1) numbered copies obtained from the commission, whether in a printed format or

electronically reproduced from the files available on the commission's Internet site;

(2) printed copies made from copies obtained from the commission;

(3) legible photocopies made from such copies; or

(4) computer-driven printers following these guidelines.

(A) The computer file or program containing the form text must not allow the end-user direct access to the text of the form and may only permit the user to insert language in blanks in the forms or to strike through language at the direction of the parties to the contract.

(B) Typefaces or fonts must appear to be identical to those used by the commission in printed copies of the particular form.

(C) The text and number of pages must be identical to that used by the commission in printed copies of the particular form.

(D) The spacing, length of blanks, borders and placement of text on the page must appear to be identical to that used by the commission in printed copies of the form.

(E) The name and address of the person or firm responsible for developing the software program must be legibly printed below the border at the bottom of each page in no less than six point type and in no larger than 10 point type.

(F) The text of the form must be obtained from a copy of the form bearing a control number assigned by the commission.

(i) The control number of each copy must appear on all forms reproduced from the copy, including forms reproduced by computer-driven printers.

(j) Forms approved or promulgated by the commission must be reproduced on the same size of paper used by the commission with the following changes or additions only.

(1) The business name or logo of a broker, organization or printer may appear at the top of a form outside the border.

(2) The broker's name may be inserted in any

blank provided for that purpose.

§537.12. Standard Contract Form TREC No. 1-1. *[Repealed August 1, 1985]*

§537.13. Standard Contract Form TREC No. 2-4. *[Repealed January 1, 1998]*

§537.14. Standard Contract Form TREC No. 3-0. *[Repealed August 1, 1985]*

§537.15. Standard Contract Form TREC No. 4-0. *[Repealed August 1, 1985]*

§537.16. Standard Contract Form TREC No. 5-0. *[Repealed August 1, 1985]*

§537.17. Standard Contract Form TREC No. 6-0. *[Repealed August 1, 1985]*

§537.20. Standard Contract Form TREC No. 9-4. *[Adopted November 1, 1982; amended August 1, 1985; February 1, 1994; January 1, 1998; January 1, 2000; and April 20, 2000.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-4 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188..

§537.21. Standard Contract Form TREC No. 10-3. *[Adopted November 1, 1982; amended December 1, 1987; September 1, 1994; September 1, 1999; and January 1, 2000.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 10-3 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.22. Standard Contract Form TREC No. 11-3. *[Adopted November 11, 1982; amended December 1, 1987; September 1, 1994; and September 1, 1998]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 11-3 approved by the Texas Real Estate Commission in 1998. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Capitol Station, Austin, Texas 78711.

§537.23. Standard Contract Form TREC No. 12-1. *[Adopted November 1, 1982; amended September 1, 1992]* The Texas Real Estate Commission adopts by reference standard contract

form TREC No. 12-1 approved by the Texas Real Estate Commission in 1992. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.24. Standard Contract Form TREC No. 13-1. *[Repealed September 1, 2000.]*

§537.25. Standard Contract Form TREC No. 14-0. *[Repealed September 1, 1994]*

§537.26. Standard Contract Form TREC No. 15-3. *[Adopted November 1, 1982; amended August 1, 1985; September 1, 1994 and March 1, 1999.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 15-3 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Capitol Station, Austin, Texas 78711.

§537.27. Standard Contract Form TREC No. 16-3. *[Adopted November 1, 1982; amended August 1, 1985; September 1, 1994 and March 1, 1999.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 16-3 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Capitol Station, Austin, Texas 78711.

§537.28. Standard Contract Form TREC No. 20-4. *[Adopted August 1, 1985; amended September 1, 1992; February 1, 1994; January 1, 1998; January 1, 2000 and April 20, 2000.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-4 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.29. Standard Contract Form TREC No. 21-4. *[Adopted August 1, 1985; amended September 1, 1992; February 1, 1994; January 1, 1998; January 1, 2000 and April 20, 2000.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 21-4 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.30. Standard Contract Form TREC No. 23-4. *[Adopted December 1, 1987; amended February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000 and September 1, 2000.]* The Texas Real Estate Commission adopts by reference

standard contract form TREC No. 23-4 approved by the Texas Real Estate Commission in 2000. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.31. Standard Contract Form TREC No. 24-4. *[Adopted December 1, 1987; amended February 1, 1994; January 1, 1998; January 1, 2000; April 20, 2000 and September 1, 2000.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-4 approved by the Texas Real Estate Commission in 2000. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.32. Standard Contract Form TREC No. 25-3. *[Adopted December 1, 1987; amended February 1, 1994; January 1, 1998; January 1, 2000 and April 20, 2000.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-3 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.33. Standard Contract Form TREC No. 26-2. *[Adopted December 1, 1987; amended September 1, 1992; February 1, 1994 and April 1, 2001]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 26-3 approved by the Texas Real Estate Commission in 2000. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.34. Standard Contract Form TREC No. 27-0. *[Repealed January 1, 1998]*

§537.35. Standard Contract Form TREC No. 28-0. *[Adopted February 1, 1994]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 28-0 approved by the Texas Real Estate Commission in 1993. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.36. Standard Contract Form TREC No. 29-1. *[Adopted February 1, 1994; amended September 1, 1999 and January 1, 2000.]* The Texas Real Estate Commission adopts by reference standard contract form TREC No. 29-1 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.37. Standard Contract Form TREC No. 30-2. [Adopted September 1, 1994; amended January 1, 1998; January 1, 2000 and April 20, 2000.] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-2 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.38. Standard Contract Form TREC No. 31-2. [Adopted September 1, 1994; amended January 1, 1998; January 1, 2000 and April 20, 2000] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 31-2 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.39. Standard Contract Form TREC No. 32-0. [Adopted September 1, 1994] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 32-0 approved by the Texas Real Estate Commission in 1994. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.40. Standard Contract Form TREC No. 33-0. [Adopted March 1, 1995] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 33-0 approved by the Texas Real Estate Commission in 1994. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.41. Standard Contract Form TREC No. 34-0. [Adopted March 1, 1995] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 34-0 approved by the Texas Real Estate Commission in 1994. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.42. Standard Contract Form TREC No. 35-2. [Adopted March 1, 1995; amended September 1, 1998 and April 1, 2001] The Texas Real Estate Commission adopts by reference standard contract form TREC No.35-2 approved by the Texas Real Estate Commission in 2000. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.43. Standard Contract Form TREC No.

36-1. [Adopted January 3, 1996; amended September 1, 1999 and January 1, 2000.] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-1 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.44. Standard Contract Form TREC No. 37-1. [Adopted January 3, 1996; amended September 1, 1999 and January 1, 2000.] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 37-1 approved by the Texas Real Estate Commission in 1999. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.45. Standard Contract Form TREC No. 38-0. [Adopted September 1, 1998] The Texas Real Estate Commission adopts by reference standard contract form TREC No. 38-0 approved by the Texas Real Estate Commission in 1998. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.46. Standard Contract Form TREC No. 39-2. [Adopted September 1, 1998; amended September 1, 1999; January 1, 2000 and April 1, 2001.] The Texas Real Estate Commission adopts by reference standard contract form TREC No.39-2 approved by the Texas Real Estate Commission in 2000. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

CHAPTER 539 PROVISIONS OF THE RESIDENTIAL SERVICE COMPANY ACT

D. Definitions

§539.31. Residential Service Contract. *[Adopted February 11, 1980; Ref: §4(a), Art. 6573b]* A contract or agreement whereby a person, for a fee, undertakes to indemnify against or reimburse the costs of maintenance, repair, or replacement of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property is not a "residential service contract" within the meaning of Section 4(a).

F. Authorized Personnel

§539.51. Employee Defined. *[Adopted October 7, 1982; amended November 30, 1990 and October 5, 1998; Ref: §4(a), Art. 6573b]* For the purposes of Texas Civil Statutes, Article 6573b, §6(b), "employee" means any person other than a licensed real estate salesperson, real estate broker, mobile home dealer, or insurance agent authorized by a licensed service company to sell, offer to sell, arrange or solicit the sale of, or receive applications for residential service contracts subject to the following conditions.

(1) The residential service company must have the right to direct and control the employee's performance.

(2) The residential service company must accept responsibility for representations made by the employee within the scope of the employee's employment.

G. Application for License

§539.61. Application and Licensing. *[Adopted February 11, 1980; amended July 18, 1994; Ref: §7(a), Art. 6573b]*

(a) The Texas Real Estate Commission adopts by reference Application Form RSC 1-1 approved by the commission in 1994. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) The commission shall assign a license number to each residential service company licensed by the commission.

H. Miscellaneous Forms

§539.71. Miscellaneous Forms. *[Adopted May 15, 2001; Ref: §9(c) and §15, Art. 6573b]* The Texas Real Estate Commission adopts by reference the following forms approved by the commission in 2001. These forms are published and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188.

(1) Residential Service Company Bond, Form RSC 2-2; and

(2) Application to Approve Evidence of Coverage/Schedule of Charges, Form RSC 3-1.

I. Funded Reserves

§539.81. Funded Reserves. *[Adopted August 19, 1991; amended July 18, 1994; Ref: §9(a), Art. 6573b]*

(a) Each residential service company licensed by the commission shall maintain funded reserves in the amount required by the Residential Service Company Act (Act), §9. Accounts containing funded reserves must be identified as such and may not be encumbered or commingled with funds which are not reserves. Separate funded reserves are required for service contracts written in Texas unless the company's combined funded reserves meet the minimum reserve requirements of the Act, §9, calculated on the basis of all outstanding contracts. Each company shall maintain a level of liquidity equal to or greater than the amount of its funded reserve. Funded reserves may be maintained in the following liquid assets only:

(1) in cash or savings deposits, time deposits, certificates of deposit, NOW accounts or money market accounts in solvent banks, savings and loan associations and credit unions and branches thereof, organized under the laws of the United States of America or its states; or

(2) in investment grade notes, bonds, bills or other evidences of indebtedness or obligations of the United States of America or of a state or unit of local government or in a money market mutual fund which invests in the securities listed in this paragraph. For the purposes of this section, the term "investment grade" shall mean a security rated BBB and above by a nationally recognized securities rating organization such as Standard &

Poor's.

(b) The commission may suspend or revoke the license of a residential service company for failure to comply with this section.

J. Annual Report

§539.91. Annual Report Form RSC 6-1.

[Adopted March 11, 1981; amended February 19, 1990 and May 15, 2001; Ref: §10(b), Art. 6573b] The Texas Real Estate Commission adopts by reference the Annual Report Form RSC 6-2 approved by the commission in 2001. This document is published by and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188.

M. Examinations

§539.121. Examinations. *[Adopted September 15, 1994; Ref: §13(b), Art. 6573b]* The commission shall examine the affairs of each licensed residential service company as the commission deems necessary, but no less than once every three years. A company's failure to provide access to the commission to the books and records of the company is a violation of Texas Civil Statutes, Article 6573b, §13(b) (the Act) and may subject the company to the penalties provided in the Act.

N. Semiannual Report

§539.137. Semiannual Report. *[Adopted July 20, 1981; amended February 19, 1990; July 18, 1994 and March 9, 1995; Ref: §14(b), Art. 6573b]*

(a) The Texas Real Estate Commission adopts by reference Semi-annual Report Form RSC 7-2 approved by the commission in 1994. This document is published by and available from the Texas Real Estate Commission, P. O. Box 12188, Austin, Texas 78711-2188.

(b) Each residential service company shall file a semiannual report no later than August 15 of each year for the preceding months of January through June and shall file a semiannual report no later than February 15 of each year for the preceding months of July through December.

X. Fees

§539.231. Fees. *[Adopted February 11, 1980; amended July 18, 1994 and May 15, 2001; Ref: §24, Art. 6573b]* The commission shall charge and

collect the following fees:

- (1) a fee of \$3,500 for filing an application for a license;
- (2) a fee of \$3,500 for filing an annual report;
- (3) a fee of \$250 for filing an evidence of coverage; and
- (4) a fee of \$250 for filing a schedule of charges.

CHAPTER 541 TEXAS CIVIL STATUTES ARTICLE 6252-13c

§541.1. Criminal Offense Guidelines. *[Adopted May 19, 1982; amended November 6, 1990; December 8, 1992; February 23, 1998 and May 4, 1999; Ref: Art. 6252-13c]*

(a) For the purposes of Texas Civil Statutes, Article 6252-13c, the Texas Real Estate Commission considers the following felonies or misdemeanors to be criminal offenses which may be directly related to the duties and responsibilities of the occupation of real estate broker, real estate salesperson, easement or right-of-way agent, professional inspector, real estate inspector or apprentice inspector for the reason that the commission of the following criminal offenses tends to demonstrate inability to represent the interest of another with honesty, trustworthiness and integrity:

- (1) offenses involving fraud or misrepresentation;
- (2) offenses against real or personal property belonging to another, if committed knowingly or intentionally;
- (3) offenses against public administration;
- (4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;
- (5) offenses involving moral turpitude;
- (6) offenses of attempting or conspiring to commit any of the foregoing offenses.

(b) In determining whether a criminal offense is directly related to an occupation, the commission shall consider and make appropriate findings of fact in a contested case upon the following factors:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed

occupation.

(c) In addition to the factors that may be considered under Subsection (b) of this section, the commission, in determining the present fitness of a person who has been convicted of a crime, shall consider the following evidence:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the commission of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
- (6) other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(d) It shall be the responsibility of the applicant to the extent possible to secure and provide to the commission the recommendations of the prosecution, law enforcement, and correctional authorities; the applicant shall also furnish proof in such form as may be required by the commission that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

CHAPTER 542 RULES RELATING TO THE PROVISIONS OF HOUSE BILL 5
(Ref: House Bill 5, 69th Legislature, 1987)

**§542.1. Notices to Applicants; Processing
Times; Appeals.** *[Repealed May 15, 2001]*

CHAPTER 543 RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT
(Ref: Chapter 221, Property Code)

§543.1. Registration. *[Adopted December 27, 1985; amended May 15, 2001]*

(a) A person who wishes to register a timeshare property shall submit an application for registration using forms prepared by the commission. The commission may not accept for filing an application submitted without a complete application form or the appropriate filing fee.

(b) If the commission determines that an application for registration of a timeshare property satisfies all requirements for registration, the commission shall promptly register the timeshare property. The commission shall notify the applicant in writing that the timeshare property has been registered, specifying the effective date of registration and shall assign a registration number to the timeshare property.

(c) If the commission determines that an application for registration of a timeshare property fails to satisfy any requirement for registration, the commission shall notify the applicant of any deficiency in writing. The commission may require an applicant to revise and resubmit written documents filed with the application or to provide additional information if the commission determines that the application is incomplete or inaccurate. Upon submission by an applicant of a response sufficient in the opinion of the commission to cure any deficiency in the application, the commission shall promptly register the timeshare property and provide the applicant with the written notice required by these rules. An application will be terminated, and the commission shall take no further action 180 days after the commission mails a request to the applicant for curative action.

§543.2. Amendments. *[Adopted December 30, 1985; amended May 15, 2001]*

(a) A person who wishes to amend the registration of a timeshare property shall submit an application to amend the registration using forms prepared by the commission. A person may file an application to amend the registration prior to the occurrence of the change. The commission may not accept for filing an application submitted without a completed application form or the appropriate filing fee.

(b) For the purposes of Section 221.023 of the Texas Timeshare Act, "promptly" means within 30

days after the occurrence of a material and adverse change in any document contained in a registration.

(c) An increase in the number of timeshare interests to be offered for sale is deemed a material and adverse change if it exceeds by more than 10% of the number of interests which existed or were proposed in the original registration.

(d) An increase in the dues, assessments, fees or charges paid or to be paid by purchasers for the use of accommodations or amenities or for any other purpose is deemed a material and adverse change if it exceeds by more than 15% the amounts set forth in the original registration.

(e) If the commission determines that a registration, if amended in the manner indicated in an application to amend a registration, would continue to satisfy all requirements for registration, the commission shall promptly notify the applicant in writing that the registration has been amended, specifying the effective date of the amendment.

(f) If the commission determines that a registration, if amended in the manner indicated in an application to amend a registration, would fail to satisfy a requirement for registration, the commission shall notify the applicant of any deficiency. The commission may require the applicant to revise and resubmit written documents filed with the application or to provide additional information if the commission determines that the application or written material filed with the application is incomplete or inaccurate. Upon submission by an applicant of a response sufficient in the opinion of the commission to cure any deficiency in the application, the commission shall promptly notify the applicant that the registration has been amended, specifying the effective date of the amendment.

§543.3. Fees. *[Adopted December 30, 1985 and amended May 15, 2001]*

(a) Applicants may pay fees in the form of a check, cashier's check or money order made payable to the Texas Real Estate Commission.

(b) An applicant for registration of a timeshare property shall pay a filing fee of \$2.00 per timeshare interest to be sold for units located on

the timeshare property, provided, however, that the commission shall charge and collect a minimum filing fee of \$500.00 and that no registration filing fee shall exceed \$2,500.00.

(c) An applicant for amendment of the registration of a timeshare property shall pay a minimum filing fee of \$100.00, provided, however, that the filing fee for an amendment that increases the number of timeshare interests to be sold by more than 10% from the number that existed or were proposed for sale in the original registration shall be \$.50 per new timeshare interest and that no filing fee shall exceed \$1,000.00.

§543.4. Forms. *[Adopted December 27, 1985; amended October 2, 1986, February 19, 1990; February 11, 1994 and May 15, 2001]*

(a) The Texas Real Estate Commission adopts by reference revised Application Form TSR 1-3 approved by the commission in 2001. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) The Texas Real Estate Commission adopts by reference revised Application Form TSR 2-3 approved by the commission in 2001. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§543.5. Violations. *[Adopted December 25, 1985; amended May 15, 2001]*

(a) It is a material violation of the Texas Timeshare Act (the Act) for a person to engage in any of the acts described in Section 221.071(a) of the Act.

(b) It is a material violation of the Act for a registrant to represent to a potential purchaser of a timeshare interest by advertising or any other means that a timeshare property has been approved by the State of Texas or the Texas Real Estate Commission or to represent that the State of Texas or the Texas Real Estate Commission has passed upon the merits of a timeshare offering. It is not a material violation of the Act for a registrant to represent that a timeshare property has been registered if the registrant discloses at the same time and in the same manner that the State of Texas and the Texas Real Estate Commission have not approved the timeshare property or passed upon merits of the timeshare offering.

(c) It is a material violation of the Act for a registrant to fail to file an application to amend a registration within 30 days of the occurrence of a material and adverse change in any document contained in the registration or to fail to cure a deficient application to amend a registration within 180 days after the commission has mailed to the applicant a request for curative action.

(d) It is a material violation of the Act for a person to procure or attempt to procure a registration or amendment to a registration by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application filed with the commission.

§543.6. Hearings. *[Adopted December 25, 1985; amended May 15, 2001]* Proceedings initiated by the commission to consider the suspension or revocation of the registration of a timeshare property will be conducted in accordance with the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code.