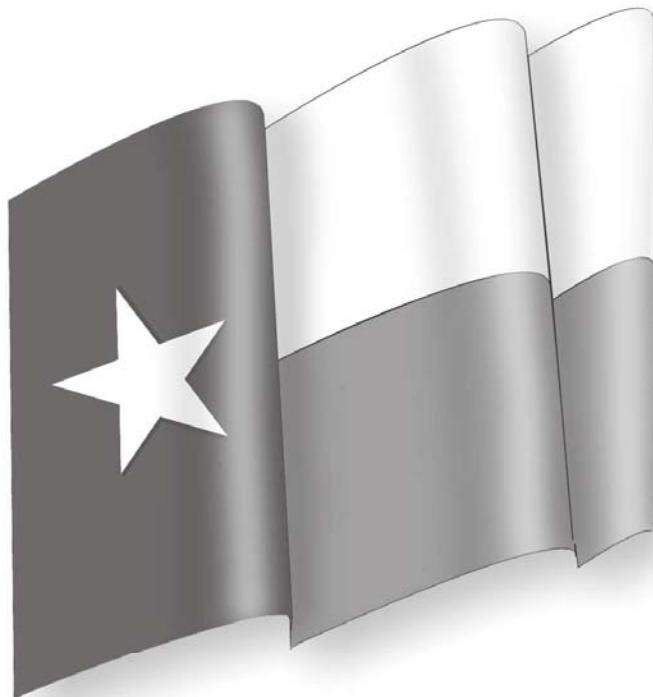


# *Summary of Sunset Commission Recommendations*



**Texas Real Estate Commission**

**February 2007**







# Texas Real Estate Commission

## Agency at a Glance

The Texas Real Estate Commission (TREC) protects 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.

The Commission's main functions include:

- ◆ licensing real estate brokers, salespersons, home inspectors, and residential service companies;
- ◆ certifying right-of-way agents and registering timeshare projects;
- ◆ approving private real estate schools, courses, and instructors; and
- ◆ investigating and resolving complaints, and taking disciplinary action when necessary to enforce the Commission's statutes and rules.

## Key Facts

- ◆ **Funding.** In fiscal year 2006, the agency operated on a budget of about \$4.5 million and collected about \$19.8 million in revenues primarily from professional licensing fees.
- ◆ **Staffing.** The agency employs 76 people who work primarily in Austin. TREC also provides administrative support to the seven staff of the Texas Appraiser Licensing and Certification Board.
- ◆ **Licensing.** The agency licenses 153,259 individuals and businesses, including 35,280 real estate brokers and 106,597 salespersons. The remainder includes broker corporations, private real estate schools, instructors, home inspectors, right-of-way agents, home warranty companies, and time share projects.

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- ◆ **Enforcement.** In fiscal year 2006, the Commission opened 5,391 enforcement cases, and closed 4,894, with 1,258 initiated by complaints from consumers or licensees.

## Commission Members (9)

John S. Walton, Jr., Chair (Lubbock)  
Elizabeth Leal, Vice Chair (El Paso)  
Troy C. Alley Jr. (Arlington)  
Mary Frances Burleson (Sachse)  
John D. Eckstrum (Conroe)  
William H. Flores (Sugarland)  
Louise E. Hull (Victoria)  
Paul Jordan (Georgetown)  
Tom C. Mesa, Jr. (Pasadena)

## Agency Head

Wayne Thorburn, Administrator  
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## **Recommendations**

1. Increase TREC's focus on consumer protection, and provide the agency additional enforcement tools.
2. Improve TREC's ability to quickly resolve complaints, and transfer its hearings to SOAH.
3. Improve regulation of private real estate schools to ensure students get a quality education.
4. Conform key elements of the Commission's licensing and regulatory functions to commonly applied licensing practices.
5. Continue the Texas Real Estate Commission for 12 years, and better integrate regulation of home inspectors and appraisers into the agency's structure.

# *Issue 1*

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## **TREC's Enforcement Process Needs an Increased Focus on Consumer Protection.**

### **Key Findings**

- ◆ The Commission's policies and statute create delays in resolving consumer complaints, placing the public at risk of harm.
- ◆ TREC lacks sufficient administrative penalty authority to deter violations of the licensing act and to hold licensees accountable for multiple violations.
- ◆ TREC lacks a penalty matrix with a full range of sanctions, making it difficult for the agency to fairly apply a range of penalties scaled to the severity of violations.
- ◆ Nonstandard enforcement provisions of TREC's statute and policies could reduce the agency's effectiveness in protecting consumers and providing fair treatment to licensees.

TREC's enforcement authority, policies, and processes create barriers to more quickly and effectively investigating and resolving complaints against licensees, hindering the agency's ability to adequately balance consumer protection against the needs of licensees. The Sunset Commission also found that TREC lacks standard enforcement tools and complaint tracking processes common to occupational licensing agencies.

### **Recommendations**

#### **Change in Statute**

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

Under this recommendation TREC would focus on more quickly investigating consumer complaints and taking swifter action against licensees who violate the licensing act by creating a risk-based approach to prioritizing and investigating complaints. In creating this risk-based approach, the Commission would consider 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.

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

Rather than waiting to request the Commission's approval to open enforcement cases, agency staff would be authorized to immediately, and more quickly, 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.

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

This recommendation would ensure that the Commission can consistently and fairly apply a full range of sanctions against licensees for violations of the licensing act and rules. By requiring the Commission to adopt the matrix in rule, the public would have an opportunity to comment. Typical sanctions could include revocation, suspension or probation of a license, or fines.

**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 should the person re-apply for a license.

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

The Commission would be allowed to include refunds as part of an agreed order negotiated with a licensee. Refunds would be limited to fees paid for real estate-related services and products regulated by TREC, and would not include estimations of damages or harm. Refunds may be in lieu of or in addition to other sanctions against a licensee.

**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 in a format that allows staff to identify regulatory problem areas. The type of information the Commission should analyze includes enforcement case resolution time frames by type of complaints; the number, type, and age of all open complaints at the end of each fiscal year; and the number and type of nonjurisdictional complaints.

## *Issue 2*

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

**Key Findings**

- ♦ TREC's use of separate administrative and contested case hearing tracks prevents it from effectively sanctioning licensees who violate the Act.
- ♦ TREC's enforcement processes are outdated, lacking a structured informal complaint resolution process common to other state occupational licensing agencies.
- ♦ The agency's process for issuing orders in contested cases lacks the independence and efficiencies that SOAH provides.

TREC carries out long-standing internal practices to enforce provisions of its enabling Act. In evaluating these practices, the Sunset Commission concluded that the agency's practices fail to meet common standards relating to consistency, fairness, and effectiveness. In addition, the Sunset Commission found that the State Office of Administrative Hearings (SOAH) could more independently and efficiently conduct TREC's contested case hearings.

## **Recommendations**

### **Change in Statute**

#### **2.1 Align TREC's hearing and administrative penalty processes.**

This recommendation would allow TREC to more easily investigate and administer cases through a single, consistent process by aligning several statutory provisions of TREC's contested case hearing and administrative penalty processes. TREC would 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.

#### **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 common procedures for informal complaint resolution. As a result, the majority of TREC's complaint cases would be closed much more quickly, and only the most serious enforcement cases would need a contested case hearing. TREC would create an enforcement plan detailing an informal complaint resolution process, which requires the following statutory changes.

- ◆ 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.
- ◆ 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.

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

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.

## *Issue 3*

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

#### **Key Finding**

- ♦ The Commission does not hold private real estate schools accountable for providing quality education outcomes, nor provide information to prospective students to assist them with choosing the best real estate school.

The Sunset Commission found that TREC's current regulations do not go far enough to ensure that private real estate and home inspector schools provide information useful to evaluating a school's ability to teach courses, or help ensure students receive a quality education that leads to licensure in the field. Currently, real estate students have limited access to information that would help them choose a quality course provider. In addition, TREC does not have an adequate mechanism to review real estate schools that consistently show problems, and assist these schools with improving their performance.

#### **Recommendations**

##### **Change in Statute**

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

The Commission lacks a basic performance measure for private real estate and home inspector schools to help ensure that students are able to attend quality schools. The Commission would establish a minimum pass rate requirement, above the current 55 percent average exam pass rate, for a school to be re-accredited by the Commission.

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

Currently students lack information needed to help them choose a quality real estate school to attend, and this recommendation would assist prospective students with making more informed choices before enrolling in a particular real estate school.

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

This recommendation would allow the Commission to convene a review committee to conduct assessments of low-performing schools, such as those having difficulty in meeting minimum exam pass rates, and provide these schools with advice on improving their business practices or teaching methods.

##### **Management Action**

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

Under this recommendation, TREC would perform unannounced audits only on schools where significant problems exist, such as repeated failure to meet defined performance measures, including exam pass rates. TREC would redirect these resources to complaints that directly affect consumers.

# *Issue 4*

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

### **Key Findings**

- ◆ Licensing provisions in the Commission's statutes do not follow model licensing practices and could potentially affect the fair treatment of licensees and consumer protection.
- ◆ Nonstandard enforcement provisions in TREC's statutes could reduce the agency's effectiveness in protecting consumers.

Various licensing and enforcement processes in the agency's statutes and rules do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 90 Sunset reviews of occupational licensing agencies in 29 years. For example, the lack of a full range of penalties may affect the agency's ability to protect the public from licensees who violate the law and TREC's rules. Comparing TREC's regulatory practices and statute to these licensing standards identified variations and needed changes to bring the Commission in line with model standards.

### **Recommendations**

#### **Licensing – Change in Statute**

##### **4.1 Authorize TREC to approve continuing education courses for inspectors.**

This recommendation would ensure that home inspectors have a variety of relevant continuing education courses to choose from, 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. A person whose license has been expired for 90 days or less, would pay a renewal fee equal to 1-1/2 times the regular renewal fee. Those whose licenses have been expired for more than 90 days, but less than one year, would pay a fee equal to two times the renewal fee. In calculating the late penalty, TREC would not include the \$200 professional fee assessed on brokers and salespersons.

#### **Licensing – 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.**

TREC would no longer purge the electronic records of licensees who have been inactive for eight years if they have a violation history, and would be able 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.**

Providing the Commission with cease-and-desist authority would help the agency to more quickly protect consumers from unlicensed real estate practice. This recommendation would also authorize the Commission to assess administrative penalties against persons who violate these orders.

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

The Commission would be able to levy an administrative penalty of up to \$5,000 per day, per violation of the Residential Service Company Act or TREC rules, strengthening the Commission's ability to protect consumers and gain compliance for violations.

### **4.7 Authorize the Commission to temporarily suspend a license.**

The Commission would be able to temporarily suspend a license upon determination that continued practice by the licensee threatens the public. Action by a panel of three Commission members would be required to temporarily suspend a broker, salesperson, or home inspector license, and could occur by teleconference. The Commission would ensure due process to the license holder through subsequent proceedings to resolve issues that are the basis of the temporary suspension.

## **Administration – Change in Statute**

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

The Commission would have greater flexibility to set fees as appropriate, without statutory change, to recover program costs as conditions change. The Legislature would continue to maintain control by setting spending levels in the General Appropriations Act. Under this recommendation, fees passed through to the Texas Real Estate Research Center would not be affected.

## **Administration – Management Action**

### **4.9 The Commission, Appraiser's Board, Department of Savings and Mortgage Lending, and Department of Insurance should coordinate their enforcement efforts.**

These agencies would develop an interagency agreement specifying referral of nonjurisdictional complaints to the appropriate agency, and coordination of enforcement efforts to address mortgage fraud and other illegal activities conducted by their respective licensees.

## *Issue 5*

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

#### **Key Findings**

- ♦ Texas has a continuing interest in licensing and regulating the real estate industry.
- ♦ The Texas Real Estate Inspector Committee's statute does not conform to standards for advisory committees.
- ♦ Separation of the Appraiser Board's operations from TREC prevents the Appraiser Board from operating efficiently.

The Texas Real Estate Commission's responsibilities – licensing and regulating real estate professionals – are important to ensuring the protection of consumers from unscrupulous or ill-trained licensees, and other participants, that could easily take financial advantage of consumers. While the Sunset Commission identified needed improvements to the agency's operations, particularly in enforcement, TREC remains uniquely qualified to focus on the regulation of the real estate industry, and its specialized expertise in the areas of real estate transactions, home inspections, home warranties, and timeshare properties. While other agencies perform similar functions, the Sunset Commission did not find that TREC has specific problems justifying transfer of its functions to another state agency. The Sunset Commission also found that TREC could better integrate the Texas Real Estate Inspector Committee and the functions of the Appraiser Board into the agency's overall structure.

## **Recommendations**

### **Change in Statute**

#### **5.1 Continue the Texas Real Estate Commission for 12 years.**

This recommendation would continue the Commission as a separate, stand-alone agency to regulate the real estate, home inspection, home warranty, and timeshare industries.

#### **5.2 Remove the Commission's authority to delegate decision-making powers to the Texas Real Estate Inspector Committee, and authorize the Commission to create advisory committees as needed.**

The Texas Real Estate Inspector Committee's role and authority would be aligned with standards for advisory committees, to better conform with its actual advisory role. The Commission would also be able to create advisory committees, as needed, to provide special expertise and would adopt standard rules for advisory committees in compliance with Chapter 2110 of the Texas Government Code. This change would not affect the agency's Texas Real Estate Broker-Lawyer Committee.

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

TREC's advisory committees would be able to more effectively carry out their business by allowing them to hold general meetings by teleconference, which would be subject to 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, making the Board's operations more efficient. The Appraiser Board would continue as an independent regulatory body to meet federal requirements for an independent state authority.

## *Fiscal Implication Summary*

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Two issues regarding the Commission would have a fiscal impact to the State, as summarized below.

**Issue 2** – Implementing an informal complaint resolution process and transferring TREC's hearings to the State Office of Administrative Hearings would result in efficiencies for the agency, allowing them to redirect resources equal to about two staff positions towards meeting their goals of issuing licenses and protecting consumers.

**Issue 4** – Changing the basis on which the agency calculates late renewal penalties would result in a gain of about \$78,400 annually.

<b><i>Fiscal Year</i></b>	<b><i>Gain to the General Revenue Fund</i></b>
2008	\$78,400
2009	\$78,400
2010	\$78,400
2011	\$78,400
2012	\$78,400