

TREC Advisor

Texas Real Estate Commission

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Commission Considers Shorter Inspection Report Form

TREC has proposed an amendment to 22 TAC §535.223, concerning standard inspection report forms.

The amendment would permit an inspector to use a shorter version of the standard inspection report form and to modify the length of space for comments as the inspector deems necessary.

In the proposed form 7A-0, the space for comments follows each item, and the report does not contain a detailed list of subparts for each inspected item.

The amendments would permit an inspector to use the new form as an alternative to the original report forms which have been mandatory since January 1, 1998.

The form was proposed by the Commission after a TREC committee headed by Chairman Jay Brummett and including members Kay Sutton and Mike Brodie met in Austin on March 13 and

received written and oral comments from inspectors, brokers, relocation companies and builders.

As proposed, the amendment also would clarify that quality construction control inspections for new homes, remodeling, and re-inspections do not require use of the TREC report forms; and that inspections for a relocation company or for a seller's employer may be done on a report required by the company or employer.

At the May 4 Commission meeting, changes to the report form and rule were suggested by the Texas Real Estate Inspector Committee to provide the inspector with greater flexibility in the use and reproduction of the form.

Copies of the form and rule are available on the TREC website or by mail. Comments may be addressed to the Office of General Counsel, TREC, P. O. Box 12188, Austin, Texas 78711-2188. Final action on the proposal

NEW FORMS PROPOSED

At their meeting on May 4, 1998, the members of the Commission voted to initiate the rulemaking process to adopt four new or revised forms submitted by the Texas Real Estate Broker-Lawyer Committee.

In addition to the revised Agreement for Mediation form, which has been refiled to permit action on all four forms at the same time, the Commission is proposing a revised Addendum for "Back-Up" Contract, a Notice of Termination of Contract, and an Amendment form.

Copies of the forms and the related amendments or new sections proposed for Chapter 537 of TREC rules may be obtained on the TREC website or by mail. Comments are invited, and final action on the proposed forms could be taken at the June 15 TREC meeting. Comments may be addressed to the Office of General Counsel, TREC, P. O. Box 12188, Austin, Texas 78711-2188.

TREC Begins Rule Reviews

In compliance with a new state law, the Commission has begun the review of all of its rules adopted before September 1, 1997, to determine whether the reason for adopting each rule still exists.

Under the rule review plan approved at the TREC meeting on May 4, 1998, the Commission will file a notice of its intention to review each section of rules with the *Texas Register*, consider comments from the public as to whether the rules should be readopted, amended or repealed, and act on rules at the next TREC meeting held after the 30-day comment period.

A copy of the rule review plan appears on Page 3.

The Commission is now accepting comments on Chapters 531, relating to TREC Canons of Professional Ethics and Conduct for Real Estate Licensees.

By the end of 1998, reviews will be conducted of Chapter 533, relating to Practice and Procedure; Chapter 534, relating to General Administration; and Chapter 537, relating to Professional Agreements and Standard Contracts.

Comments or questions may be sent to: The Office of General Counsel, TREC, P. O. Box 12188, Austin, Texas 78711-2188.



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TEXAS REAL ESTATE COMMISSION MEETING HIGHLIGHTS

MARCH 22-23, 1998

Commission members met March 22, 1998 to conduct a public hearing as part of the strategic planning process for the period 1999-2003. Members of the public, Commissioners, and TREC staff formed three working groups to discuss what should be contained in the plan. All participants then reconvened together to hear Commission members present ideas submitted by the individual groups.

Commissioners continued their meeting on March 23. The first order of business was to discuss proposed amendments to rules that would remove gender specific terms to parallel the Real Estate License Act.

Chairman Brummett reported on a recent meeting of the Inspection Form Committee. Following a discussion on the matter, resolutions were adopted concerning the Commission's intent for use of the adopted inspection form. A proposal was then offered by the Commission to amend §535.223 concerning inspection forms.

In other action, Commission members discussed and voted to approve and/or adopt the following measures:

- Amendments to 22 TAC §537.11 and §537.42 relating to standard contract forms
- Amendments to 22 TAC §§535.1-535.70 concerning various provisions of the Real Estate License Act
- Five real estate recovery fund payments and one real estate inspection recovery fund payment

Further discussion was conducted regarding possible action on the Strategic Plan for 1999-2003. TREC staff plan to present a final draft for approval at the next Commission meeting scheduled for May 4, 1998.

Future Commission meetings were set for the remainder of 1998 according to the following schedule: May 4, June 15, July 27, September 14, October 26, and December 7.

MAY 4, 1998

The first action taken by the Commission during its May 4, 1998 meeting was to withdraw amendments to 22 TAC §537.11 and §537.42 relating to

standard contract forms. These amendments were re-proposed in connection with an amendment to 22 TAC §537.22, concerning back-up contract addendums; an amendment to 22 TAC §537.45, regarding notices of contract termination; and an amendment to 22 TAC §537.46, concerning contract amendments.

Commission members accepted public comment and discussed a proposed amendment to 22 TAC §535.223 that pertains to standard inspection report forms. This item will be considered for final adoption at the Commission's next meeting scheduled on June 15.

The Commission took final action to approve and/or adopt the following measures:

- Amendments to rules that would remove gender specific terms to parallel The Real Estate License Act
- Renewed contract with NAI-Block to administer license examinations.

EXAM UPDATE

At its meeting on May 4, 1998, the Commission renewed its contract with NAI-Block for administration of license examination testing for an additional two years.

Another examination item development workshop was held on April 17th and 18th. This workshop was held in Dallas in conjunction with the Texas Real Estate Teachers Association annual conference at the Harvey Hotel. Another workshop is scheduled for June 22 & 23 in Austin. For item writing, anyone with an interest in real estate may attend. For item review, you may not be associated with a school that has an examination preparation class. For more information please contact Cameron Wilson with NAI-Block at (801) 355-5009. These examination development workshops are the heart of what makes the Texas real estate examinations work. Please consider becoming involved. There is a new examination site in the Houston area at 14025 SW Freeway, #505. This site has 31 seats and is now part of the 17 sites that serve Texas.

- Five real estate recovery fund payments
- The Texas Real Estate Commission Strategic Plan for 1999-2003
- A rule review plan, and filing of a notice of intention to review 22 TAC Chapter 531, concerning canons of professional ethics and conduct for real estate licensees
- Administrator and Director of Licensing and Education authority to approve education courses, MCE providers, and instructors

Registration of easement or right-of-way agents was also discussed under a proposed amendment to 22 TAC §535.400; and new 22 TAC §535.403 pertaining to renewal of registrations.

Following Commission discussion, action was deferred on 22 TAC §535.72 (h) regarding presentation of MCE courses.

**TEXAS REAL ESTATE COMMISSION
CALENDAR
OF EVENTS**

June
Broker - Lawyer Committee
June 4-5, 1998—Austin
Texas Real Estate Commission
June 15, 1998 — Austin

July
Texas Real Estate Commission
July 27, 1998 — Austin

September
Texas Real Estate Commission
September 14, 1998 — Austin

October
Texas Real Estate Commission
October 26, 1998 — Austin

December
Texas Real Estate Commission
December 7, 1998 — Austin

Website: <http://www.trec.state.tx.us>
TREC Fax: (512) 419-1623
Phone: (800) 250-TREC (8732) or
(512) 459-6544

MISSION STATEMENT: The mission of the Texas Real Estate Commission 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.

Rule Review Plan

Title 22. Examining Boards

Part XXIII. Texas Real Estate Commission

The Texas Real Estate Commission (TREC) adopts the following plan for review of its rules adopted prior to Sep-

tember 1, 1997, and thereafter, in accordance with House Bill 1, the Appropriations Act, Article IX, Section 167.

TREC will review whether to re-adopt its rules at public meetings beginning in May 1998 and will conclude the initial review process no later than August 31, 2001.

In addition to filing notices about the

review with the Office of the Secretary of State for publication in the *Texas Register*, TREC also will post notices on the Internet and in its newsletter, *The Advisor*.

For a minimum of 30 days after a notice of intention to review has appeared in the *Texas Register*, TREC will consider public comments on whether the rule should be readopted.

At the next regularly scheduled TREC meeting following the comment period, TREC will determine whether the rule should be repealed, readopted or amended in accordance with the procedures required by the Texas Government Code, Chapter 2001.

Rule Reviews for 1998

- Chapter 531. Canons of Professional Ethics and Conduct for Real Estate Licensees
- Chapter 533. Practice and Procedure
- Chapter 534. General Administration
- Chapter 537. Professional Agreements and Standard Contracts

Rule Reviews for 1999

- Chapter 541. Rules Relating to the Provisions of Civil Statutes, Article 6252-13c
- Chapter 535. Provisions of The Real Estate License Act (§§535.1-535.81)

Rule Reviews for 2000

- Chapter 535. Provisions of The Real Estate License Act (§§535.91-535.402)

Rule Reviews for 2001

- Chapter 539. Provisions of The Residential Service Company Act
- Chapter 542. Rules Relating to the Provisions of House Bill 5
- Chapter 543. Rules Relating to the Provisions of the Texas Time-share Act
- Rules adopted between September 1, 1997, and August 31, 1998.

Rule Reviews for 2002

Rules adopted or readopted between September 1, 1998 and August 31, 1999.

Thereafter, a review of each rule will be conducted in the third year following adoption or re adoption.

From the Commission...

Senate Bill 1100 was passed by the Texas Legislature and signed into Law by the Governor on June 19, 1997. Among other provisions, it required the Texas Real Estate Commission (TREC) to promulgate a mandatory real estate inspection form on or before October 1, 1997. Unfortunately, this provision was in the form of an amendment to the bill very late in the session and TREC was not consulted as to the necessary time involved to properly create this form. Consequently, the October 1, 1997 deadline was inadequate.

Under the Texas Real Estate License Act (TRELA), TREC must consult the Inspector Committee on these matters. The Inspector Committee is composed of active, practicing professional inspectors who are not compensated for their travel expenses and it is very difficult for them to meet on as frequent a basis as would be necessitated by the October deadline. Also, TREC could not adequately debate these issues and properly consult interested parties for input in the time allotted. However, TREC was mandated by law to create this form and create it we did. The resulting premature form was flawed, too long, and unacceptable to everyone concerned. We simply did not have time to do better!

Since the creation of this flawed form, TREC has been working diligently to replace it with a form which would be acceptable to everyone concerned. This was no easy task! There was much misunderstanding and suspicion of motives. Consequently, as Chairman of the Commission, I thought it necessary to appoint a special committee of TREC to hear from interested parties and make cer-

tain no one or group felt left out of the process. Commissioners Mike Brodie, Kay Sutton, and I met Friday, March 13, 1998 at the Commission in an "open" meeting with a full house. We were determined to bring people together, explain our goals, and listen. It was our goal that this new form be acceptable to every interested party. The motivation for working toward this goal was the universal dislike for the first form. We made our committee report to the Commission during its regularly scheduled meeting, Monday, March 23, 1998. This was followed by much more constructive debate. Based upon the information we received, the Commission unanimously began the rule making process on the resulting new form draft and it was sent to the Inspector Committee for their formal input.

It must be said that the cooperation we received from the Inspector Committee, individual inspectors, the Texas Association of Real Estate Inspectors, the Texas Association of REALTORS®, individual real estate licensees, the public, and the Commission members was most constructive and unprecedented. Also, the encouragement and cooperation we received from S.B. 1100's sponsor, Senator Jeff Wentworth, was most appreciated and helpful. We appreciate the added input and encouragement from State Representative Todd Staples of Palestine. Everyone was focused on adopting a superior inspection form that met the needs of the Texas consumer and this, I believe, we will accomplish with final approval at our meeting on June 15, 1998.

Thanks!

Evolving Standards Governing Relocation and Affinity Group Referral Fees

Congratulations were definitely in order! You became the exclusive listing agent for the property, and you stood to make a significant commission when it sold. It took a great deal of your added marketing skill and know-how over an extended time to convince the owners that you were the right person to get the job done.

When the prospective buyers came to you and said they were moving into the area from out-of-town, your exclusive listing seemed to be exactly what they were looking to purchase. Through the initial showing, negotiation, offer, further negotiation, countless phone calls and questions, you were confident you would be able to accomplish the deal within a relatively short period of time.

But wait, that well deserved commission you were counting on was by no means a certainty. Five days into the negotiation with the seller, you received a phone call advising you that the prospective buyers from out-of-town had been in contact with a relocation firm. The firm is now contending that you will owe them a referral fee that amounts to a hefty percentage of the commission that you, as selling agent, should be entitled to receive if the sale goes through.

Disappointing Scenario

Unfortunately this disappointing scenario has occurred all too often and with an ever-increasing frequency due to the growth of relocation service providers and affinity companies in the real estate business sector.

Over the past several years, when corporations set out to transfer their employees from one location to another throughout the nation, they have been more closely monitoring the bottom line costs involved with paying for such moves.

In an effort to mitigate those costs, corporations will directly refer their employees to brokers, or retain a specific relocation organization, in order to help locate suitable housing. The companies are subsequently entitled to referral fees that are then used to pay for relocation expenses or to provide other incentives associated with the employee's geo-

graphical move.

More and more, companies are calling upon the services of relocation specialists and management companies to assist with the technical details of moving. Relocation companies charge real estate referral fees to pay for their business expenses and as a legitimate means of generating a profit incentive to provide these services.

In addition, affinity groups offer their services to individuals or companies based on occupational associations, through other organizations, or simply by individual membership for a small fee. By joining an affinity group, members allow the group to represent them as a type of "buyer's or seller's agent" for any real estate services that might be needed.

Benefits & Referrals

In return, affinity group members who use these services receive a wide array of benefits such as commission discounts, rebates, even free airline mileage bonus credits, or other monetary based membership incentives.

Whether relocation services are being performed through in-house corporate organizations, relocation companies, or through affinity groups, a vast network of referral relationships surrounds the activity.

Alliances, affiliations, partnerships, and other cooperative networks and arrangements between brokers and relocation providers help make this a strong component in developing a sizeable portion of real estate transactions.

The extent of relocation provider involvement--and the specific services that they are capable of rendering--depends on the nature of their particular firm and qualifications they possess. But at a minimum, they all offer services and information based on a network of referrals to help their customers find and move into a new home in whatever city they choose.

No one would question the legitimacy or viability of providing a valued business service to assist individuals with finding new homes, helping to make the transition of a physical move a little easier, and offering to save the consumer

some money in the process. In fact, the way such relocation and affinity companies do business typically produces benefits of mutual advantage to buyers, sellers and all others involved with real estate and relocation transactions. Consumers, be they corporate or individual, can always be expected to take advantage of commission fee discounts, rebates, and moving convenience.

Sellers and their agents, on the other hand, can utilize the benefit of a referral to develop what may become a successful sale.

For a long time, referrals have been relied upon as a vital resource in developing a customer base. This approach is so important to client development that the usual practice of paying fees to licensed real estate professionals for referrals is recognized as a legitimate and valuable part of doing business. Under normal circumstances, the referral process significantly contributes to maintaining vibrant economic activity within the real estate sector.

So, what could possibly be wrong with all of this as far as relocation and affinity groups are concerned?

"After-The-Fact"

"After-the-fact" referral fees have become a very sore point of contention. As described in the above scenario, when a client establishes a contractual relationship with a broker as either a seller's or buyer's agent, the broker naturally assumes he or she will be entitled to receive a full commission when successfully facilitating the completion of a real estate transaction.

Those assumptions too often prove misguided when a relocation provider, after the broker-client relation has already been created, demands a referral fee that amounts to a significant portion of the broker's commission on the future sale.

Brokers often feel they have no choice but to pay "after-the-fact" referral fees even though a multitude of legal, ethical, contractual, financial, and business relationship issues surround such circumstances. Brokers feel compelled to pay despite their time and effort be-

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cause the relocating client may not otherwise receive the discount, rebate, or other incentive to which they feel entitled or have always assumed they would receive.

If payment of a referral fee is refused, the broker stands to obviously lose the good will and trust that has been built-up in the inception and ongoing nature of the business relationship while working toward a successful closing. The prospect of any opportunity for return-business among relocation clientele could suffer irreparable damage as well.

These incidents have promoted such consternation within the real estate industry that individual state jurisdictions are now seriously confronting the issue. Bringing order, legitimacy, and stability back into working relationships affected by the relocation referral process has been a nationwide challenge for individual states and for the Association of Real Estate License Law Officials (ARELLO).

The State of Connecticut was the first to issue a definitive policy statement addressing this situation. This policy was developed in consultation between the Connecticut Real Estate Commission, various relocation companies, Employee Relocation Council (ERC), and numerous broker representatives. It has been endorsed by the ERC and the National Association of REALTORS® (NAR).

Connecticut's Policy

Connecticut's policy summarizes how the state's current real estate laws would apply to the issue of "after-the-fact" referral fees.

First of all, it establishes that a broker cannot pay a referral fee to any unlicensed person involved with the real estate business.

Second, there must be an actual justification shown in order to charge a referral fee; for example, a direct introduction, an established agency relationship, or a referral fee agreement by contract.

Third, the policy stipulates that interfering with an agency relationship of another licensee is prohibited. An agency relationship is defined under the policy as either a listing or buyer agency agreement between a customer and real estate broker.

Interference with that relationship would include demanding a referral fee when the agent and customer relation is already established; threatening to take harmful action against a client of another licensee because of the agency relationship; or counseling a client of another licensee on how to terminate or amend an existing agency contract.

Relocation providers would, of course, still be able to communicate their policies and benefits to transferring customers, as long as they do not advise or encourage the termination or amendment of an existing agency contract.

Special Task Force

On April 17, 1998, the ARELLO Special Task Force on Affinity Practices met in St. Louis, Missouri. Texas Real Estate Commission Chairman, Jay Brummett, is a member of this important working group and attended the meeting which took several positions on issues pertaining to relocation and affinity group business activities.

The special task force had two specific objectives: to study and make recommendations to ARELLO for a position regarding affinity practices; and to consider recent court decisions that would have a bearing on development of an ARELLO position specifically regarding payment of fees to unlicensed parties.

Input from a broad number of states, consumer interest groups, brokers, representatives of relocation companies and affinity groups, the NAR, and others were received during the session.

Task force members reviewed a great deal of information regarding the problems associated with "after-the-fact" referral fees, and weighed those concerns on balance with the justifiable and legitimate benefits derived by consumers from utilizing the services of relocation providers.

Results of the meeting were very constructive from the standpoint of firm policy positions taken by task force members, and with respect to cooperation that was announced from within the relocation industry itself. Representatives of Cendant Mobility, a prominent relocation firm, told ARELLO members that they were aware of the concerns being expressed at the conference and within individual state jurisdictions.

Consequently, the company has agreed to not make any demands for payment of referral fees "after-the-fact" in their future relocation and affinity transactions.

In addition to the welcomed cooperation from companies such as Cendant, the Affinity Practices Task Force recommended a number of actions that would set acceptable parameters under which relocation referral services could be provided.

First, the task force requested development of a model regulation that would require all distributions, rebates and other items of value that are disbursed from a real estate transaction be disclosed to all parties.

Second, the task force asked that disclosure of any affiliated or beneficial business relationship be made prior to the signing of a contract, or as soon as otherwise practicable.

The task force members strongly urged disapproval of the demand for "after-the-fact" referral fees, and expressed their sentiment that such demands should be considered as a violation of already existing contracts.

Finally, it was suggested that ARELLO take a well-defined position in support of the rights of states to regulate the payment of fees to unlicensed persons. All of these recommendations were adopted by the ARELLO Board of Directors.

Evolving Standards

With the degree of recent concern and developments throughout the nation regarding referral fees claimed by relocation and affinity groups, state jurisdictions are clearly becoming more aware of what can be done to protect established business relationships and legal standards involving their licensees.

As regulatory actions continue to evolve in response to these situations, and as the relocation industry works to cooperate within the legal and ethical bounds recognized by state jurisdictions, these concerns can hopefully be resolved.

By defining how such relocation services can be implemented, relocation providers, consumers, state regulatory agencies, and real estate agents representing buyers and sellers will hopefully once again realize the full and legitimate

TEXAS REAL ESTATE COMMISSION DISCIPLINARY ACTIONS

Actions Taken Between January 1, 1998 and April 30, 1998

REVOCATIONS

Braly, William Patrick (Longview); license #425653 Criminal conviction for felony offense of murder in violation of §4(a) of Article 6252-13c. Revocation of salesperson license, effective February 23, 1998.

Phelps, Donald Lee (Austin); license #426489 Failing without just cause to return original paycheck stubs, credit card statements, W-2 forms, and an earnest money contract to the rightful owner of the documents, in violation of §15(a)(9). Failing to disclose to the lender (Department of Veterans Affairs) that he had provided financial assistance to the buyers, and advising the buyers not to make the disclosure to the lender, in violation of §15(a)(6)(V). Failing to submit an offer on behalf of a prospective buyer in a timely fashion, in violation of §15(a)(6)(W) of the Act; and attempting to conceal his failure to submit the offer by making false statements to the prospective buyer, in violation of §15(a)(6)(V). Submitting two checks, both of which were dishonored by the bank, in payment for a real estate inspection obtained for a client, in violation of §15(a)(6)(V). Revocation of salesperson license, entered January 22, 1998.

SUSPENSIONS

Harris, George Emmanuel (El Paso); license #429302 Failing to remit and holding hostage monies entrusted to him in violation of §15(a)(6)(E); using monies entrusted to him as leverage in an attempt to recover fees in violation of §15(a)(6)(V). 1 year suspension of salesperson license, effective April 1, 1998.

Jankowiak, Gloria June (Midland); license #436955 Causing a copy of buyers' signatures to be placed on an addendum to a sales contract under the mistaken belief she had authorization by buyers in violation of §15(a)(6)(W). Agreed 1 year suspension of salesperson license, fully probated effective January 1, 1998.

Jeffrey, Buddy Donald (Terrell); license #171851 Threatening a buyer with litigation for fraud when there was no basis for such action and to coerce payment of a real estate commission where there was no written obligation to do so signed by the buyer in violation of §15(a)(6)(R) and §15(a)(6)(V); misleading the seller of property as to the buyer/licensee's ability to pay cash for the property and threatening to take unwarranted legal action against the seller in violation of §15(a)(3). Agreed 6 month probated suspension of broker license, effective April 15, 1998; agreed administrative penalty of

\$250.00, paid April 15, 1998.

Laskey, Richard Roman (South Padre Island); license #419072 Failing to deliver rental monies to his broker to be placed into a trust or escrow account in violation of 22 TAC §535.159(f); drafting and preparing a lease not otherwise prepared by the property owner or prepared by an attorney in violation 22 TAC §537.11(b); failing to completely comply with requests made for documents during the course of an investigation in violation of §15(a)(7); paying or dividing a commission or fees with an unlicensed corporation in violation of §15(a)(6)(F); and establishing an association with an unlicensed corporation in violation of §15(a)(6)(S). Agreed 6 month probated suspension of salesperson license, effective April 20, 1998; agreed administrative penalty of \$4,000.00; \$2,000.00 paid on March 30, 1998 and remaining \$2,000.00 due on June 1, 1998.

Maples, Myron Leo (San Antonio); license #118027 Without any written commission agreement as required by Section 20(b) the licensee threatened legal action and filed a lien which constitutes publishing or circulating an unjustified or unwarranted threat of legal proceedings, or other action in violation of Section 15(a)(6)(R). Failed to use TREC promulgated contract and addendum where appropriate for the transaction which constitutes a violation of 15B(b); 22 TAC 537.11(b) and acting negligently or incompetently in performing an act for which a person is required to hold a real estate license in violation of 15(a)(6)(W). Agreed 6 month suspension of broker license, fully probated effective January 1, 1998.

Micheletti, Richard Joseph (Fort Worth); license #131903 Failure to remit security deposit to property owners, and unauthorized deduction of unearned management fees from security deposit; agreed order followed attempts by licensee to make restitution of the withheld security deposit to the property owners in violation of §15(a)(6)(E). Agreed 90 day suspension of salesperson license, fully probated effective January 9, 1998.

Pettigrew, Hal Robert (Arlington); license #141067 Criminal conviction for three counts of bank fraud and aiding and abetting bank fraud in violation of §4(a) of Article 6252-13c. Agreed 5 year suspension of broker license, fully probated effective February 8, 1998.

Robertson, Lynda Ann (Houston); license #442547 Completing forms not approved and promulgated by the Texas Real Estate Commission for use in a lease/

purchase agreement in violation of 22 TAC §537.11(b); adding language which affected the legal rights of the respective parties beyond the insertion of factual statements and business details in violation of 22 TAC §537.11(d); preparing legal documents using unrelated forms from different sources in an effort to create a transaction for which the forms were not intended in violation of §15(a)(6)(W). 90 day suspension of salesperson license, effective April 1, 1998.

Rodriguez, Noemi Garcia (McAllen Allen); license #445361 Failing to make clear to all parties to a transaction, which party she was acting for in violation of 15(a)(6)(D). Failing to furnish buyers the written statement contained in TREC's Information About Brokerage Services form in violation of 15C(d). Failing to fill in all blanks on a sales contract, failing to obtain buyer's initials to new pages to a sales contract, and signing buyer's initials to new pages to a sales contract believing the terms thereon were acceptable to buyers in violation of 15(a)(6)(W). Agreed 6 month suspension of salesperson license, fully probated effective January 2, 1998. Agreed administrative penalty of \$500.00, paid on December 31, 1997.

Williams, Sunshine (Austin); license #114812 Failing to timely inform potential buyers of a pending civil suit affecting the property in violation of §15(a)(6)(W). Agreed 3-month suspension of broker license fully probated for 1 year, effective March 20, 1998.

REPRIMANDS

Ash, Floyd Leslie (Houston); license #393173 Failing to advise and exercise sufficient supervision over a salesperson under his sponsorship who placed a sign in violation of the Houston Sign Code, thereby violating section §15(a)(6)(W). Agreed reprimand of broker license, entered January 23, 1998.

Dillon, Eric Eugene (Waco); license #3299 (i) indicating on inspection report that disposal was operable when in fact there was no disposal on the property, (ii) failing to report a dishwasher knob was held on with tape, and (iii) failing to report that a five-gallon bucket containing water was hanging from an attic rafter beneath a rotten roof board in violation of §23(l)(3). Agreed reprimand of inspector license, entered March 3, 1998.

Etie, Gloria Jean (Conroe); license #302795 Doing business through a corporation while the entity was unlicensed as a

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Questions & Answers About Residential Service Contracts

Q. What is The Residential Service Company Act?

A. The Residential Service Company Act (Article 6573b, Vernon's Texas Civil Statutes) has been administered by the Texas Real Estate Commission since 1979. It provides for the licensing and regulation of residential service companies who provide residential service contracts, also known as home warranties, to the public.

Q. What is a Residential Service Contract?

A. A residential service contract or home warranty is usually purchased when a house sells in the resale

market. A home under warranty may be more attractive to prospective buyers.

It covers major appliances and systems which are in proper operating condition at the time of closing and usually carries a one-year service agreement. It is an agreement on the part of the issuer (the residential service company) to repair or replace certain named components or systems within a home that fail due to normal wear and tear during the contract term.

A service fee (a deductible ranging from \$35 to \$125) may be charged for each service call, and the homeowner is protected against the

costly expense of a major breakdown or multiple breakdowns which can occur when a change of ownership and lifestyle subject the equipment to different usage.

Q. Is a residential service contract an insurance policy?

A. No. Perhaps the best way to draw distinctions is to compare the most common insurance policy written on a house with the typical residential service contract. The homeowner's policy covers fire, lightning, windstorm, hurricane, hail, explosion, riot, civil commotion, vandalism and malicious mischief to the

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real estate broker thereby paying a commission or fees or dividing a commission or fees with someone not licensed as a real estate broker or salesperson in violation of 15(a)(6)(F) and establishing an association, by employment or otherwise with an unlicensed person who is expected or required to act as a real estate licensee in violation of 15(a)(6)(S). Agreed reprimand of salesperson license, entered April 22, 1998; agreed administrative penalty of \$250.00, entered April 22, 1998.

Fisher, Norris L. (Fort Worth); license #252446 Establishing an association with an unlicensed person who acted as a real estate agent in a single real estate transaction in violation of §15(a)(6)(S). Reprimand of broker license, entered April 13, 1998.

Gore, Alan Hugh (Katy); license #142293 Offering rebates to prospective apartment tenants without the authorization of the apartment owner in violation of §15(a)(6)(O), §15(a)(6)(V), and §15(a)(6)(W). Agreed reprimand of broker license, entered April 20, 1998.

Green, Mary Ann (Bastrop); license #433925 In representing sellers, a husband and wife, allowed the wife to sign her husband's name to the earnest money contract without a power of attorney or other written authority, and did not direct or suggest that the wife place symbols or a notation in the contract to demonstrate that she had signed her husband's name, in violation of §15(a)(6)(W) of the Act. Agreed reprimand of broker license, entered January 30, 1998. Agreed administrative penalty of \$500.00, paid on January 30, 1998.

Jeffrey, Karin D. (Terrell); license #442703 Misleading the seller of property

as to the buyer/licensee's ability to pay cash for the property and threatening to take unwarranted legal action against the seller in violation of §15(a)(3). Agreed reprimand of salesperson license, entered April 8, 1998; agreed administrative penalty of \$250.00, paid April 8, 1998.

Kan, Alan H. (Lewisville) license #400656 Failing or refusing on demand to provide information or documentation to a Texas Real Estate Commission investigator during the course of an investigation in violation of §15(a)(7), §15(a)(8) and 22 TAC §535.161. Agreed reprimand of broker license, entered April 20, 1998.

McBride, Michael David (Conroe); license #196794 Doing business through a corporation while the entity was unlicensed as a real estate broker thereby paying a commission or fees or dividing a commission or fees with someone not licensed as a real estate broker or salesperson in violation of 15(a)(6)(F) and establishing an association, by employment or otherwise with an unlicensed person who is expected or required to act as a real estate licensee in violation of 15(a)(6)(S). Agreed reprimand of broker license, entered April 22, 1998; agreed administrative penalty of \$250.00, entered April 22, 1998.

Ney, Jan William (Dallas); license #3107 Rendering an inspection report which failed to disclose water damage to the floor beneath the kitchen cabinets of the property when this condition was visible and accessible at the time of the inspection in violation of 22 TAC §535.222(e)(2)(B)(i)(I) and failing to list in an inspection report all parts, components, and systems in the required order in violation of 22 TAC §535.222(b), all in violation of §23(l)(3). Agreed reprimand of professional inspector license, entered April 9, 1998; agreed admin-

istrative penalty of \$250.00, paid April 9, 1998.

Poling, Ladonna Gail (Southlake); license #429118 Making representations to buyers concerning the condition of the subject property when her knowledge of the property's condition was less than what she represented she knew and when defects existed in the property, thereby in violation of §15(a)(6)(W). Reprimand of salesperson license, entered March 23, 1998.

Sallee, Nicholas D. (Houston); license #176703 Offering and paying a rebate to a tenant for selecting an apartment at an apartment complex when the owner of the apartment complex had not authorized the rebate, thereby in violation of §15(a)(6)(O). Agreed reprimand of broker license, entered March 30, 1998.

Shugart, Rick Madison (Rowlett); license #283509 Failing within a reasonable time to make good a check issued to the Commission in violation of §15(a)(4). Agreed reprimand of broker license, entered January 23, 1998.

Su, Suew Jane (Houston); license #409090 Placing security deposits, rentals and other monies belonging to others in her operating account, which constitutes commingling, in violation of §15(a)(6)(E). Agreed reprimand of broker license, entered April 20, 1998.

Tomorrows Visions, Inc. (Houston); license #451267 Failing within a reasonable time to make good a check issued to the Commission after the Commission has mailed a request for payment in violation of §15(a)(4). Failing to pay the returned check processing fee within 15 days after the Commission has mailed the request in violation of 22 TAC §534.3(b). Agreed reprimand of broker license, entered March 16, 1998.



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Residential Service Contracts...

(Continued from page 7)

entire dwelling and its contents. It specifically excludes inevitable loss due to "mechanical failure" or "normal wear and tear." A residential service contract, on the other hand, covers the inevitable perils of mechanical failure and wear and tear.

Q. What appliances or systems does a service contract cover?

A. Most residential service contracts include repair or replacement coverage for built-in appliances, air conditioning and heating systems, electrical systems, water heaters and plumbing. Depending on the contract, coverage may also include attic and exhaust fans, septic tanks, leaky roofs and termite treatments. Optional coverage is usually available for swimming pools and spas, clothes washers and dryers.

Q. Will a service contract cover pre-existing conditions?

A. No. A residential service contract must not be used to market properties with components or systems which do not work or are clearly near the end of their mechanical life. Every approved contract offered in Texas excludes pre-existing problems, and purchasers who try to get pre-existing problems corrected will always end up dissatisfied. Any repairs needed prior to

closing should be negotiated with the seller and corrected or repaired prior to the effective date of the home warranty contract.

For additional information on residential service contracts and the companies licensed to offer them in Texas, please contact: TREC, Enforcement Division, Residential Service Companies, P.O. Box 12188, Austin, Texas 78711-2188 (512) 465-3960.

Employee of the Quarter

TREC is proud to announce that Laura George recently received the second Employee of the Quarter award for fiscal year 1998.

Laura, who works in the Cashier Section of Staff Services, began employment with TREC on January 1, 1984. Laura's primary responsibilities are preparing the daily deposit of money received from applicants and licensees and preparing correspondence for money related items. She is a group leader and performs various other duties in the Cashier Section. If you come to the TREC office to renew your license you may see Laura at the Cashier Window.

Laura is a diligent and committed worker. Her efforts make her an asset to the commission.

TREC commends Laura's dedication and is pleased to recognize