

## Proposed 2011 TREC Legislative Agenda Items

### Broker Responsibility Measures

Establish a 6 hour mandatory Broker Responsibility class for all brokers and for agents who are authorized by brokers to supervise other agents; that also qualifies for MCE credit if desired

*Increase education for Brokers to include reminders and updates to broker responsibilities via a specifically designed mandatory course taken by brokers and those to whom they delegate the responsibility to train, oversee and manage the sales licensees they sponsor.*

Change minimum period of sales experience from 2 to (up to) 6 years to qualify for broker license

*Currently just 2 years of holding a sales license in "active" status is required as experience to take the broker examination. Many believe this is simply too short a period to gain the qualifying experience in most cases. Professional brokerage requires a higher standard.*

Allow additional transactional competency requirements to be set for initial broker licensure

*Currently "experience" is only determined by tenure of licensure, without any other method of showing transactional competency, such as a minimum number of transactions completed.*

Allow any business entity authorized in Texas to be licensed; repeal "partnership" exception

*Although many forms of business entity are allowed to be formed in Texas, currently only corporations and LLCs are allowed to be licensed as brokers, with an exception for partnerships (requiring no license at all). Any authorized business entity should be allowed.*

Ensure all business entities receiving real estate commissions hold a license from the agency

*If any business entity is allowed to hold a broker license, then all recipients of "commission" compensation should hold a license if engaged in brokerage activity or advertised as such.*

Require \$1MM E&O insurance for licensed business entities if designated officer owns <10%

*"Designated" officers or managers for business entities holding broker licenses should be active managers of the entities, with a stake in the outcome of the professional services rendered by associated licensees. Uninvolved officers or managers are a fraud on the public who rightfully expect access to the experience, knowledge and expertise of a broker. Having a financial interest to protect is one measure of involvement. Its absence enhances the risk to consumers. Be involved or provide adequate alternate protection for customers represented.*

Require out-of state attorneys to hold Texas law license to conduct brokerage activities in Texas

*The current exception for licensed attorneys involved in brokerage activity in Texas does not distinguish between attorneys licensed in Texas and others. Clarity is needed to meet the reasonable expectations of and to protect Texas consumers.*

Add “acceptance, deposit or control of rent from SFR 1-4 unit property” as “brokerage activity”  
*Homeowners who choose not to sell a residence but rather rent it while waiting for better market conditions are being taken advantage of by unlicensed entities. Managing the funds of others is a fiduciary activity that deserves more than mere contract protection. Adding rental activities to the list of brokerage activities requiring a license provides additional protection.*

## **Education Improvement Measures**

Change pre-license education not to exceed 210 core course hours as specified by Commission  
*The Act currently provides for 210 hours of pre-licensure education by applicants, with 150 hours designated as “core” and 60 hours as “related”. Additional “core” courses are needed, especially in contracts. This will allow the Commission to increase “core” hours and topics as the need is recognized, but remaining within the limits established in the law.*

Change first time pass rate target from 55% to “average” for pre-license education programs; add suspension, probation, and related tools to allow agency to improve all education programs; add “ownership of previously revoked education programs” as legitimate (*school*) disapproval criteria  
*Although the “average” rate was around 55% when this requirement was established, using a set number requires the Commission to adjust all educational considerations to meet that set number. If the concern is that schools with “below average” exam pass rates should be brought into compliance, then more tools are required to actually bring about the desired result. Currently the only tool available is to put a school out of business, treating a school with a 52% pass rate the same as a school with a 22% pass rate. More flexibility is needed.*

## **General Efficiency and Fairness Measures**

Require licensees to provide and maintain current primary email address and phone to agency  
*Today’s efficiencies require electronic methods of communication and business transactions. Use of email and phone are more effective, immediate and saves the agency resources.*

Amend law to reflect electronic delivery of licenses, such as “custody”; “surrender”; “delivery”  
*These terms belong to an age when a license was a valuable individual piece of paper, not a right that is granted, recorded and monitored electronically. Update is required.*

Extend license application period to 12 months vs. current six months to offset more education  
*Current practices require an application to be submitted with all required attachments, including education. If any requirements are not yet met, then applicants should have sufficient time to complete them. Other agencies and states use 12 months as a standard.*

Modify current one year “late renewal” rights to six months and apply to all license types  
*Currently a full year is allowed to renew an expired license without a new application. This period remedies for inadvertence with only monetary penalties. Over 95% of late license renewals are completed within 6 months of expiration. This fully recognizes this reality.*

Obtain the authority for the agency to apply for, accept, administer and expend gifts or grant funds  
*Some federal agencies connected to the real estate industry are authorized to make grants and gifts to state agencies to assist in the accomplishment of their mission, most notably in the area of mortgage fraud and appraisal standards. The agency needs the ability to apply for, accept and spend such funds to make it more effective without raising license fees.*

### **Home Warranty Measures**

Strengthen Residential Service Company Act (e.g. jurisdiction; unlicensed activity penalties)  
*Current text needs better definition to allow more effective enforcement and protections.*

### **Inspector Related Items**

Eliminate “classroom” from “education/experience alternative”; allowing mandated field time  
*Current “field” experience requirements allow the same to be accomplished in a classroom setting, which in many cases defeats the purpose of having a “field” experience. Clarify.*

Distinguish “Standards of Practice” from “Ethics and Legal” courses in inspector education  
*Current text contains “or”, making standards, legal and ethics as alternative requirements when each should have its own requirement to produce better educated inspectors. Clarify.*

### **Stand-Alone Inspector Related Bill**

Repeal/reduce E&O insurance required for inspectors and raise Recovery Fund limits to offset  
*Inspectors have a mandatory requirement for a minimum of \$100,000 of E&O insurance, as well as a Recovery Fund with claim limits so low that it is rarely used. Modify the consumer protection provisions to provide adequate protection via E&O repeal or revised claim limits.*

*This document was drafted by Doug Oldmixon, Administrator, Texas Real Estate Commission, and reprinted with permission of the author.*