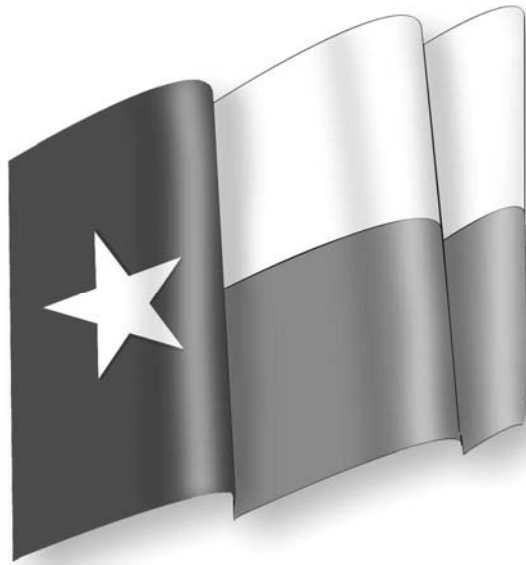


SUNSET COMMISSION DECISIONS



Texas Real Estate Commission

August 2006

Agency Information

Agency at a Glance

The mission of the Texas Real Estate Commission (TREC) is to protect consumers' economic welfare by ensuring that licensees properly carry out their fiduciary responsibilities to clients, are qualified and competent, and adhere to professional standards. The State began regulating the real estate profession in 1939 with passage of the first licensing act, and later created the Commission in 1949. To accomplish its mission, TREC does the following:

- ◆ licenses real estate brokers, salespersons, home inspectors, and residential service companies;
- ◆ certifies right-of-way agents and registers timeshare projects;
- ◆ approves private real estate schools, courses, and instructors; and
- ◆ investigates and resolves complaints, taking disciplinary action when necessary to enforce the Commission's statutes and rules.

Key Facts

Funding. In fiscal year 2005, the agency operated on a budget of about \$4.26 million and collected about \$18.6 million in revenues primarily from professional licensing fees. In fiscal year 2005, the Commission also transferred \$2.6 million in licensing fee revenues to the Texas Real Estate Research Center.

Staffing. The agency employs 66 people who work in Austin, and ten investigators who work from their homes in different state regions. TREC also provides administrative support to the seven staff of the Texas Appraiser Licensing and Certification Board, an independent entity with a budget of about \$480,000.

Licensing. In fiscal year 2005 the agency licensed 148,158 individuals and businesses, including 35,268 real estate brokers and 97,126 salespersons. The remainder include broker corporations, private real estate schools, instructors, home inspectors, right-of-way agents, home warranty companies and time share projects.

Enforcement. The Commission opened 4,585 enforcement cases in fiscal year 2005, and closed 4,419, with 1,909 initiated by complaints from consumers or licensees. The most common complaints were for failure to properly disclose client representation, and failure to carry out required fiduciary duties for clients.

Issues/Recommendations

Issue 1 TREC's Enforcement Process Needs an Increased Focus on Consumer Protection.

Recommendations

Change in Statute

1.1 Require the Commission to prioritize complaint investigations based on potential risk to consumers.

This recommendation would focus TREC on more quickly investigating consumer complaints and taking swifter action against licensees who violate the licensing act. Under this recommendation, TREC should create a risk-based approach to prioritizing and investigating complaints based on an initial assessment of the complaint. In creating this risk-based approach the Commission should consider several factors including:

- ◆ the degree of potential harm to the consumer;
- ◆ the potential for immediate harm to other consumers;
- ◆ the overall severity of the allegations in the complaint;
- ◆ the number of potential violations in the complaint;
- ◆ the number of licensees potentially involved in the complaint; and
- ◆ the previous complaint history of the licensee.

Based on these factors, and others as appropriate, agency staff would initially rank and prioritize investigation of consumer complaints. In addition, the Commission should revise its policies and procedures to reflect this emphasis on consumer protection, while at the same time appropriately balance the needs of licensees to ensure that new licensees can enter the profession in a reasonable amount of time after applying for a license.

1.2 Fully authorize TREC staff to open enforcement cases against licensees for violations of the licensing act and agency rules.

This recommendation allows the agency to more quickly, and fully, protect consumers by directly authorizing staff to open enforcement cases regarding any violation of the licensing act or TREC rules, based upon reasonable cause. Other state occupational and professional licensing agencies commonly have this authority to effectively enforce their statute and rules.

1.3 Repeal the \$1,000 fine limit for practicing with an expired license, and increase administrative fines to a maximum of \$5,000 per day, per violation.

This recommendation would provide the agency flexibility to more effectively deter licensees from committing violations and more appropriately hold licensees accountable who commit multiple violations of the licensing act. This recommendation would remove statutory language prohibiting TREC from assessing an administrative penalty for each transaction carried out by a person with an expired license, if the licensee renewed within four years of the violation. This recommendation would also increase the administrative penalty cap to a maximum of \$5,000 per day, per violation. The Commission should use this new flexibility to assess appropriate penalties consistent with the severity and frequency of violations committed by real estate and home inspector licensees. This recommendation would not change TREC's penalty authority over timeshare developers, and Issue 4 of this report addresses penalty authority over residential service companies.

1.4 Require the Commission to adopt a penalty matrix, in rule, that includes administrative fines and other sanctions against a licensee.

This recommendation ensures that the Commission can consistently and fairly apply a full range of sanctions to licensees for violations of the licensing act and rules. The recommendation would require the Commission to develop a penalty matrix covering the range of possible violations by real estate licensees, home inspectors and education providers. This matrix should include a range of administrative penalties and sanctions against a licensee, such as revocation, suspension, and probation. The matrix should relate the appropriate fines and sanctions to different violations based on their severity, and should include increased penalties for repeat violations. Developing this penalty matrix in rule would require that it be published in the Texas Register, and adopted by the Commission after giving the public the opportunity to comment.

1.5 Authorize final orders against a person who committed a violation while licensed, but whose license expires during the investigation.

This recommendation would provide TREC an additional enforcement tool to more effectively hold a person accountable for violations, and allow the agency to conclude an investigation and obtain a final order without having to re-open the case at a later date. This recommendation would authorize TREC to assess an order against a person who was licensed when he committed a violation, but whose license expires during the investigation. Under this recommendation, the agency would be able to assess an administrative penalty against the former licensee, and require payment before considering the person for a new license.

1.6 Authorize TREC to order refunds as part of the complaint settlement process.

This recommendation would provide consumers with more recourse to settle complaints informally, without having to file a separate lawsuit and make a claim against the Recovery Account. Under this recommendation, the Commission would have the option to include restitution in an agreed order negotiated with the licensee. Restitution could include refunds of fees paid for real estate services, home inspections, or other real estate-related services and products regulated by the agency and would not include estimations of damages or harm.

Management Action

1.7 Direct the Commission to improve on its collection of complaint and violation statistics, and to develop a method for complaint trend analysis.

This recommendation would direct the Commission to compile more useful information on complaint and violation statistics, reported to the Commission at least annually. The agency should compile this information in a useful format allowing staff to identify regulatory problem areas. TREC should not use non-jurisdictional complaints or licensing information requests in calculating its complaint resolution time frames. In addition to the detailed information the agency already collects, the agency should collect information such as:

- ◆ enforcement case resolution time frames by type of complaints for example, consumer complaints versus licensing-related complaints;
- ◆ the number, type, and age of all open complaints at the end of each fiscal year; and
- ◆ the number and type of non-jurisdictional complaints.

Fiscal Implication

These recommendations would not have a fiscal impact to the State, as TREC would be able to implement changes to its current enforcement process with existing resources.

Increasing TREC's cap on administrative penalties would not result in a gain to the General Revenue Fund because these fines are deposited to the Real Estate Recovery Trust Account.

Responses

Agency

Recommendations 1.1 – 1.7: The Commission does not object to these recommendations.

(Wayne Thorburn, Administrator – Texas Real Estate Commission, Austin)

Modifications 1 and 2: The Chair of the Texas Real Estate Inspector Committee supports these modifications.

(John Cahill, Chair – Texas Real Estate Inspector Committee, Plano)

For

None received.

Against

None received.

Modifications

1. Any expansion of staff authority to conduct an investigation without a signed complaint or Commission approval should be narrowly written to accomplish a specific and compelling objective. (Ron Walker, Vice President of Legal Affairs – Texas Association of REALTORS®, Austin)
2. Restitution should be limited to actual out-of-pocket expenses caused by the alleged failure of the licensee to comply with the Real Estate License Act and may not include other types of alleged damages, expenses, or costs. (Ron Walker, Vice President of Legal Affairs – Texas Association of REALTORS®, Austin)

Recommended Action: Adopt Recommendations 1.1 through 1.7.

Commission Decision: Adopted Recommendations 1.1 through 1.7.

Issue 2 The Enforcement Process is Outdated, Resulting in Delays and Wasted Agency Resources.

Recommendations

Change in Statute

2.1 Align TREC's hearing and administrative penalty processes.

This recommendation would enable TREC to more easily investigate and administer cases through a single, consistent process. The recommendation would align several statutory provisions of TREC's contested case hearing and administrative penalty processes, including the Commission's ability to delegate hearings and final disposition authority to the agency's Administrator and the ALJ. The statute would primarily align the non-monetary sanction and hearing process with the more specific and recently structured, administrative penalty process contained in many state agencies' statutes. TREC should analyze all elements of its enforcement processes under the new statutory framework and align all elements to ensure rapid, fair, and complete administration and disposition of cases. As a result, in combination with Issue 1, consumers would see quicker disposition of complaints that often languish under the current process.

2.2 Require the Commission to implement a standard enforcement process including a structure for informal complaint resolution.

This recommendation would modernize TREC's enforcement process and apply procedures for informal complaint resolution common to other state agencies. As a result, the majority of TREC's complaints cases would be closed much more quickly, and only the most serious enforcement cases would need a contested case hearing. The statute would require TREC to create an enforcement plan detailing a step-by-step

informal complaint resolution process applied to all of the agency's licensees and regulated entities. As a model, TREC could look to the Texas Department of Licensing and Regulation, which has such a plan detailed on its website. TREC should adopt the plan by agency rule, providing an opportunity for public comment. To implement this plan the following statutory changes are necessary.

- ◆ Require the Commission to issue notices of violation with proposed sanctions if warranted. Sanctions may include one or more of administrative penalties, actions against a license, and terms of probation.
- ◆ Provide the Commission authority to require licensees to respond to notices of violations within a specific timeframe, typically 20 days, to be set by rule.
- ◆ Require the Commission to issue default enforcement orders when licensees do not timely respond to notices of violation, or do not request a hearing.
- ◆ Require the Commission to hold informal settlement conferences to resolve complaints and negotiate agreed orders. At least two staff with expertise in the relevant regulatory area should participate in these conferences with the licensee or regulated entity. TREC may conduct conferences by telephone. TREC should also make its existing precedent information more readily usable to help guide agreed order proposals.

2.3 Transfer the agency's Administrative Procedure Act hearings to the State Office of Administrative Hearings.

This recommendation would provide more independence for TREC's contested case hearings, and would improve the cost

effectiveness of the hearings process, while still providing quality hearings. If the Commission adopts the recommendations in Issue 1 and Issue 2, the agency could hold significantly fewer hearings, reducing the need for an in-house administrative law judge and increasing the cost effectiveness of a transfer of hearings to SOAH.

In conducting hearings, SOAH would consider the Commission's applicable substantive rules or policies. Like other agencies that have hearings conducted by SOAH, the Commission would maintain final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge. The Commission may reverse or modify the decision only if the judge did not properly apply or interpret applicable law, agency rules, written policies, or prior administrative decisions; the judge relied on a prior administrative decision that is incorrect or should be changed; or the Commission finds

a technical error in a finding of fact that should be changed. Although SOAH may face an initial learning curve in hearing cases about TREC regulated professions and entities, the subject areas of TREC cases are not significantly more complex than the average cases currently brought before SOAH. In addition, this recommendation would not increase the agency's average time to close complaints. Other agencies whose hearings have been transferred to SOAH have not seen an increase in disposition time frames.

Fiscal Implication

Implementing an informal complaint resolution process would free one staff annually. Transferring TREC's hearings to the State Office of Administrative Hearings would save the costs of one staff and associated administrative support.

Responses

Agency

Recommendations 2.1 – 2.2: The Commission does not object to these recommendations.

(Wayne Thorburn, Administrator – Texas Real Estate Commission, Austin)

Recommendation 2.3: The Commission disagrees with this recommendation. Transferring TREC's contested case hearings to SOAH would delay the closing of cases. Once a SOAH judge rules, TREC's Commissioners must approve SOAH's ruling. This adds up to 60 days to complaint closing. In addition, it is beneficial having an Administrative Law Judge who specializes in statutes enforced by TREC.

(Wayne Thorburn, Administrator – Texas Real Estate Commission, Austin)

Recommendation 2.3: The Chair of the Texas Real Estate Inspector Committee opposes this recommendation.

(John Cahill, Chair – Texas Real Estate Inspector Committee, Plano)

Affected Agency

Recommendation 2.3: The Texas Appraiser Licensing and Certification Board opposes this recommendation.

Shirley J. Ward – Chair, Appraiser Member, Alpine

Larry D. Kokel – Vice Chair, Appraiser Member, Georgetown

Paul E. Moore – Ex-officio Member, Executive Secretary Veterans Land Board, Austin (Mark A. McAnally, Designee)

Elroy Carson – Public Member, Lubbock

Malcolm J. Deason – Public Member, Diboll

Wm. A. (Rusty) Faulk, Jr. – Public Member, Brownsville

James B. Ratliff – Appraiser Member, Garland

Clinton P. Sayers – Appraiser Member, Austin

Dona S. Scurry – Public Member, El Paso

Recommendation 2.3: The Commissioner of Texas Appraiser Licensing and Certification Board opposes this recommendation.

(Wayne Thorburn, Commissioner – Texas Appraiser Licensing and Certification Board, Austin)

Recommendation 2.3: If the Legislature finds that transfer of hearings to the State Office of Administrative Hearings (SOAH) would increase the independence and fairness of the contested case process, then SOAH is capable of handling this work efficiently and effectively. In the past SOAH has conducted hearings for both TREC and TALCB pursuant to the voluntary referral of cases to the Office. Based on the volume of work described in the Sunset staff report SOAH anticipates that it would be able to absorb any new work resulting from the transfer of TREC’s and TALCB’s hearings with the Office’s existing resources.

(Sheila Bailey Taylor, Chief Administrative Law Judge – State Office of Administrative Hearings, Austin)

For

None received.

Against

Recommendation 2.3

Wayne Mayo, Former Chair – Texas Appraiser Licensing and Certification Board, Richardson

Ron Walker, Vice President of Legal Affairs – Texas Association of REALTORS®, Austin

James I. Wiedemer, President – Texas Real Estate Teacher’s Association, Houston

Jim D. Pearson, President – Pearson Appraisal Company, Inc., McKinney

Gerald Keller, President – Foundation Appraisers Coalition of Texas, Inc., San Antonio

Vincent R. Venhaus – Venhaus Appraisal Company, Royse City

Michael A. Smith, Chief Appraiser – IndyMac Bank, Inc.

Mike Eustace – Mansfield

Chris Lehman – Austin

Recommended Action: Adopt Recommendations 2.1 through 2.3.

Commission Decision: Adopted Recommendations 2.1 through 2.3.

Issue 3 Regulation of Private Real Estate Schools Should Better Ensure That Students Have Access to a Quality Education.

Recommendations

Change in Statute

3.1 Require TREC to establish a minimum exam pass rate for re-accreditation of private real estate schools.

This recommendation would provide a basic performance measure to help ensure that real estate and home inspector students are able to attend quality schools. Under this recommendation, the Commission would establish a minimum pass rate requirement for a school to be re-accredited by the Commission. The required first-time pass rate should be above the current 55 percent average exam pass rate. The minimum first-time pass rate percentage should be established by rule, with opportunity for public comment. The Commission should implement the requirement over two years, allowing schools the opportunity to adjust teaching methods and raise exam pass rates.

3.2 Require the Commission to publish exam pass rates for individual real estate schools, and provide this information to the public.

This recommendation would allow prospective students to make more informed choices before enrolling in a particular real estate school. Under this recommendation, the statute would require the Commission to post exam pass rates tied to individual schools on the agency's website. TREC would post all first-time pass rates for brokers, salespersons, and home inspectors according to the school the licensee last attended, along with the state-wide average pass rate for each licensee group.

3.3 Authorize the Commission to establish an ad-hoc peer review committee to conduct assessments of low performing schools.

This recommendation would allow the Commission to convene a peer review committee to conduct assessments of low performing schools, such as those having difficulty in meeting minimum exam pass rates. The committee would offer problem schools expert advice on improving their business practices or teaching methods. However, the committee would not have the authority to recommend sanctions or mandatory corrective actions. In the past, TREC has convened an education task force to review the overall regulations of schools, and TREC could draw from these participants and other professional expertise, such as the Texas Real Estate Research Center, located at Texas A&M University, to more specifically assess the performance of individual schools.

Management Action

3.4 Direct TREC staff to audit real estate schools based only on risk to consumers.

This recommendation would direct TREC staff to perform unannounced audits only on schools where significant problems exist. For example, TREC staff should audit based on the submission of formal complaints or a repeated failure to meet defined performance measures, such as exam pass rates. This recommendation would allow TREC to redirect significant resources to more serious complaints that directly affect consumers.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

Responses

Agency

Recommendation 3.1: The Commission disagrees with this recommendation. The Commission believes that an examination pass rate should be only one of many criteria used to determine the quality of an education provider. Establishing a minimum exam pass rate would encourage schools to teach to the exam. Finally, since universities and colleges are not governed by TREC, they could not be held to the same standards as TREC approved education providers.

Recommendation 3.1: TREC Commissioner Louise Hull agrees with this recommendation.

Recommendation 3.2: The Commission disagrees with this recommendation. Given that TREC licensees must complete five courses prior to taking a license examination, the Commission believes it would be difficult to determine which provider should receive credit for the published exam rate.

Recommendation 3.2: TREC Commissioner Louise Hull supports this recommendation, as long as exam pass rates can be fairly reported.

Recommendation 3.3: The Commission disagrees with this recommendation and offers the following modification. A subcommittee of the Commission would be more neutral in its appraisal of low performing schools, rather than an ad-hoc peer review committee. Individuals volunteering for such non-paying assignment may be competitors of the school being appraised and advised, creating the appearance, if not reality of a conflict of interest. The Commission currently has authority to convene such a subcommittee.

Agency Modification

1. Require the Commission to convene a subcommittee of the Commission, with staff support, to appraise low performing schools.

Recommendation 3.4: The Commission does not object to this recommendation.

(Wayne Thorburn, Administrator – Texas Real Estate Commission, Austin)

Affected Agency

Recommendation 3.3: The Real Estate Center states that having peer schools review their competitors could present a conflict of interest, and offers the following modification. If the number of schools selected for review is very large, the Real Estate Center could sustain a negative fiscal impact. As long as the ad hoc review team's work does not become an onerous commitment of Center resources, we will assist within the confines of our current expertise.

Real Estate Center Modification

2. Require the Commission to convene a team to review real estate schools composed of real estate licensees, selected TREC Commissioners, key TREC staff and a representative of the Real Estate Center. Such a team might offer more insights, be more objective, and have a

greater impact on the quality of real estate education. The task force should have latitude to focus on whatever is determined to be the causative factors and not review individual schools if there is no evidence of poor instruction.

(Gary Maler, Director – Real Estate Center, College Station)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendations 3.1 through 3.4 and Modification 2.

Commission Decision: Adopted Recommendations 3.1 through 3.4 with Modification 2.

Issue 4 Key Elements of the Commission's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Recommendations

Licensing

Change in Statute

4.1 Authorize TREC to approve continuing education courses for inspectors.

This recommendation would help TREC treat all its licensees equally by ensuring that home inspectors have a variety of relevant continuing education courses, and have access to education on new technologies and changes in the home inspection field.

4.2 Require the Commission to base delinquent license renewal fees on the standard renewal fee.

The renewal fee for licensees who are delinquent in renewing their licenses would be based on the standard renewal rate set by the Commission, rather than the fee for an original application. To renew a two-year license that has been expired for 90 days or less, the late renewal fee would be equal to 1-1/2 times the regular renewal fee. A two-year license that has been expired for more than 90 days, but less than one year, would pay a fee equal to two times the regular renewal fee. Licensees who have allowed their licenses to be expired for more than one year must obtain new licenses by complying with all requirements for obtaining an original license. Other fees the agency charges upon renewal – including the \$200 professional fee, and fees directed to the Texas Real Estate Research Center and Texas Online – would remain unaffected by this recommendation.

Management Action

4.3 TREC should conduct criminal background checks for all license renewals.

This recommendation would ensure that the Commission learns about any crimes committed by real estate professionals since becoming licensed, and provide the agency another tool to ensure protection of consumers.

4.4 TREC should indefinitely maintain records of licensees with violation histories, and check these records when issuing new licenses.

Under this recommendation, TREC would not purge the electronic records of licensees who have been inactive for eight years if they have a violation history. The agency would develop a method for maintaining, indefinitely, an electronic record of all licensees who have had final enforcement orders issued against them. The agency would also check these records before issuing a new license to ensure that no one with a history of severe violations receives a license.

Enforcement

Change in Statute

4.5 Authorize the Commission to issue cease-and-desist orders.

The Commission would issue cease-and-desist orders when it receives a complaint or discovers an individual or entity practicing real estate without a license. This recommendation authorizes the Commission to assess administrative penalties against persons who violate these orders. The agency would still be authorized to refer these cases

to local law enforcement agencies or the attorney general for prosecution. Cease-and-desist authority would help TREC better protect consumers from unlicensed real estate practice and standardize the agency's procedures with commonly applied licensing practices.

4.6 Authorize the Commission to levy administrative penalties against residential service companies who violate agency statute and rules.

This recommendation authorizes the Commission to levy an administrative penalty of up to \$5,000 per day, per violation of the Residential Service Company Act or TREC rules. The recommendation would strengthen the Commission's ability to gain compliance for violations and standardize fine amounts across the agency's regulated entities.

4.7 Authorize the Commission to temporarily suspend a license.

This recommendation authorizes the Commission to temporarily suspend a license upon determination, by a panel of three Commission members, that continued practice by the licensee threatens the public. This recommendation authorizes the panel to hold a meeting by teleconference under provisions in the Open Meetings Act if the threat is imminent, and convening the panel at one location is impossible for the timely action required. The Commission would also need to ensure due process to the license holder through subsequent proceedings to resolve issues that are the basis of the temporary suspension. This recommendation would strengthen the Commission's enforcement process and increase protection of the public against harm by enabling a faster response against serious violators.

Administration

Change in Statute

4.8 Eliminate the agency's licensing and administrative fee caps and authorize the Commission to set fees in rule.

This recommendation would give the Commission greater flexibility to set fees as appropriate without statutory change. The recommendation would also give the Commission flexibility to set fees at the level necessary to recover program costs as conditions change. The Legislature would maintain control by setting spending levels in the General Appropriations Act. The recommendation does not affect the fees passed through to the Texas Real Estate Research Center.

Management Action

4.9 The Commission, Appraiser's Board, Department of Savings and Mortgage Lending, and Department of Insurance should develop an interagency agreement to coordinate their enforcement efforts.

Under this recommendation, these agencies would jointly develop an interagency agreement that specifies how the agencies would refer non-jurisdictional complaints to the appropriate agency, and coordinate their enforcement efforts to address mortgage fraud and other illegal activities conducted by their respective licensees.

Fiscal Implication

Changing the basis on which the agency calculates late renewal penalties would result in a gain of about \$78,400 annually.

Responses

Agency

Recommendation 4.1: The Commission does not object to this recommendation.

Recommendation 4.2: The Commission disagrees with this recommendation. Assessing a delinquent license renewal fee based on varying criteria (more than 90 days/less than 90 days) would be an onerous and confusing task for agency staff. Currently late renewals are valid for only one year. It is unclear as to whether Sunset recommends that a late renewal would be valid for the remaining time of the normal two year renewal period or that the two year license period would start at the point of the late renewal. Additionally, this recommendation negates the penalty of having to take 15 hours of Mandatory Continuing Education (MCE) within one year.

Staff Comment: Under this recommendation the late renewal would be valid for the remaining time of the two year renewal period. In addition, the agency would still be able to assess a penalty for late MCE, and be able to take action against a licensee for not completing MCE within the one year period.

Recommendations 4.3 – 4.9: The Commission does not object to these recommendations.

(Wayne Thorburn, Administrator – Texas Real Estate Commission, Austin)

For

None received.

Against

None received.

Recommended Action: Adopt Recommendations 4.1 through 4.9.

Commission Decision: Adopted Recommendations 4.1 through 4.9.

Issue 5 Texas Has a Continuing Need for the Real Estate Commission, Although Its Advisory Committee Structure Needs Strengthening.

Recommendations

Change in Statute

5.1 Continue the Texas Real Estate Commission for 12 years.

This recommendation would continue the Commission as an independent agency responsible for regulating the real estate, home inspection, home warranty, and timeshare industries. Under this recommendation the Residential Service Company Act and the Texas Timeshare Act would be added to TREC's Sunset expiration clause in the agency's statute.

5.2 Remove the Commission's authority to delegate decision-making powers to committees, and authorize the Commission to create advisory committees as needed.

This recommendation would eliminate statutory language that authorizes the Commission to delegate powers and duties to its committees, aligning them with their actual advisory roles. The recommendation also authorizes the Commission to create advisory committees, as needed, to provide special expertise. The Commission should adopt rules regarding its committees in compliance with Chapter 2110 of the Texas Government Code, including:

- ◆ the purpose, role, responsibility, and goals of the committees;
- ◆ the size and quorum requirement of the committees;
- ◆ qualifications of the members, such as experience or geographic location;
- ◆ the appointment procedures for the committees;

- ◆ the terms of service;
- ◆ training requirements;
- ◆ a process to regularly evaluate the need for each committee; and
- ◆ the requirement that the committees comply with the Open Meetings Act, with the exception recommended below.

5.3 Authorize TREC's advisory committees to meet by teleconference.

This recommendation would allow TREC's committees to more effectively carry out their business by allowing them to hold general meetings by teleconference. Under this recommendation, teleconference meetings would be subject to the open meetings notice requirements.

5.4 Fully merge the Appraiser Board's staff functions with TREC, while retaining the Appraiser Board as an independent regulatory authority.

Under this recommendation, TREC's Administrator would serve as the Appraiser Board's Commissioner, and Appraiser Board staff would be fully integrated into TREC's staff structure. TREC management would supervise Board staff, making its operations more efficient. This recommendation would not affect the Appraiser Board's status as an independent policymaking and regulatory body and it would continue to meet federal requirements for an independent state authority. Issue 2 of this report recommends transferring TREC's hearings to SOAH, which would also include Appraiser Board's hearings.

Fiscal Implication

If the Legislature continues the current functions of TREC, using the existing organizational structure, the agency's annual appropriations of nearly \$4.26 million would continue to be required for its operation.

Transferring the Appraiser Board's functions to TREC would not have a significant fiscal impact, though some administrative efficiencies would result.

Responses

Agency

Recommendation 5.1: The Commission does not object to this recommendation.

Recommendation 5.2: The Commission does not object to this recommendation, and offers the following modification.

Agency Modification

1. Remove the Commission's authority to delegate decision-making powers to the Inspector Committee, and authorize the Commission to create it as an advisory committee. Under this modification the Broker/Lawyer Committee would remain unchanged, and the Commission would continue to be authorized to delegate additional powers and duties to the Broker/Lawyer Committee.

(Wayne Thorburn, Administrator – Texas Real Estate Commission, Austin)

Recommendation 5.2: The Chair of the Texas Real Estate Inspector Committee does not oppose this recommendation, as long as the Committee remains a statutorily created Committee.

Recommendation 5.3: The Chair of the Texas Real Estate Inspector Committee supports this recommendation.

(John Cahill, Chair – Texas Real Estate Inspector Committee, Plano)

Recommendations 5.3 – 5.4: The Commission does not object to these recommendations.

(Wayne Thorburn, Administrator – Texas Real Estate Commission, Austin)

Affected Agency

Recommendation 5.2: The State Bar states that potential revisions to the statute should not alter the current organization of the Broker/Lawyer Committee, including the method its members are appointed. The primary function of the Committee, to draft standard forms for TREC approval, should also be continued with express statutory authority.

(John P. Edwards, Executive Director – State Bar of Texas, Austin)

Recommendation 5.4: The Vice Chair of the Texas Appraiser Licensing and Certification Board states he sees the advantages to this recommendation.

(Larry D. Kokel, Vice Chair – Texas Appraiser Licensing and Certification Board, Georgetown)

Recommendation 5.4: The Commissioner of the Texas Appraiser Licensing and Certification Board supports this recommendation.

(Wayne Thorburn, Commissioner – Texas Appraiser Licensing and Certification Board, Austin)

Recommendation 5.4: The Chair of the Texas Appraiser Licensing and Certification Board (TALCB) opposes this recommendation, and proposes the following modification.

TALCB Modification

2. Rather than merge the functions of TALCB into TREC, grant the Appraiser Board staff office ample funds to hire adequate enforcement and support for the everyday operation of TALCB.

Staff Comment: The staff recommendation would not change the organization or method of appointment of TALCB.

(Shirley J. Ward, Chair – Texas Appraiser Licensing and Certification Board, Alpine)

For

Recommendation 5.4

Gerald Keller, President – Foundation Appraisers Coalition of Texas, Inc., San Antonio

Against

Recommendation 5.4

Wayne Mayo, Former Chair – Texas Appraiser Licensing and Certification Board, Richardson

Renil C. Liner, Former Commissioner – Texas Appraiser Licensing and Certification Board, San Marcos

Jim D. Pearson, President – Pearson Appraisal Company, Inc., McKinney

Vincent R. Venhaus – Venhaus Appraisal Company, Royse City

Michael A. Smith, Chief Appraiser – IndyMac Bank, Inc.

Mike Eustace – Mansfield

Chris Lehman – Austin

Staff Comment: In response to a request by the Texas Appraiser Licensing and Certification Board, the federal Appraisal Subcommittee stated it would not oppose the integration of TALCB and TREC staff so long as independent policymaking and decisionmaking regarding appraisal regulatory and supervisory matters remains with TALCB.

(Mark L. Weinberg, General Counsel and Acting Executive Director – Appraisal Subcommittee, Washington D.C.)

Modifications

3. Authorize the Commission to create advisory committees as needed and retain the current powers and functions of the Real Estate Inspector and Broker/Lawyer Committees. (Ron Walker, Vice President of Legal Affairs – Texas Association of REALTORS®, Austin)
4. Within TREC create an Inspector Board, similar to the existing Appraiser Board. (Daniel F. South, Vice President, Government and Regulatory Affairs – Texas Association of Real Estate Inspectors, Austin)
5. Transfer the Texas Appraiser Licensing and Certification Board to the Texas Department of Licensing and Regulation (TDLR). (Michael A. Smith, Chief Appraiser – IndyMac Bank, Inc.) (Jim D. Pearson, President – Pearson Appraisal Company, Inc., McKinney)

Staff Comment: Transferring the Appraiser Board to TDLR would not conflict with federal requirements for an independent state regulatory authority for appraisers. TDLR’s structure uses occupational advisory committees reporting to TDLR’s Commission, which has full authority over occupations under its regulation.

Recommended Action: Adopt Recommendations 5.1 through 5.4.

Commission Decision: Adopted Recommendations 5.1 through 5.4 with Modification 1.

Across-the-Board Recommendations

Texas Real Estate Commission

Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency’s policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency’s policymaking body.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update and Modify	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

New Issues

New Issues

None received.

