

TREC MANDATORY ETHICS COURSE

Revised November 2011



COURSE OUTLINE & OBJECTIVES

Canons of Professional Ethics

Agency Relationships

Contract Issues

Defects and Disclosure

Advertising

Intellectual Property

Dispute Resolution

TREC Rule Changes

Case Studies

5 CANONS OF PROFESSIONAL ETHICS

- ✘ Fidelity (22 TAC 531.1)
- ✘ Integrity (22 TAC 531.2)
- ✘ Competency (22 TAC 511.3)
- ✘ Consumer Information Form (22 TAC 531.18)
- ✘ Discriminatory Practices (22 TAC 531.19)

CANONS OF PROF. ETHICS (CONT.)

× Fidelity (531.1)

- + Position (representation) must be clear to all parties
- + Must treat others fairly
- + Must honor the trust
- + Must perform scrupulously & meticulously
- + Place client's interest first

CANONS OF PROF. ETHICS

× Integrity

- + Special obligations imposed on licensee
- + Must be careful to avoid misrepresentation (by commission or omission)

CANONS OF PROF. ETHICS

- ✘ Competency - Ask Questions Found on Page 3
 - + Must be a knowledgeable practitioner
 - + Must be informed about market
 - + Continue education
 - + Must stay informed
 - + Must exercise judgment and skill

CANONS OF PROF. ETHICS

- ✘ Consumer Information Form 1-1
 - + Must be displayed in offices
 - + Advises consumers where to file complaints

THIS FIRM IS
LICENSED AND REGULATED
BY THE
TEXAS REAL ESTATE
COMMISSION (TREC)

TREC ADMINISTERS TWO RECOVERY FUNDS
WHICH MAY BE USED TO SATISFY JUDGMENTS
AGAINST INSPECTORS AND REAL ESTATE
LICENSEES INVOLVING A VIOLATION OF THE LAW.
COMPLAINTS OR INQUIRIES SHOULD
BE DIRECTED TO

TEXAS REAL ESTATE COMMISSION
P.O. BOX 12188
AUSTIN, TEXAS 78711-2188

(512) 936-3005

CANONS OF PROF. ETHICS

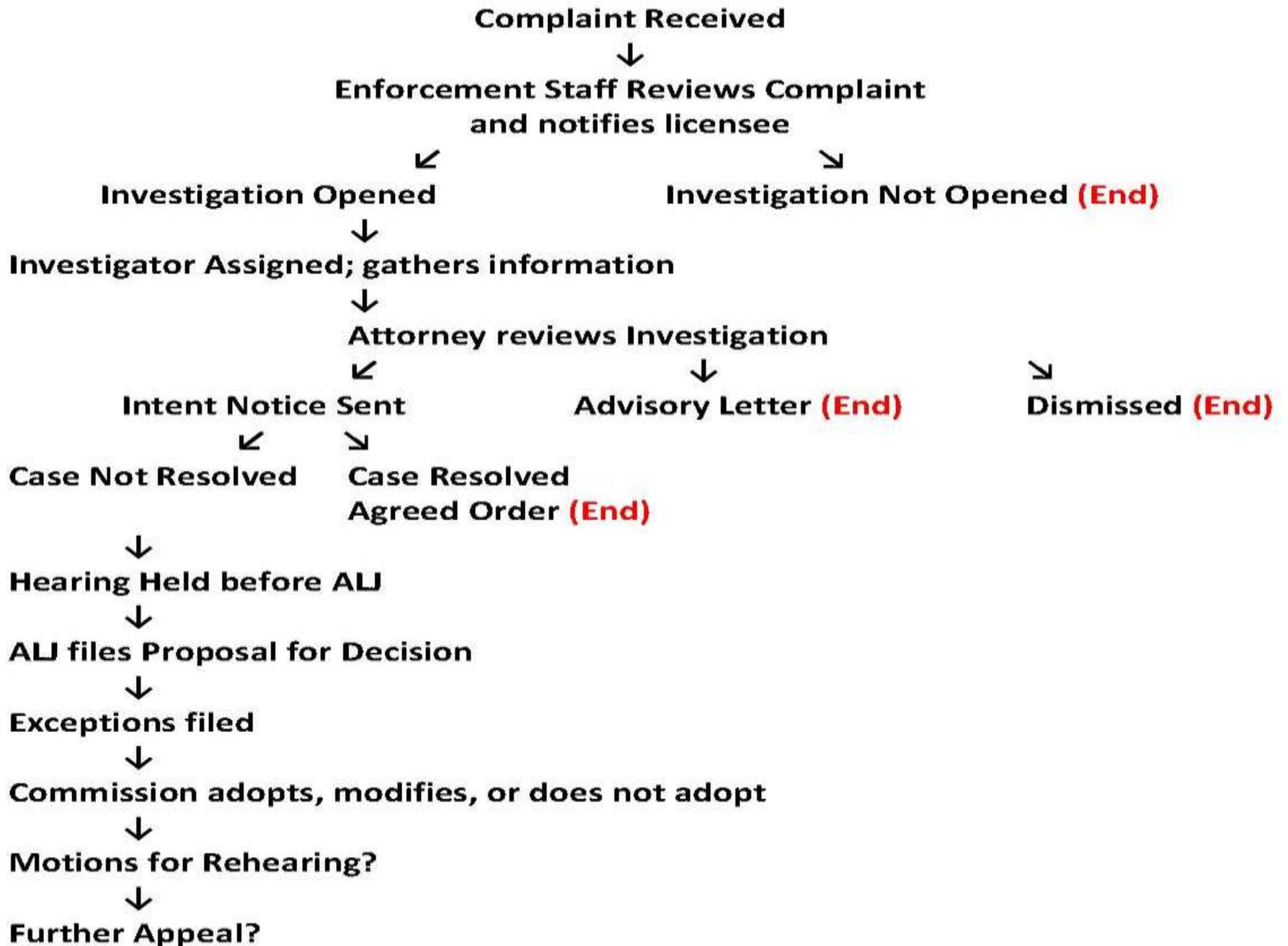
× Discriminatory Practices

- + May not inquire about, respond to, or facilitate inquiries, or make disclosure which indicates or intended to indicate a preference based on a protected class
- + Protected classes defined
- + Handicap and AIDS are protected classes

TREC Complaints - Overview



- Consumers may file complaint at TREC
- Licensee will be notified
- Enforcement may investigate
- If a violation appears to be present the Enforcement will give notice to licensee
- Matter may be administratively settled or a hearing may be held



TREC Complaints



- **Prioritization of Complaints**
 - TREC is statutorily required to develop a system of prioritization
 - ✦ Degree of harm
 - ✦ Potential for immediate harm
 - ✦ Number of licensees involved
 - ✦ Complaint history
 - ✦ Number of potential violations

TREC Complaints (continued)



- If violation established sanctions include:
 - Reprimand
 - Suspension
 - Revocation
 - A fine
 - Probation
 - Any combination of the foregoing

TREC Complaints (continued)



- Refunds - In addition to disciplinary action (suspension), TREC can order licensee to give a refund to the complainant (either from a informal settlement or enforcement order)

TREC Complaints (continued)



- **Advisory Letters**
 - Determination by TREC staff that TREC will not pursue a sanction; but that there are matters noted by Enforcement Staff that give rise to concern and that should be corrected
 - Generally used in technical matters or when production of evidence or witnesses may be difficult

TREC Complaints (continued)



- Informal Disposition (2 levels)

- Discussions with Enforcement Attorney

- Additionally, TREC has procedures for informal disposition for licensee to discuss or negotiate case in presence of:

- ✦ 2 staff members; and

- ✦ Public member of
Commission

TREC Complaints (continued)



- Temporary Suspension while Investigation is Pending
 - In serious cases, TREC has authority to take immediate, temporary action.
 - May be used if TREC determines that the licensee would constitute a continuing threat to the public welfare

Association Complaints

- Person may file complaint with a trade association
- Complaint is sent to a Grievance Committee
- Grievance may send matter to a hearing
- Association may offer ADR
- If hearing held then sanctions may be:
 - ▣ Reprimand
 - ▣ Fine
 - ▣ Probation
 - ▣ Suspension of Membership
 - ▣ Revocation of Membership
 - ▣ Any combination

Citation Program

- TAR Program
- Applies to limited number of Standards of Practice
- If a citation is issued, the respondent has right to the normal due process procedures

Agency Relationships

- **Customer or Client (Pg. 6)**
- **Agreement to represent may or may not be in writing**
- **Agreement to be an intermediary must be in writing**

**SEE DISCUSSION ON PAGE 6
(Expectations)**

Agency Disclosure & IABS

- ◎ 2 basic principles about Agency Disclosure
 - **Inform everyone in transaction who you represent at first contact**
 - **Provide IABS to the party you are working with at your first substantive dialogue.**

AGENCY DISCLOSURE - Statute

1101.558 (b). A license holder who represents a party in a proposed real estate transaction shall disclose orally or in writing, that representation at the time of the licensee's first contact with:

- (1) another party to the transaction; or
- (2) another license holder who represents another party to the transaction.

IABS FORM or STATEMENT - Statute

1101.558(c) The license holder shall provide to a party to a real estate transaction at the time of the first substantive dialogue with the party the written statement prescribed by Subsection (d) of this section....,

“Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner)...

PROVIDING THE WRITTEN INFORMATION WHEN FIRST SUBSTANTIVE DIALOGUE IS BETWEEN:

Listing Agent	Owner (listing presentation)	Yes
Listing Agent	Buyer (represented)	No
Listing Agent	Buyer (not represented)	Yes
Buyer Agent	Buyer (buyer rep. agrmt.)	Yes
Buyer Agent	Owner (represented)	No
Buyer Agent	Owner (not represented)	Yes
Subagent	Buyer (1st mtg.)	Yes
Subagent	Owner (represented)	No

The Intermediary

1101.559(a). A broker may act as an intermediary between the parties to a real estate transaction if:

(1) the broker obtains written consent from each party for the broker to act as an intermediary in the transaction; and

(2) the written consent of the parties states the source of any expected compensation to the broker.

1101.551(1). ***“Intermediary”*** means a broker who is employed to negotiate a transaction between the parties to a transaction and for that purpose may be an agent of the parties.

1101.559(c). An intermediary shall act fairly and impartially. Appointment by a broker acting as an intermediary of an associated license holder under Section 1101.560 to communicate with, carry out instructions of, and provide opinions and advice to the parties to whom that associated license holder is appointed is a fair and impartial act.

§1101.651(d)

(d) A broker and any broker or salesperson appointed under Section 1101.560 who acts as an intermediary under Subchapter L may not:

(1) disclose to the buyer or tenant that the seller or landlord will accept a price less than the asking price, unless otherwise instructed in a separate writing by the seller or landlord;

(2) disclose to the seller or landlord that the buyer or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord, unless otherwise instructed in a separate writing by the buyer or tenant;

(3) disclose any confidential information or any information a party specifically instructs the broker or salesperson in writing not to disclose, unless:

(A) the broker or salesperson is otherwise instructed in a separate writing by the respective party;

(B) the broker or salesperson is required to disclose the information by this chapter or a court order; or

(C) the information materially relates to the condition of the property;

(4) treat a party to a transaction dishonestly; or

(5) violate this chapter.

POWER TO APPOINT:

§ 1101.560. Associated License Holder Acting as Intermediary

(a) A broker who complies with the written consent requirements of Section 1101.559 may appoint:

- (1) a license holder associated with the broker to communicate with and carry out instructions of one party to a real estate transaction; and
- (2) another license holder associated with the broker to communicate with and carry out instructions of any other party to the transaction.

Sec. 1101.560 (continued)

(b) A license holder may be appointed under this section only if:

(1) the written consent of the parties under Section 1101.559 authorizes the broker to make the appointment; and

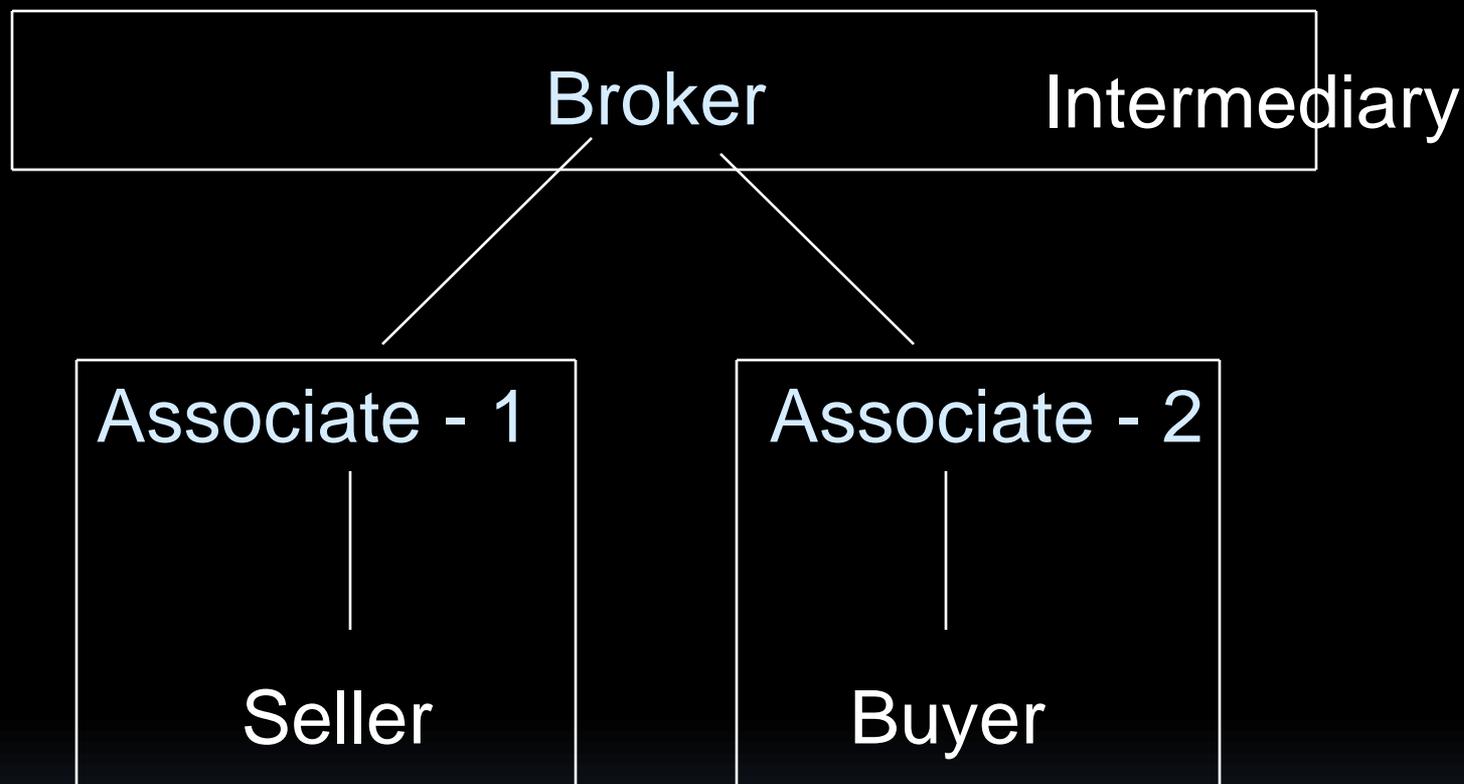
(2) the broker provides written notice of the appointment to all parties involved in the real estate transaction.

(c) A license holder appointed under this section may provide opinions and advice during negotiations to the party to whom the license holder is appointed.

1101.559(b). A written listing agreement to represent a seller or landlord or a written agreement to represent a buyer or tenant that authorizes a broker to act as an intermediary in a real estate transaction is sufficient to establish written consent of the party to the transaction if the written agreement specifies in conspicuous bold or underlined print, the conduct that is prohibited under Section 1101.651 (d).

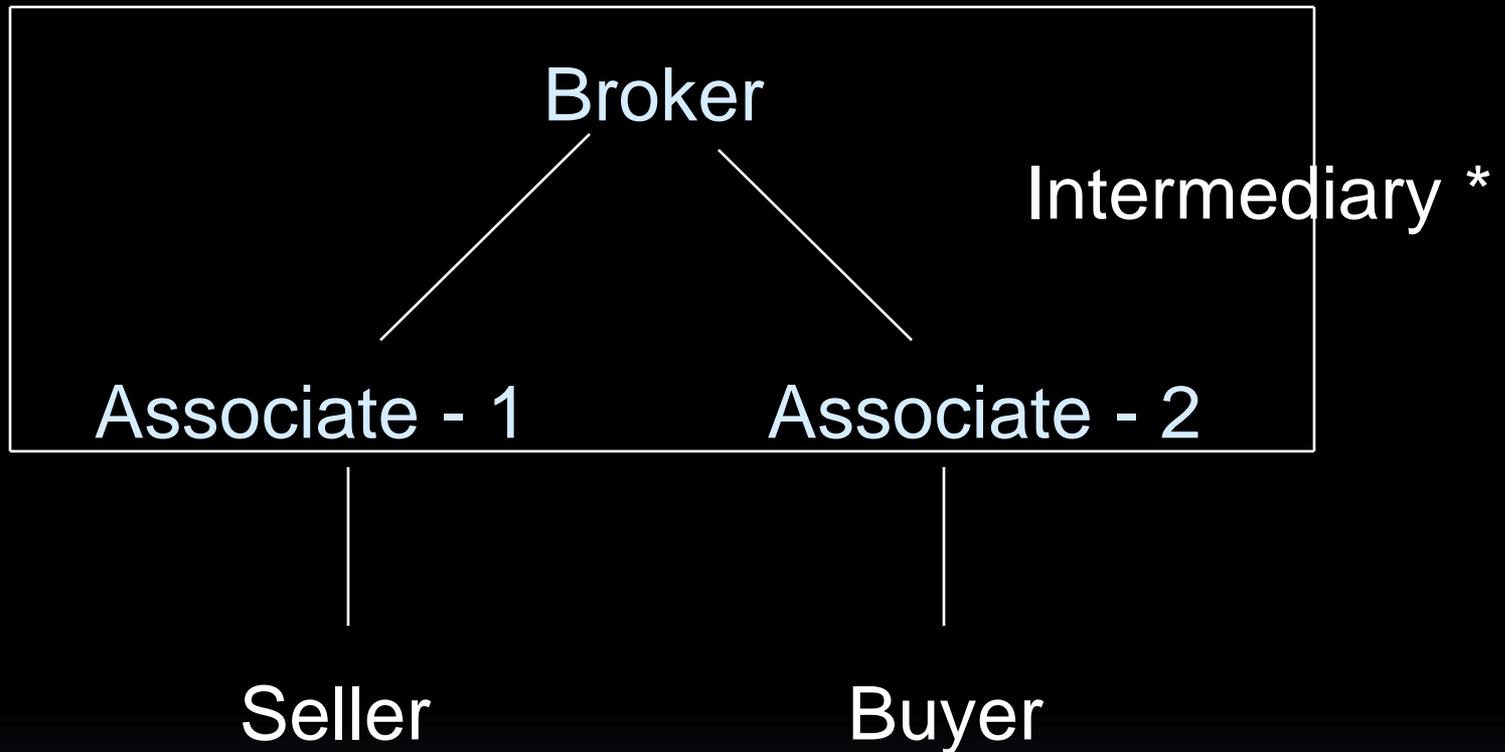
Decision to Appoint or Not Appoint
is Matter of Firm Policy

EXAMPLE 1

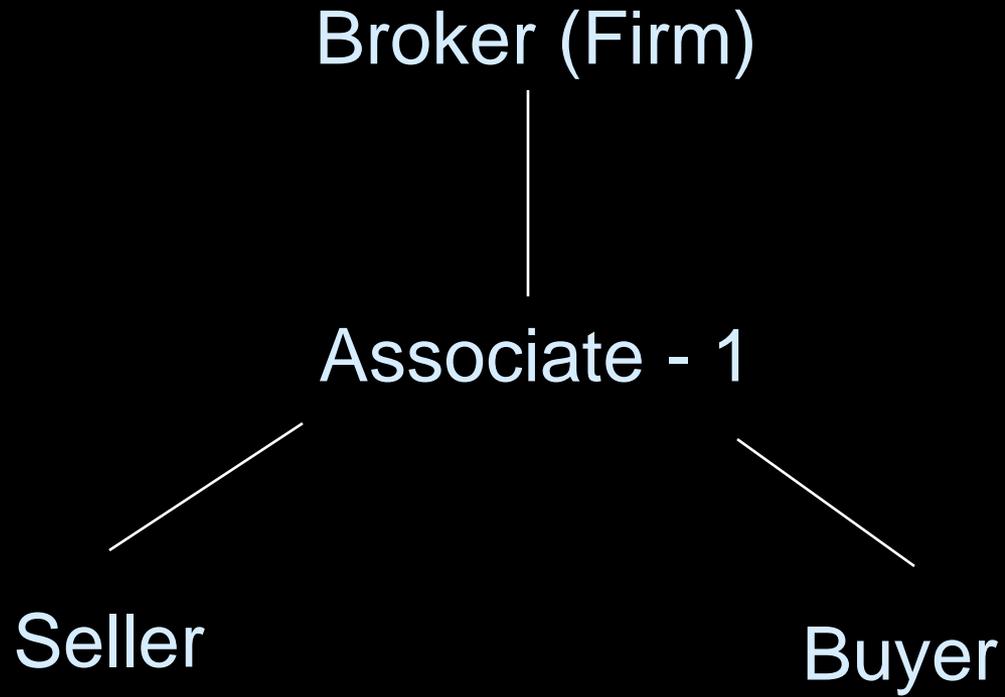


By making appointments, Associates will provide opinions and advice during negotiations. HOWEVER: RESTRICTIONS UNDER 1101.651(d) APPLY.

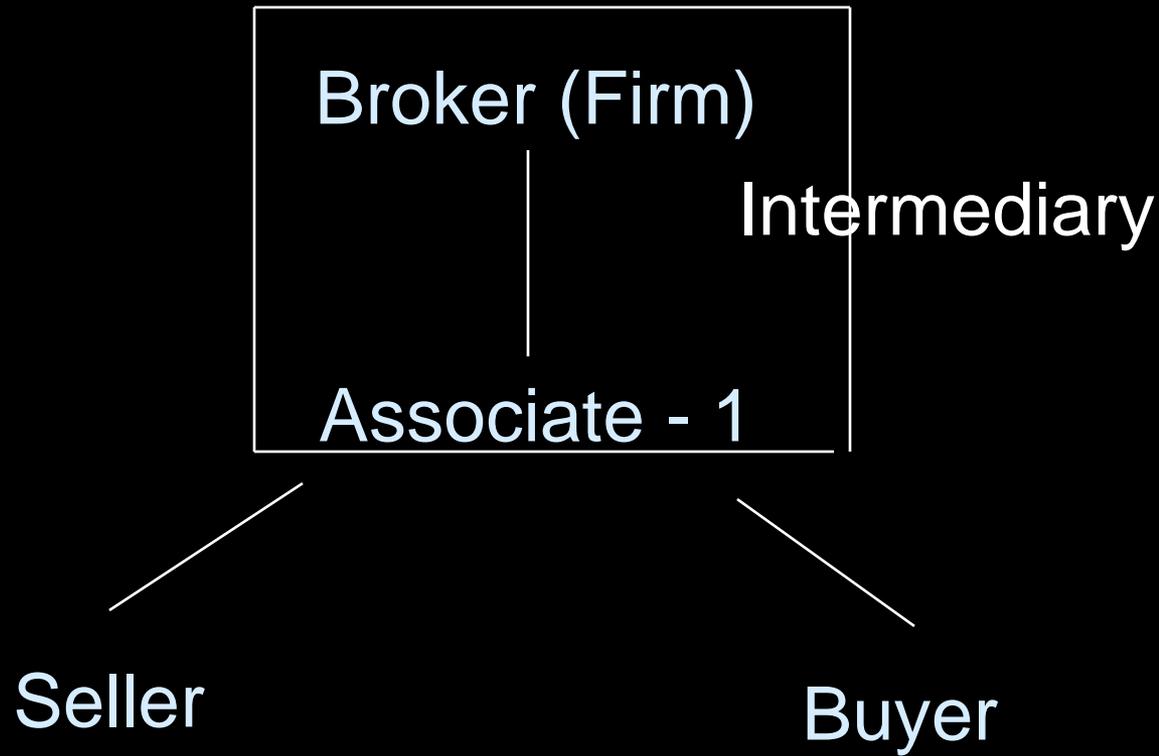
EXAMPLE 2



Restricted by Subsection (1101.651(d))
No opinions or advice during negotiations



EXAMPLE 3



No
Appointment

EXAMPLE 3 – Alternative 1

Broker (Firm)= Intermediary

Associate - 1

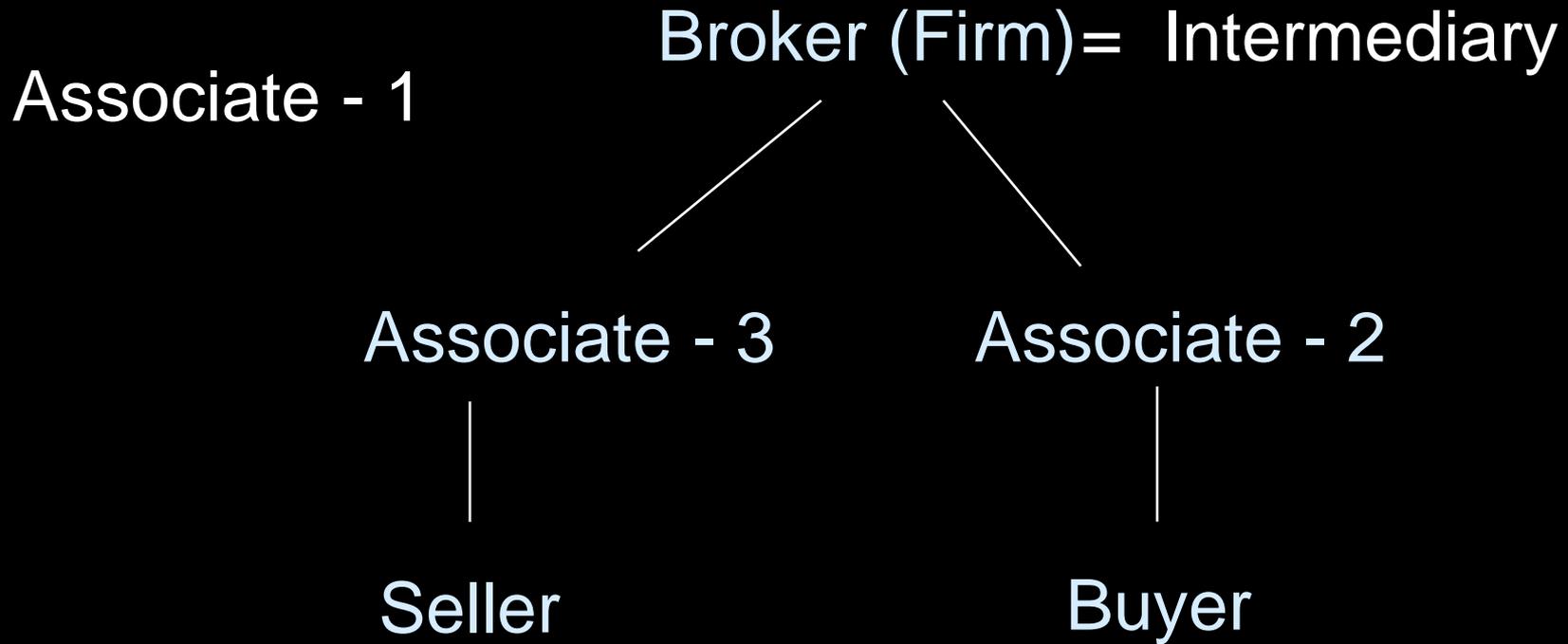
Associate - 2

Seller

Buyer

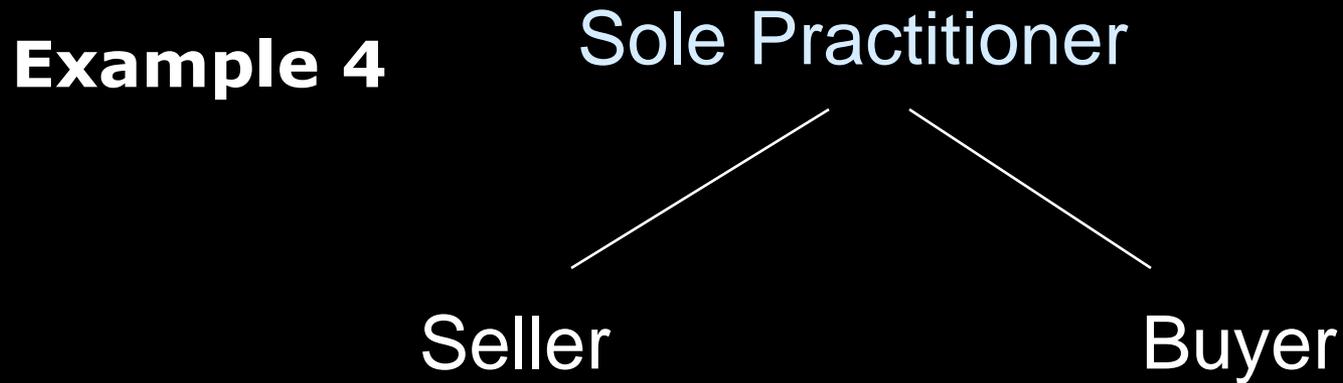
Reassign One Party
with consent of all parties

EXAMPLE 3 – Alternative 2



Reassign Both Parties
with consent of all parties

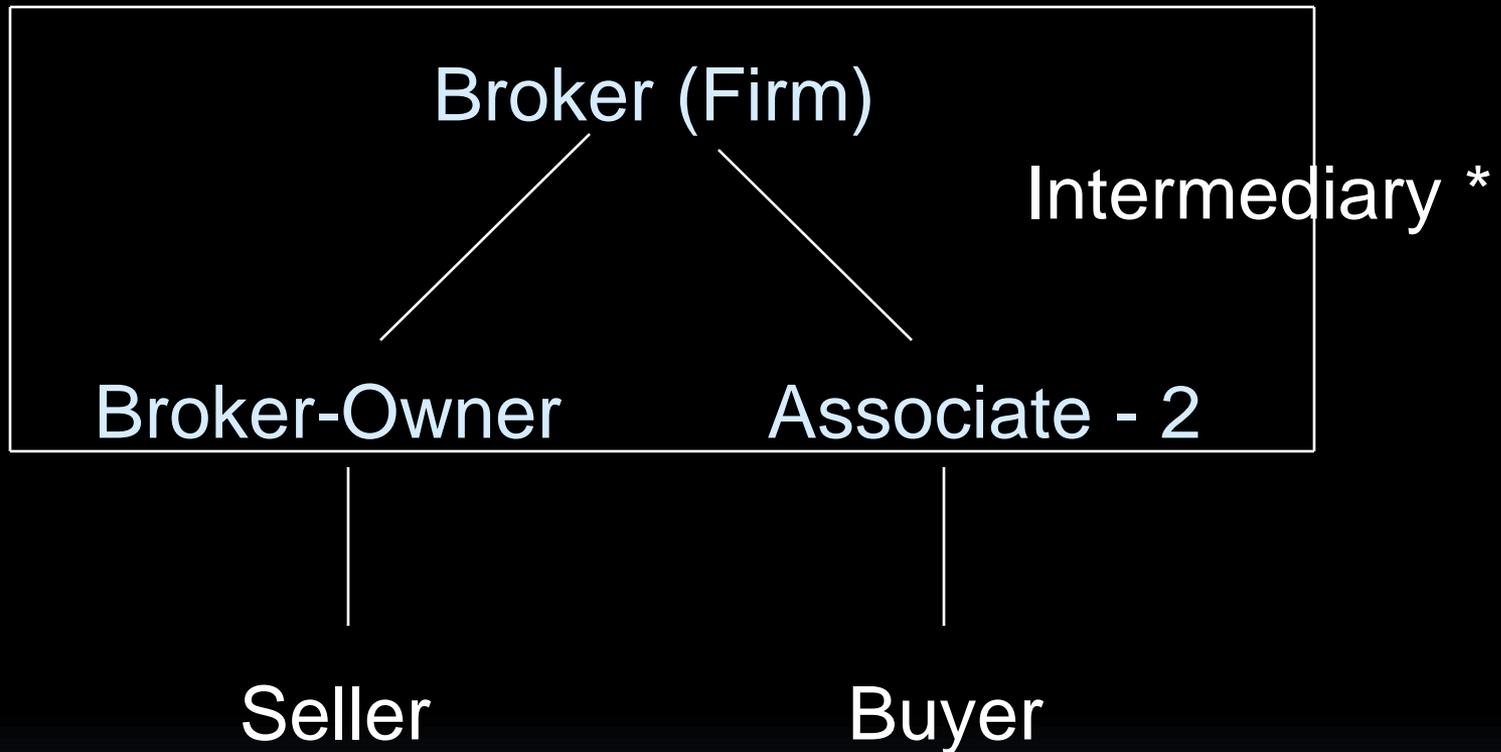
EXAMPLE 3 – Alternative 3



No appointment possible.

No opinions or advice during negotiations.
Subsection 1101.651(d) restrictions apply.

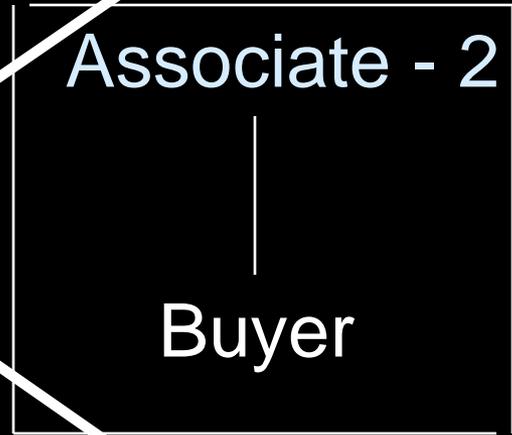
Firms where Broker/Owner is Active



Restricted by Subsection 1101.651(d)
No opinions or advice during negotiations

EXAMPLE 5 (continued)

Firm - Intermediary



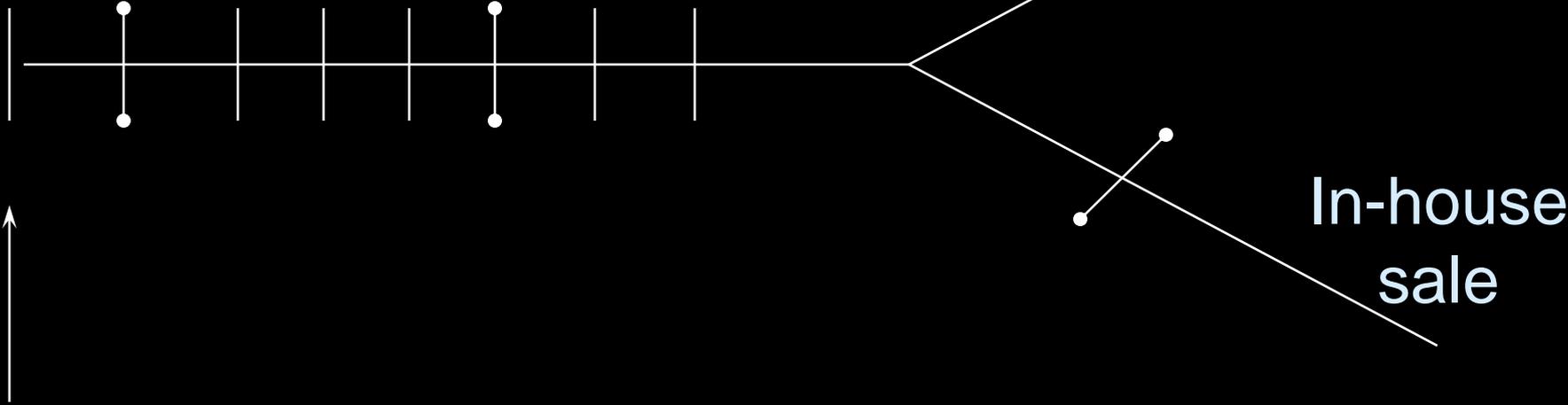
Example 5

Example 6

- Agt. orally agrees to represent buyer
- Moving to in-house sale
- Solutions?
 - Intermediary; have buyer sign buyer rep. agrmt. and authorize intermediary
 - If buyer does not agree then must terminate agency relationship with buyer

Related Question (Example 6 continued)

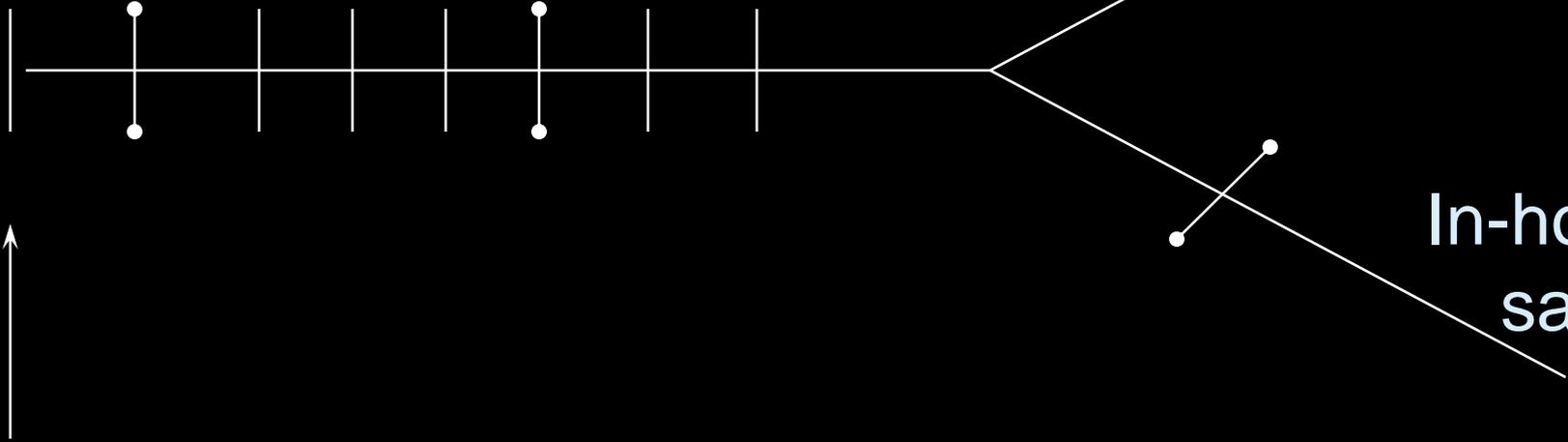
- Agt. has listing.
- Unrepresented buyer wants to make offer
- Must agt. move into intermediary relationship?
 - No.
 - May treat buyer as customer and represent seller
 - May move into intermediary under written consents
 - Check with company policies



Buyer Rep. Agrmnt
Written Information

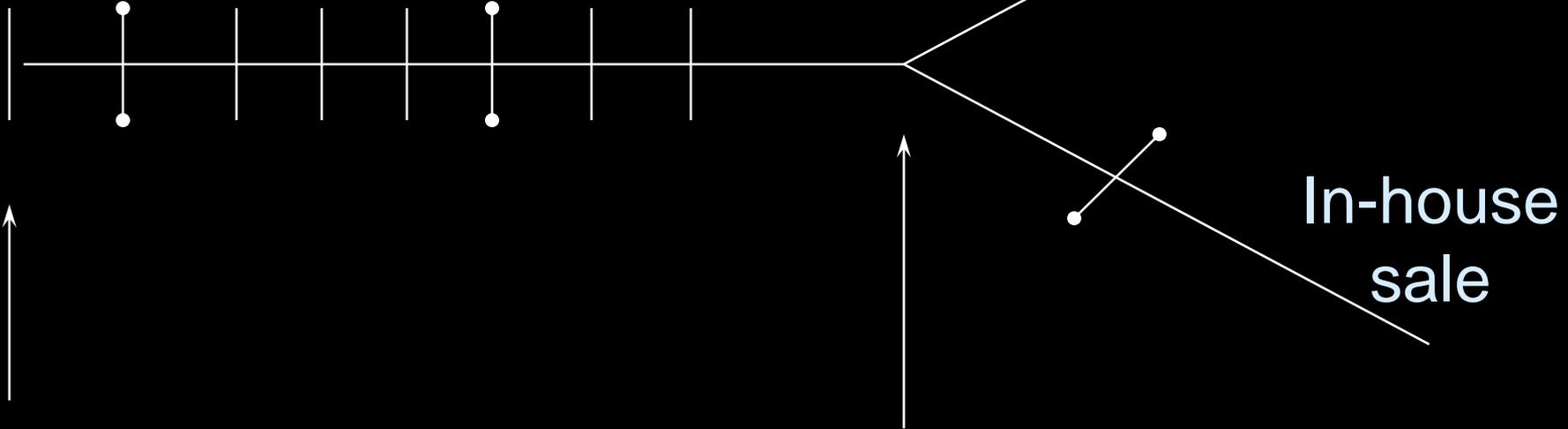
Single Buyer Representation

Co-op
sale



In-house
sale

Buyer Rep. Agrmnt
Written Information



Co-op
sale

In-house
sale

Buyer Rep. Agrmnt
Written Information

Notification of
Intermediary Relationship
Appointments made.

Other Types of Conflicts of Interest



Other Conflicts of Interest (cont.)

▶ When Licensee is a Principal

- May not use expertise to the disadvantage of the other party
- Includes when acting for spouse, parent, or child; or business (10% ownership or more)
- May not act in dual capacity as an agent and undisclosed principal.

Other Conflicts of Interest (cont.)

- ▶ If you receive a commission, rebate or fee from a service provider, you must obtain your principal's consent. You must also disclose to the person being referred to the service provider that you are receiving the commission, rebate or fee.

Other Conflicts of Interest (cont.)

- ▶ Licensee may not pay a fee for a broker service (e.g., referral fee) to an unlicensed person
- ▶ Exceptions:
 - A thank you gift, which is not cash & which is worth \$50 or less, is not considered to be valuable consideration
 - Rebates to Principals (consent of principal & lender may be required)
 - Unlicensed person that owns brokerage firm that is licensed

RSC Disclosure

► If licensee (or firm) receives compensation from a RSC, then use Form RSC-1 to disclose the compensation

- Firm should have policy in place

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC) 12-01-2010

 **DISCLOSURE OF RELATIONSHIP WITH RESIDENTIAL SERVICE COMPANY**

RESIDENTIAL SERVICE CONTRACTS. A residential service contract is a product under which a residential service company, for a fee, agrees to repair or replace certain equipment or items in a property. Co-payments typically apply to most service calls. Residential service companies are licensed and regulated by the Texas Real Estate Commission. The extent of coverage and the cost of coverage will vary. Before buying a residential service contract, the buyer should read the contract and consider comparing it with the extent of coverage and costs from several other residential service companies. You may obtain a list of the residential service companies licensed in Texas at <http://www.trec.state.tx.us> as well as a copy of their respective contracts. **YOU MAY CHOOSE ANY COMPANY.**

THE PURCHASE OF A RESIDENTIAL SERVICE CONTRACT IS OPTIONAL. The TREC promulgated residential contract forms contain a paragraph in which the parties may negotiate whether the seller will reimburse the buyer the cost of a residential service contract. The choice of the residential service company and extent of coverage lies with the buyer, **NEITHER A BROKER/SALESPERSON NOR A SELLER MAY CONDITION THE SALE OF A PROPERTY ON THE BUYER'S PURCHASE OF A RESIDENTIAL SERVICE CONTRACT.**

<input type="checkbox"/> Other Broker/Salesperson will receive no compensation from a residential service company.	<input type="checkbox"/> Listing Broker/Salesperson will receive no compensation from a residential service company.
<input type="checkbox"/> Other Broker/Salesperson receives compensation from the following residential service company: _____ _____	<input type="checkbox"/> Listing Broker/Salesperson receives compensation from the following residential service company: _____ _____

for providing the following services:

for providing the following services:

The compensation is not contingent upon a party to the real estate transaction purchasing a contract or services from the residential service company.

The compensation is the fee for the services that Listing Broker or Other Broker, either directly or through an agent, provides to the company. As required by the Real Estate Settlement Procedures Act and HUD Regulation X, any fees paid to a settlement services provider are limited to the reasonable value of services actually rendered.

Other Broker's Name _____ License No. _____	Listing Broker's Name _____ License No. _____
By: _____	By: _____

The undersigned acknowledges receipt of this notice:

Buyer _____	Seller _____
Buyer _____	Seller _____

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provisions in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 459-6544 (<http://www.trec.state.tx.us>) RSC 1.

Early Termination of Agency

- ▶ Agency is highly personal
- ▶ Agency relationship may be terminated at any time by either party.
- ▶ Early termination, without cause, may subject one to contractual liability
- ▶ Upon receipt of a notice of termination from a principal, the agent should cease acting as the principal's agent & should attempt to resolve compensation due

Prior Agency Relationships

- ▶ If a prospective client approaches broker and tells broker that they are subject to an existing agency relationship, broker should take reasonable precautions
- ▶ May not interfere with an existing relationship
- ▶ Resolve any compensation issues

Contract Issues (Chapter 3)

- ▶ The EFFECTIVE DATE
 - Who determines?
 - How is it determined?
 - What happens if it is omitted?
 - Calculating time periods?

Tendering Option Money

- ▶ Must be tendered in 2 days
 - ▶ Tender must be made to seller or listing agent (not escrow agent)
 - ▶ Delivery by personal delivery, courier, or mail.
- 

Option Money

- ▶ Option money should be delivered to seller (probably through listing broker)
- ▶ Should not be delivered to 3rd Party such as a title company or lender
 - Failure to properly deliver may put buyer at risk of not having an option
 - To be enforceable option must be supported by consideration and the consideration must be tendered in strict accordance with provisions

Special Provisions – Admonitions

- ▶ Licensee may fill in blanks of standard forms, insert factual statements and insert business details
 - ▶ Concern is when line is crossed and moves licensee into the unauthorized practice of law
 - ▶ Most forms address most issues now (e.g., Non–Realty Items Addendum now addresses personal property)
- 

Case Study – Lewis v Foxworth

- ▶ “Both Seller and Purchaser agree that there are items of Personal Property which will be removed from the Property and that ALL fixtures which are attached to the Property will remain with the Property, said fixtures including, but not limited to fences, working pens, gates, chutes, water well fixtures, and tanks.”
- 

Case Study – Johnson v Conner

- ▶ “None of the above are available to be conveyed.”
- ▶ Inserted in old Farm & Ranch contract form for mineral reservations
- ▶ Now better to use Addendum for Oil, Gas & Other Minerals

As-Is Clauses in Special Provisions

- ▶ Courts generally hold the Paragraph 7 language in TREC forms (“in its present condition”) is an as-is clause
 - ▶ Licensees do not need to attempt to negotiate additional as-is clauses (leave it to the principal’s attorneys)
- 

Brokerage Fees in Special Provisions

- ▶ **Paragraph 8 of TREC forms provides that brokerage agreements are in separate written agreements**

Poorly Drafted Clauses in Special Provisions

- ▶ “This contract is subject to a satisfactory appraisal report.” (or inspection report)
- ▶ “This contract is subject to the buyer selling buyer’s existing home.”
- ▶ “Buyer agrees not to require seller to complete any repairs.”
- ▶ “Buyer may begin to move-in 3 days before closing.” (or seller to stay after closing)

Poorly Drafted Clauses (cont.)

- ▶ “If for some reason buyer cannot obtain financing, the parties will renegotiate owner financing at that time.”
 - ▶ “Buyer requests seller to paint all exterior doors.”
 - ▶ “Seller shall provide buyer with an allowance at closing in the amount of \$1,000.00.”
- 

Poorly Drafted Clauses (cont.)

- ▶ “Buyer has the right to do inspections and negotiate repairs, if any, through August 4, 2011 or as soon as the property is vacated. If such negotiations do not result in mutual agreement of the parties, buyer may terminate this contract and his earnest money will be refunded.”
- 

What is a factual statement?

- ▶ A statement that can be verified as true.
 - ▶ Not a provision under which the parties agree to perform obligations.
- 

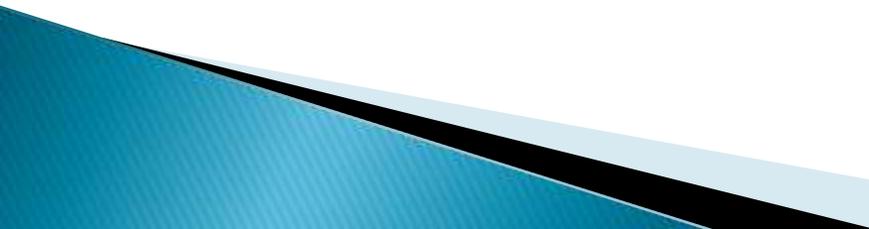
What is a business detail?

- ▶ Usually an accounting term
 - ▶ Used to provide more information helpful to an audit or transaction.
 - ▶ Footnotes to help the better understand
 - ▶ Provides information about the existing obligations in other parts of the contract.
- 

Examples of Appropriate Items for Broker Drafted Special Provisions

- ▶ Disclosure that agent is related to a party;
 - ▶ Disclosure that a party is a licensee;
 - ▶ instructions to the title company, (e.g., buyer will purchase the boundary deletion); or
 - ▶ provisions that cannot fit into a space (e.g., multiple sellers).
- 

Electronic Signatures

- ▶ Texas UETA is Chap. 43, Bus.&Comm. Code
 - ▶ States electronic documents and signatures are enforceable as paper
 - ▶ Does not require all transactions to be electronic (parties agree)
 - Agreement to electronic transaction may be given electronically
 - Party can opt out any time but does not affect prior actions given electronically
- 

Electronic Signatures (cont.)

- ▶ Prudent to:
 - have parties consent to the electronic transaction
 - disclose that parties have right to withdraw consent
 - provide adequate means to withdraw the consent

Record Retention

- ▶ Electronic records need to be available for same retention period as paper records
 - At least 4 years in most cases
 - Ancillary questions such as preserving confidential information also applies to electronic records

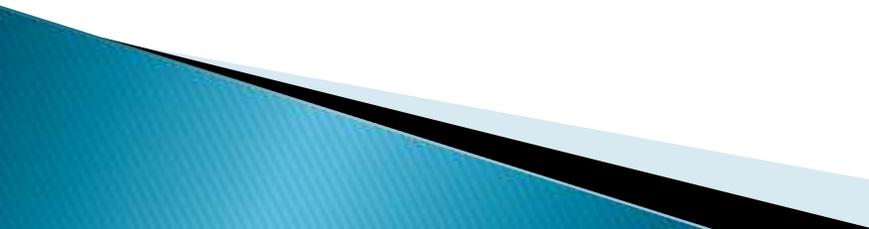
The Short Sale Addendum

- ▶ Purpose is to create a contingency that suspends performance under contract until lender approves the sale
 - ▶ What is the effective date? (mirrors back-up addendum procedure)
 - ▶ May buyer terminate while waiting for lender approval if option applies?
- 

Short Sale Addendum (cont.)

- ▶ If lender does not approve does buyer receive a refund of earnest money? Option fee?
 - ▶ Can seller accept a back-up offer in a short sale?
 - ▶ Notices to buyer?
 - If lender does not approve?
 - Time expires under the addendum?
- 

Back-Up Addendum

- ▶ Purpose is to create contingency if seller has a pending contract
 - ▶ Do parties perform while buyer is back-up position?
 - ▶ What is the effective date in the back-up addendum?
 - ▶ May buyer terminate if he is in back-up position and has option?
- 

Back-Up Addendum

- ▶ If first contract never terminates, does the back-up buyer receive return of earnest money? Option fee?
 - ▶ If seller extends closing in the first contract, does that breach the back-up contract?
 - ▶ Can a transaction have multiple back-up contracts?
- 

Disclosure of Defects

Property Defects

- 2011 Changes to Residential Seller Disclosure Notice
 - Rainwater harvesting systems
 - Liquid Propane Gas
 - Blockable main drains in pool or spa

Property Defects (Common Questions)

- What is a defect?
 - Irregularity in surface or structure that mars its appearance or causes property to weaken or fail
 - Must be tangible and physical
 - Must be blemished or broken

Property Defects (Common Questions)

- What if seller does not want to disclose, but agent knows of it (DISCLOSE and tell Seller)

Duty to Disclose Defect

- Sellers & brokers have duty to disclose known, material defects
- Duty applies in statute and common law causes of action
- 5.008 of Property Code (Seller Disclosure Notice) applies to residential properties of not more than 1 dwelling unit
- Exceptions to 5.008 – See Page 17

Property Defects (Common Questions)

- Do relocation companies need to provide the seller disclosure notice?
- Previous deaths?
- Water penetration versus previous water penetration?
- Sex Offenders?
- Offsite Conditions?



Advertising

Truth in Advertising

- RELA has 2 requirements:
 - May not create a misleading impression
 - Standard is not truth, but misleading
 - Must identify yourself as broker or agent
 - Question is what is proper identification
 - Use “broker,” “agent,” “REALTOR”, etc.

SEE EXAMPLES ON PAGE 19 &
FOLLOWING SLIDES



Advertising

- A licensee must identify his license status in advertisement



Advertising

(examples that do not comply)



Advertising

(examples that do not comply)

Advertising (cont)

- 535.154 revised
 - Definition of advertising is broad
 - Private websites (password for clients) is not advertising
 - Broker's name must be in AD and be conspicuous (see safe harbor standard)



Use of Team Names

- ❑ Broker must register Team Name as an assumed name with TREC (assumed name is broker's alias)
- ❑ Broker's name does not need to appear separately except when Team Name includes a Salesperson's Name (cannot mislead as to who is in charge)



Filing Assumed Names with TREC

- Can look-up brokers' assumed names on TREC website
- TREC has form (Notice of DBA) for brokers to give notice of an assumed name to TREC

Corporate Names (535.154 cont.)

- Some corporate names for brokerage operations include salespersons' names
 - Permissible, but now designated officer's name must be included in the AD
- Unlicensed persons' names may appear in corporate name, but care must be given to not create impression that an unlicensed person is engaged in brokerage activity

Signs (535.154)

- Signs must include designation as “broker,” “agent,” etc. as other Ads and must be Clear and Conspicuous
 - No specific font-size is required, but see safe-harbor standard



Ranking Service Providers

- Licensees cannot rank service providers in Ads unless the ranking is based on disclosed objective criteria
- May not advertise that licensee offers commission-approved courses unless licensed to offer such courses

Intellectual Property

- ▶ Licensees sued for pasting others' material on websites publications
- ▶ Need permission from author or copyright holder
 - Giving credit is probably not good enough
- ▶ See FAQ at www.copyright.gov

Intellectual Property (cont.)

- ▶ Fair Use is not a “end-around”
- ▶ Rules apply to
 - Photos
 - Music
 - Software

Mediation

- ▶ **Mediation** is a forum, before an impartial person, which is designed to facilitate communication between parties and to promote reconciliation, settlement or understanding.



Arbitration

- ▶ **Arbitration** is a forum where parties and counsel present their positions before an impartial party who renders a specific award.

Broker Responsibility Rule Changes (Chapter 8)

- Broker must advise salespeople of scope of authorized acts
- Broker is liable if he permits salespeople to act beyond the defined scope
- Broker can delegate oversight responsibilities but remains responsible
- Broker will be responsible for property management and advertising by salespeople

Broker Responsibility Rules

- Must maintain business records for at least 4 years
- Need written policy & procedure for
 - Advising salespeople of scope
 - Having licensee maintain licenses active
 - Compensation payments (through broker)
 - Keeping salespeople apprised of changes in RELA, rules, and forms

Broker Responsibility Rules

- Brokers will ensure
 - Licensees get proper CE
 - Salespeople comply with advertising rules
 - Trust accounts and money belonging to others complies with rules
 - Record retentions schedules are followed

Other Rule Changes

- Broker must promptly respond to agents' clients
- Broker must give agents correspondence from TREC
- Rules do not create employment relationship
- Compensation agreements with agents must be in writing
- Corp., Ptnrshp., LLC that receives compensation from a brokerage deal must be licensed

Education Rule Changes

- Bachelor's degree satisfies all "related" education requirements for a license (not core)
- TREC now will waive education requirements for expired licensees seeking to re-license only for 2 years (not 4)
- If expired licensee waits longer than 2 years, he must also take examination
- Similar core courses are not given credit if taken within 2 years of each other (only 1 given credit)

Disciplinary Rule Changes

- A suspended licensee may not advertise
- TREC staff may investigate potential violations of probation orders if reasonable cause exists (no need for authorization from commission)
- If license is suspended, agent must notify broker in writing and all parties and brokers in any pending deals

Disciplinary Rule Changes

- Must disclose in writing if licensee is acting as a principal in a transaction (see def'n of principal on Page 25)
- Trust account rules clarified
 - Broker can place some money in trust account to cover bank fees
 - Broker must notify parties of disbursement that is not authorized in writing by parties

Disciplinary Rules

- Sharing fees with the unlicensed
 - Can't pay fees to unlicensed entities even if owned by broker or agent
 - Unlicensed person who owns licensed entity is not sharing with an unlicensed person

Disciplinary Rule Changes

- RSC-1 Disclosure now required
- Cannot enter into agreement with a service provider if licensee represents a party (buyer or seller) and: (1) licensee provides services for or on behalf of the service provider; and (2) agreement with service provider is exclusive
- Licensee may not receive fee from service provider if fee is contingent on a party to the sale purchasing service provider's services

Disciplinary Rule Changes

- Licensees must keep e-mails current with TREC
- Renewing a probationary license keeps license in probationary status
- Agent's license becomes inactive if broker notifies TREC that sponsorship terminates

Inspector Rule Changes

- More emphasis on on-line transactions and electronic delivery of notices
- Inspection reports must be delivered to client within 3 days (unless otherwise agreed)
- All inspectors who participated must be identified on report
- Signatures of sponsoring inspector not required
- RE inspectors and professional inspectors must take a 6-hour standards update course

Property Management Rules

- The following on Page 26 repeats what is reported on Page 25 (under trust accounts):
 - Broker is responsible for property management activity by salespersons & advertising
 - Trust accounts must be handled by broker with proper controls
 - Parties must be notified if broker makes disbursement not authorized in writing
 - May deposit broker's money in trust accounts to cover bank fees

Property Management Case Study

- Broker, Salesperson, and attorney end up commingling and taking property management funds (Page 27)

TREC DISCIPLINARY CASES

THEFT OF DEPOSIT TO PURCHASE A CONDO

- ✘ Agent obtained \$20,000 from a buyer to purchase a condo, but never had buyer enter into a contract to purchase the unit (Page 28)

THE FORGOTTEN PEST INSPECTION

- ✘ Agent obtained pest inspection report for buyer but did not give copy to buyer. Report indicated problems. (page 29)

NEGLIGENT SUPERVISION BY BROKER

- ✘ Broker's agents acted inappropriately, broker was disciplined for failing to properly supervise agents (Page 30)

FAILURE TO REMIT TRUST FUNDS

- ✘ Property manager was unable to pay money belonging to owners and tried to blame the situation on other circumstances (Page 31)



Ethics:

The End