

# Chapter 1

## Statutory and Rule Updates



### Learning Objectives

After this chapter you will be able to

- ⇒ Understand your responsibility to know and operate under current laws;
- ⇒ Recall statutory changes to the Texas Real Estate License Act;
- ⇒ Recall statutory changes to the Texas Real Estate Inspector Act;
- ⇒ Know how to be involved in the rule-making process.

### Overview

It is every license holder's responsibility to know and operate under the current laws and rules applicable to their license. There are two primary laws that govern the conduct of inspectors in Texas. These two laws are found in Chapters 1101 and 1102 of the Texas Occupations Code (TOC). In addition, there are rules applicable to real estate inspectors adopted and maintained by the Texas Real Estate Commission (TREC or Commission).

Chapter 1102 provides the Commission direct regulatory authority over the licensing and regulation of inspectors in Texas. While Chapter 1101 focuses primarily on the regulation of sales agents and brokers, it also provides the Commission the general authority to administer Chapter 1102.

### Statutory Changes to Texas Real Estate License Act (Chapter 1101, TOC)

Chapter 1101 (TOC) gives TREC authority to:

- administer Chapters 1101 and 1102;
- adopt and enforce rules necessary to administer those chapters; and
- establish standards of conduct and ethics for all persons licensed under Chapters 1101 and 1102.

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

- require TREC to dismiss a complaint if it is determined that the complaint is inappropriate or without merit;
- require TREC to protect the identity of a complainant by excluding the complainants identifying information from the notice sent to the respondent;
- remove the Texas residency requirement for all licenses regulated by TREC and instead require license holders to have geographic competency;
- remove TREC's authority to license instructors but maintain TREC's authority over the requirements to act as an instructor and require providers to ensure any instructors they use meet the TREC requirements;
- require TREC to determine if an applicant is fit to engage in the occupations regulated by TREC in lieu of determining if an applicant's moral character complies with licensing requirements; and
- authorize TREC to deny a renewal in the event that the license holder is in violation of a TREC order.

## **Statutory Changes to Texas Real Estate Inspector Act (Chapter 1102, TOC)**

Chapter 1102, Texas Occupations Code, gives TREC authority to license and regulate real estate inspectors in Texas.

The changes resulting from the Agency's sunset bill (SB 624) mentioned above apply to inspectors as well.

### **TREC Rules Publication**

The rules applicable to inspectors in Texas are detailed in Chapter 535, Subchapter R, of Title 22 of the Texas Administrative Code (TAC). TREC publishes all proposed amendments and adopted rule changes in the Texas Register. TREC also notifies license holders of proposed and adopted rule changes eight times each year through the *Inspector Insight*, TREC's electronic newsletter for real estate inspectors. Recently adopted or proposed rules are included on the TREC website.

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

### **Rule Changes since January 2017**

#### **§535.216 Renewal of License**

Effective 3/06/17

The amendments clarified the process for renewing an expired inspector license when the license has been expired for less than six months.

#### **§535.218 Continuing Education Required for Renewal**

Effective 12/6/17

The real estate inspector continuing education requirements for non-elective course work were updated to include a four-hour course developed by providers in accordance with a TREC approved course outline and a four-hour course developed by TREC.

Effective 3/5/19

The revisions tie the definition of a ride along course to

section §535.213 for consistency and allow inspectors to receive continuing education credit for courses applicable to inspectors that are taken to satisfy continuing education requirements for an occupational license issued by another Texas governmental body.

#### **§535.227 Standards of Practice: General Provisions**

Effective 5/24/17

Corrected a clerical error – adding “or” between subsections (f) (C) and (D).

#### **§535.201 Definitions**

Effective 5/24/17

A definition for “Standards of Practice” was added and the definition for “Texas Standards of Practice/Legal/Ethics Update” was deleted since the course was restructured and renamed.

#### **§535.201 Definitions**

Effective 8/13/18

A definition for “client” was added, and unused definitions for “code organization” and “trade association” were deleted.

Reorganized and clarified the qualifying education course requirements for inspectors, including decreasing the ride along class size from 10 students to 4 students per instructor. Multiple instructors are allowed per class to accommodate larger class sizes.

#### **§535.219 Schedule of Administrative Penalties**

Effective 3/5/19

Added statutory section 1102.305 to the penalty matrix, which was inadvertently omitted.

#### **§535.220 Professional Conduct and Ethics**

Effective 3/5/19

Tied the section back to the parallel requirement of §531.18, which was recently updated to provide more flexibility for license holders when linking to the required Consumer Protection Notice form.

## TREC Rule Changes

### §535.218 Continuing Education Required for Renewal

Effective 9/2/2019

Continuing education topics required for inspectors to renew their licenses are listed and are no longer cross referenced to §535.213 which was repealed and shall expire effective February 28, 2021. The rule includes the minimum requirements for receiving continuing education credit for a ride-along inspection course (now only available for CE). Lastly, the proposed amendment expands the ability for an inspector to receive up to four hours of CE credit per license period by attending any Texas Real Estate Inspector Committee meeting.

### §535.222 Inspection Reports

Effective 9/2/2019

Reduces the amount of time an inspector has to deliver a report from 3 days to 2 days and clarifies that the delivery of an inspection report is not required until the inspector receives payment for services.

### §535.209 Examinations

Effective 8/31/2020

The Rule allows the two part licensure examination to be taken at two separate times effective March 1, 2021. The rule lists specific education for each portion of the exam that must be successfully completed before scheduling each portion of the exam. If the applicant chooses to take the national portion and state portion of the exam separately, the national portion must be taken before the state portion of the exam. Courses that must be retaken if an applicant thrice fails either the national or state portion of the examination are enumerated.

### §535.212. Education and Experience Requirements for a License

Effective 8/31/2020

The Rule significantly streamlines the pre-licensing requirement for inspectors. Currently, there are three license types for inspectors: apprentice, real estate and professional. The more experienced license types (real estate and professional) can be attained through experience and sponsorship or through substitute coursework. The rule sets out each path in one place and reduces the total hours of

coursework and field work for the substitute paths to be more in line with other states requirements. Further, the requirement to repeat coursework for a higher level license was removed.

### §535.213 Qualifying Real Estate Inspector Courses

Effective 8/31/2020

New coursework for licensure is outlined. The courses closely track the national guidelines for the national examination and create improved Texas modules and a practicum for the field work component of training. These redesigned courses should improve the quality and consistency of inspector licensure coursework.

### §531.18 Consumer Information

Effective 2/1/2021

The amendment to the Consumer Protection Notice adds a statement to alert consumers that inspectors licensed by TREC are required to maintain errors and omissions insurance to cover losses arising from the performance of a real estate inspection in a negligent or incompetent manner. Form CN 1-3. See Appendix A.

#### DISCUSSION

1. How can an inspector get involved in the rule-making process?
2. What kind of continuing education is accepted beyond TREC Providers?