

TEXAS



REAL ESTATE COMMISSION

APPRAISER LICENSING & CERTIFICATION BOARD

TREC and TALCB Initiate Review of Rules

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TREC and TALCB will begin formal review of all agency rules and encourage the public and regulated industries to participate in the process.

IMMEDIATE RELEASE

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The Texas Real Estate Commission (TREC) and Texas Appraiser Licensing and Certification Board (TALCB) have announced a formal review of all agency rules in 2010. This process is different from regular rulemaking proposals in that the agency's Rule Review initiative will include consideration of public and regulated industry comments *prior* to the writing of rule proposal drafts. "2010 will be the key year for a comprehensive review of all agency policies," TREC Administrator and TALCB Commissioner Douglas E. Oldmixon says; "we will be initiating strategic planning in addition to this formal rule review. Instead of responding to proposals, participants will have the opportunity to provide input before draft rules are created, helping to shape how the agency implements statutes and policies."

"During the Rule Review process, the agency will be determining whether the basis for the initial adoption of a rule continues to exist," explains Devon Bijansky, TALCB General Counsel. TREC General Counsel Loretta DeHay adds, "the agency may also determine that a specific rule needs to be amended to better reflect the agency's legal and policy considerations." This comprehensive review is also the appropriate time to ensure that current internal agency procedures are accurately described in the rules.

All of the rules under review will be posted in the *Texas Register* per state law and agency rulemaking procedure. TREC and TALCB are currently inviting comments on Texas Administrative Code, Title 22:

TALCB Board Members

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Commissioner

Part VIII: TALCB, Chapter 155: Standards of Practice
Part VIII: TALCB, Chapter 157: Practice and Procedure
Part XXIII: TREC, Chapter 534: General Administration
Part XXIII: TREC, Chapter 539: Residential Service Company Act
Part XXIII: TREC, Chapter 543: Texas Timeshare Act

Rule proposals and adoptions will be presented at the respective Commission and Board meetings throughout 2010 (see attached schedule), and the culmination of the process will be at the November meetings. Those wishing to participate can contact the respective general counsel directly, or email their comments to general.counsel@trec.state.tx.us and/or general.counsel@talcb.state.tx.us.

"We anticipate receiving a large number of valuable comments," says TREC Chair John D. Eckstrum. TALCB Chair Clinton P. Sayers adds, "This is a great chance to truly participate in your government." Under state law, each agency must formally review all of its rules every four years.

The mission of TREC is to assist and protect consumers of real estate services and foster economic growth in Texas. Through its programs of education, licensing and industry regulation, the Commission ensures the availability of capable and honest real estate service providers. More information at: www.trec.state.tx.us

The mission of TALCB is to protect the public interest by assuring that consumers of real estate appraisal services are served by real estate appraisers qualified in accordance with federal and state law and in sufficient numbers to facilitate the free flow of commerce and industry. More information at: www.talcb.state.tx.us

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2010 TREC RULE REVIEW

Commission Meeting Dates	December 14, 2009	February 8, 2010	May 17, 2010	August 9, 2010	November 15, 2010
Chapters 534, 539, 543	Propose review of Chapters 534, 539, 543	Consider comments and potential rule revisions of Chapters 534, 539, 543	Conclude review and potential rule revisions adoption of Chapters 534, 539, 543		
Chapters 531, 533, 537, 541		Propose review of Chapters 531, 533, 537, 541	Consider comments and potential rule revisions of Chapters 531, 533, 537, 541	Conclude review and potential rule revisions adoption of Chapters 531, 533, 537, 541	
Chapter 535			Propose review of Chapter 535	Consider comments and potential rule revisions of Chapter 535	Conclude review and potential rule revisions adoption of Chapter 535

22 TAC Chapter 531: Canons of Professional Ethics and Conduct for Real Estate Licensees

22 TAC Chapter 533: Practice and Procedure

22 TAC Chapter 534: General Administration

22 TAC Chapter 535: General Provisions

22 TAC Chapter 537: Professional Agreements and Standard Contracts

22 TAC Chapter 539: Provisions of the Residential Service Company Act

22 TAC Chapter 541: Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53

22 TAC Chapter 543: Rules Relating to the Provisions of the Texas Timeshare Act

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*subject to final approval at the February 8, 2010 Commission Meeting

2010 TALCB RULE REVIEW

Board Meeting Dates	December 11, 2009	February 12, 2010	May 21, 2010	August date TBD	November date TBD
Chapters 155 & 157	Propose review of Chapters 155 & 157	Consider comments and potential rule revisions proposal of Chapters 155 & 157	Conclude review and potential rule revisions adoption of Chapters 155 & 157		
Chapter 153, Sections 1-.18		Propose review of §§153.1-.18	Consider comments and potential rule revisions proposal of §§153.1-.18	Conclude review and potential rule revisions adoption of §§153.1-.18	
Chapter 153, Sections .19-.37			Propose review of §§153.19-.37	Consider comments and potential rule revisions proposal §§153.19-.37	Conclude review and potential rule revisions adoption of §§153.19-.37

22 TAC Chapter 153: Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act

22 TAC Chapter 155: Rules Relating to Standards of Practice

22 TAC Chapter 157: Rules Relating to Practice and Procedure

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CHAPTER 155

RULES RELATING TO STANDARDS OF PRACTICE

§155.1. Standards of Practice. *[adopted March 2, 1992; amended March 1, 1997; August 15, 1999; April 1, 2001; and November 7, 2007]*

(a) An appraisal or appraisal practice performed by a person subject to the Texas Appraiser Licensing and Certification Act must conform with the "Uniform Standards of Professional Appraisal Practice" (USPAP) of the Appraisal Foundation in effect at the time of the appraisal or appraisal practice.

(b) A Jurisdictional Exception is adopted for the members, staff, and peer review committee members of the Texas Appraiser Licensing and Certification Board for all appraisal reviews relating to enforcement and disciplinary cases, applications, renewals, and experience verification audits.

CHAPTER 157 RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER A GENERAL PROVISIONS

§157.2. Object of Rules. *[adopted April 1, 2001]* The purpose of these rules is to provide for a simple and efficient system of procedure before the board, to insure uniform standards of practice and procedure, public participation and notice of board actions, and a fair and expeditious determination of causes. These rules shall be liberally construed, with a view towards the purpose for which they were adopted.

§157.3. Scope of Rules. *[adopted April 1, 2001]* These rules shall govern the procedure for the institution, conduct and determination of all causes and proceedings before the board. They shall not be construed so as to enlarge, diminish, modify or alter the jurisdiction, powers or authority of the board or the substantive rights of any person.

§157.4. Computation of Time. *[adopted April 1, 2001]* In computing any period of time described or allowed by these sections, by order of the board, or by any applicable statute, the period shall begin on the day after the act, event or default in controversy and conclude on the last day of such computed period, unless it be 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.

§157.5. Conduct and Decorum. *[adopted April 1, 2001]* Every party, witness, attorney or other representative shall comport himself or herself in all proceedings with proper dignity, courtesy and respect for the board and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys-at-law by the State Bar of Texas.

§157.6. Request for Advisory Opinions. *[adopted April 1, 2001]* Upon written or oral request, the board may issue written or oral advisory opinions. Such opinions are not binding on the board or on the person making the request, and may not be relied upon as an official board ruling. The board shall maintain a record of each advisory opinion, identifying the person to whom it was issued.

§157.7. Denial of a License. *[adopted April 1, 2001; amended May 30, 2006; and January 8, 2008]* If the board denies a certification or license to an applicant under the Act, the board immediately shall give written notice of the denial to the applicant. Notice and hearings

relating to denial of a license issued by the board shall be governed by the Act and by Texas Government Code Annotated, §§2001.001, et seq. In the case of an application for approval as an appraiser trainee the board shall also notify a sponsoring certified appraiser of the denial, but a sponsoring appraiser is not required to request a hearing or to be named or admitted as a party in the proceeding before the board. A hearing pursuant to this section shall be held at a place designated by the State Office of Administrative Hearings and presided over by an administrative law judge from the State Office of Administrative Hearings who shall conduct the hearing and issue a proposal for decision. Failure to request a hearing within 30 days of the written notice of denial waives judicial appeal, and the board determination becomes final and unappealable.

§157.8. Suspension and Revocation of a License. *[adopted April 1, 2001]* A license issued by the board may not be suspended or revoked except after notice and opportunity for hearing pursuant to statutory obligation and these sections. If an appraiser trainee is a respondent, the board will also notify the trainee's sponsoring appraiser(s) of the hearing. The hearing shall be held at a time and place designated by the board.

SUBCHAPTER B CONTESTED CASE HEARINGS

§157.9. Notice of Hearing. *[adopted April 1, 2001; amended December 17, 2001]*

(a) The notice of hearing shall be served by personal service or certified mail return receipt requested not later than the 30th day before the hearing date.

(b) Service of notice of hearing or investigation on the respondent or applicant shall be complete and effective if the document to be served is sent by registered or certified mail to the respondent or applicant at his or her most recent address as shown by the records of the board. Service by mail shall be complete upon deposit of the document in question in a post paid properly addressed envelope in a post office of official depository under the care and custody of the United States Postal Service.

(c) The notice shall include the following language in capital letters in boldface type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE AND A DEFAULT JUDGMENT BEING TAKEN AGAINST YOU.

§157.10. Right to Counsel; Right to Participate.

[adopted April 1, 2001] All parties, at their own expense, may be represented by counsel, which right may be expressly waived. Parties are entitled to respond and present evidence and argument on all issues involved, and to conduct cross examinations for full and true disclosure of the facts.

§157.11. Contested Cases; Entry of Appearance; Continuance. *[adopted April 1, 2001; amended December 29, 2005; and January 8, 2008]*

(a) When a contested case has been instituted, the respondent or the representative of the respondent shall enter an appearance not later than 20 days after the date of receipt of notice as provided in Tex. Occ. Code §1103.506.

(b) For the purposes of this section, a contested case shall mean any action that is referred by the board to the State Office of Administrative Hearings.

(c) For purposes of this section, an entry of appearance shall mean the filing of a written answer or other responsive pleading with the State Office of Administrative Hearings.

(d) The filing of an untimely appearance by a party, or entering an appearance at the contested case hearing entitles the board to a continuance of the hearing in the contested case at the board's discretion for such a reasonable period of time as determined by the administrative law judge, but not for a period of less than 20 days. For purposes of this section, an untimely appearance is an appearance not entered within 20 days of the date the respondent has received notice.

§157.12. Failure to Attend Hearing; Default Judgment. *[adopted April 1, 2001; amended October 12, 2006]*

(a) If a respondent fails to appear in person or through his legal representative on the day and at the time set for hearing in a contested case, regardless of whether an appearance has been entered, the administrative law judge, upon motion by the board, shall enter a default judgment in the matter adverse to the respondent who has failed to attend the hearing, upon proper proof of notice to the defaulting party.

(b) For purposes of this section, a default judgment shall mean the issuance of a final order against the respondent in which the factual allegations against the respondent contained in the complaint shall be admitted as prima facie evidence and deemed admitted as true, without any requirement for additional proof to be submitted by the board.

§157.13. Ex Parte Consultations. *[adopted April 1, 2001]* A member of the board may not communicate, directly or indirectly, in connection with any issue of fact or law with any person, party, or their representative except on notice and opportunity for all parties to participate. A member of the board may communicate ex

parte with employees of the board who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the board and its staff in evaluating the evidence.

§157.14. Informal Disposition. *[adopted April 1, 2001]* Informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. No stipulation or agreed settlement between the parties or their attorneys or representatives, with regard to any matter involved in any proceeding before the board, shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives and made a part of the record, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated in an order bearing their written approval.

**SUBCHAPTER C
POST HEARING**

§157.15. Decision. *[adopted April 1, 2001; amended December 29, 2005; and January 9, 2008]*

(a) The administrative law judge shall serve on the parties a proposal for decision which shall contain:

(1) a statement of the administrative law judge's proposed reasons for the decision;

(2) findings of fact and conclusions of law, separately stated, that are necessary to the proposed decision.

(b) Service. When a decision is prepared, a copy of the decision shall be served by the administrative law judge on each party, the respondent's attorney of record or representative, and the board. Service of the decision shall be in accordance with §157.9(b) of this title (relating to Notice of Hearing).

§157.16. Exceptions and Replies. *[adopted January 9, 2008]*

(a) Entitlement. Any party of record who is aggrieved by the administrative law judge's decision shall have the opportunity to file exceptions to the decision within 20 days from the date of service of the decision. Replies to the exceptions may be filed by the other party within 20 days of the filing of the exception.

(b) Exceptions and replies shall be filed by the administrative law judge.

§157.17. Final Decisions and Orders. *[adopted January 9, 2008; amended July 21, 2008; and November 9, 2008]*

(a) Board Action. The proposal for decision may be acted upon by the board after the expiration of the applicable time periods for filing exceptions and replies to exceptions, and after the administrative law judge has ruled on any exceptions and replies. Parties shall be notified either personally or by mail of any decision or

order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to the respondent's attorney of record.

(b) Imminent Peril. If the Board finds that an imminent peril to the public health, safety, or welfare requires immediate effect on a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered, and no motion for rehearing is required as a prerequisite for appeal.

(c) Conflict of Interest. A Board member shall recuse himself or herself from all deliberations and votes regarding any matter:

(1) the Board member reviewed as a member of a Peer Investigative Committee;

(2) involving persons or transactions about which the Board member has a conflict of interest;

(3) involving persons or transactions related to the Board member sufficiently closely as to create the appearance of a conflict of interest.

(d) A Board member's participation in the negotiation of a consent order under Texas Occupations Code, §1103.458, does not require recusal under subsection (c) of this section.

§157.18. Motions for Rehearing; Finality of Decisions. *[adopted April 1, 2001; amended December 29, 2005; October 12, 2006; and January 9, 2008]*

(a) Filing times. A motion for rehearing must be filed within 20 days after a party has been notified, either in person or by certified mail, return receipt requested, of the final decision or order made by the board.

(b) Board action. Board action on a motion must be taken no later than the 20th day after the date the commissioner is served with the motion for rehearing. If board action is not taken within the 20 day period, the motion for rehearing is overruled by operation of law.

(c) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing. A decision is final and appealable on the date of rendition of the order overruling a motion for rehearing, or on the date the motion for rehearing is overruled by operation of law.

(d) A decision is final and appealable on the date rendered if the board finds that an imminent peril to the public health, safety or welfare requires immediate effect, in which event the decision or order shall recite the finding and the fact that the decision is final and effective on the date rendered.

§157.19. Prerequisite to Judicial Review. *[adopted April 1, 2001]* Except in the case of an emergency decision or order, a motion for rehearing is a prerequisite to judicial review.

§157.20. Judicial Review. *[adopted April 1, 2001; amended December 29, 2005]*

(a) 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.

(b) The petition shall be filed in a district court of Travis County, Texas, within 30 days after the decision or order of the board is final and appealable.

(c) Pursuant to Texas Government Code Section 2001.177, a party seeking judicial review of a final decision of the Texas Appraiser Licensing and Certification Board in a contested case shall pay all costs of preparing the original or certified copy of a record of the contested case proceedings.