



Texas Real Estate Commission

MCE Ethics Update

Edition 5.1

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FOREWORD

In cooperation with the Texas Real Estate Commission, the Real Estate Center at Texas A&M University developed this real estate ethics curriculum with the assistance of an advisory committee of active licensees, attorneys and education providers. Real estate licensees are encouraged to acquire additional information and to take courses in specific, applicable topics.

This curriculum has been developed using information from publications, presentations and general research. The information is believed to be reliable, but it cannot be guaranteed insofar as it is applied to any particular individual or situation. The laws discussed in this curriculum have been excerpted, summarized or abbreviated. For a complete understanding and discussion, consult a full version of any pertinent law. This curriculum contains information that can change periodically. This curriculum is presented with the understanding that the authors and instructors are not engaged in rendering legal, accounting or other professional advice. The services of a competent professional with suitable expertise should be sought.

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Contents

The Canons of Professional Ethics—Chapter 1	3
The Five Canons	3
1. Fidelity (22 TAC §531.1).....	3
2. Integrity (22 TAC §531.2)	3
3. Competence (22 TAC §531.3)	3
4. Consumer Information Form 1-1 (22 TAC §531.18).....	3
5. Discriminatory Practices (22 TAC §531.19).....	4
TREC Complaints.....	4
Complaint Provision	4
Refund to Consumer	4
TREC Advisory Letters.....	4
Informal Proceedings.....	4
Temporary Suspension.....	4
Association Complaints	4
Citation Program.....	5
Agency Relationships—Chapter 2	6
Customer or Client?	6
Fiduciary Duties.....	7
Information About Brokerage Services and Agency Disclosure	7
Disclosure of Agency Representation.....	7
Intermediary Brokerage Relationship Services	7
Conflicts of Interest.....	9
When the Licensee is a Principal	9
Receiving Fee from a Service Provider (22 TAC §535.148).....	9
Sharing Fees with Unlicensed Persons (22 TAC §147).....	9
Residential Service Company Disclosure (22 TAC §535.148(e))	9
Conflicts Arising in Early Termination of Agency.....	10
Contract Issues—Chapter 3	11
Effective Date	11
Paragraph 11 — Special Provisions.....	12
As-Is Clause	13
Brokerage Fees.....	13
Electronic Signatures	13
UETA	13
E-sign	14
Consumer’s Consent	14
Technology.....	14

Records Retention.....	14
Short Sale Addendum	14
Backup Addendum.....	15
Defect Disclosure—Chapter 4.....	16
Seller’s Disclosure of Property Condition	16
Property Defects.....	16
Disclosure	16
Defect Disclosure FAQ.....	17
Exceptions to the Seller’s Disclosure Form.....	17
Advertising—Chapter 5	18
Definition	18
Including the Broker’s Name.....	19
Teams	19
Assumed Names.....	20
Corporations.....	20
Trade Names	20
Signs.....	20
Other Changes.....	20
Intellectual Property—Chapter 6	21
Copyright Laws.....	21
Photographs and Music.....	21
Software	21
Dispute Resolution—Chapter 7	22
Mediation	22
Arbitration.....	22
Section 535 Changes—Chapter 8	23
Broker Responsibility, §535.2.....	23
Commissions for Salespersons, §535.3	24
When a License is Required / Business Entities, §535.4, 535.5.....	24
Education and Experience, §535.54.....	24
Violations	25
License Under Suspension, §535.141	25
Licensee as Principal, §535.144.....	25
Trust Accounts, §535.146	25
Shared Commission, §535.147	25
Service Providers, §535.148	25
Miscellaneous License Provisions	25
Email Address, §535.96.....	25
Probationary License Renewal, §535.94(d).....	25
Terminated Sponsorship, §535.121.....	25
Home Inspectors	26
Online Activity.....	26
Reports	26
Inspector Continuing Education, (§535.212).....	26
Appraisals – SB 747.....	26
Attorneys at Law; §535.31.....	26
Definitions; §535.50.....	26
Examinations; §535.51.....	26
General Requirements for a License, §535.53.....	26

Corporations and Limited Liability Companies, §535.55.....	26
Education Requirements for a Salesperson License and Education and Experience Requirements for a Broker License, §535.56.....	26
Accreditation of Core Education Schools, §535.63.....	27
Broker Renewal Requirement, §535.91.....	27
Late Renewal Applications, §535.96.....	27
Mailing Address and Other Contact Information, §535.96.....	27
Fees, §535.101.....	27
Initiation of Investigation, §535.141.....	27
Property Management—Chapter 9	28
TREC Rules Addressing Property Management.....	28
Theft From Property Management Accounts.....	28
TREC Cases—Chapter 10	30
Dishonest Conduct and Flagrant Course of Misrepresentation	30
Failure to Disclose a Defect and Signing Without Authorization.....	31
Broker Supervision of Sponsored Salesperson.....	32
Failing to Forward Funds and Commingling Funds in Property Management	33
Appendix.....	34
Chapter 1 – The Canons of Professional Ethics.....	34
Chapter 2- Agency Relationships.....	35
Chapter 5- Advertising.....	35



The Canons of Professional Ethics

Chapter 1

Title 22 of the Texas Administrative Code (TAC) Chapter 531 includes five canons of professional ethics and conduct. The canons apply to real estate licensees and are included in the rules of the Texas Real Estate Commission (TREC). Acting as a fiduciary, the real estate licensee must exercise a standard of duty and care when representing a client in a real estate transaction. The licensee must subordinate his or her own interest to the client's interest. The canons also support the Federal Fair Housing Act in forbidding discrimination in real estate activities. These canons are similar in content to general business ethics and common law agency principles from a variety of sources including case law, statutory law and codes of ethics of many professional and trade associations.

The Five Canons

1. Fidelity (22 TAC §531.1)

A licensee represents the interest of the agent's client. The agent, in performing duties to the client, must

- make his or her position clear to all parties concerned in a real estate transaction,
- treat other parties to a transaction fairly,
- be faithful and observant to the trust placed in the agent,
- perform his or her duties scrupulously and meticulously, and
- place no personal interest above the client's interest.

2. Integrity (22 TAC §531.2)

A licensee

- has a special obligation to perform his or her responsibilities, and
- must use caution to avoid misrepresentation by acts of commission or omission.

3. Competence (22 TAC §531.3)

A licensee

- is knowledgeable as a real estate practitioner,
- is informed on market conditions that affect the real estate business,
- continues his or her education in the intricacies involved in marketing real estate for others,
- stays informed about national, state and local issues and developments in the real estate industry, and
- exercises judgment and skill in the performance of his or her work.

A licensee might ask the following:

- What are my strengths and deficiencies?
- Do I attend classes to improve my services to my clients or customers? How often?
- What resources are available to help me maintain my competence?
- Do I keep abreast of market conditions in the area in which I practice? How?
- Am I aware of trends in real estate practices? How do I usually find out about these trends?
- Do I read Real Estate Commission and trade publications? Which ones? How do they help me maintain my competence?
- Can I identify local, state and national issues that are currently under development or consideration?

4. Consumer Information Form 1-1 (22 TAC §531.18)

Each active real estate broker or real estate inspector licensed by the Texas Real Estate Commission (TREC) must display Consumer Information Form 1-1 prominently in each place of business that the broker or inspector maintains.

5. Discriminatory Practices (22 TAC §531.19)

No real estate licensee shall inquire about, respond to or facilitate inquiries about or make a disclosure, which indicates or is intended to indicate any preference, limitation or discrimination based on protected classes. Protected classes include race, color, religion, sex, national origin, ancestry, and familial status. Protected classes also include handicap of an owner, previous or current occupant, potential purchaser, lessor or potential lessee of real property. A handicapped individual includes a person who had, may have had, has or may have AIDS, HIV-related illnesses or HIV infection as defined by the Centers for Disease Control of the U.S. Public Health Service.

TREC Complaints

A person may file a complaint with TREC against a real estate licensee if the person believes the licensee violated the Real Estate License Act (TRELA). If TREC has jurisdiction over the complaint, it will typically investigate the allegations by interviewing the parties and witnesses and gathering relevant information. After review, TREC's enforcement division will notify the licensee if it intends to initiate disciplinary proceedings. After a hearing or other settlement procedure, it will render a decision. If the evidence establishes a violation, TREC may impose a reprimand, suspension of the license, revocation of the license, a fine, probation, or any combination.

Complaint Provision

TREC is required to maintain a system to act promptly and efficiently on complaints and must maintain a file on each complaint. TREC gives priority to the investigation of complaints filed by a consumer and an enforcement case resulting from the consumer complaint. TRELA requires that TREC assign priorities and investigate complaints using a risk-based approach based on the

- degree of potential harm to the consumer,
- potential for immediate harm to the consumer,
- overall severity of the allegations and the complaint,
- number of license holders potentially involved in the complaint,
- previous complaint history of the license holder, and
- number of potential violations in the complaint [TRELA §1101.204(h)].

Refund to Consumer

TREC may order a licensee to pay a refund to a consumer as provided by an agreement resulting from an informal settlement conference or an enforcement order in addition to imposing an administrative penalty, suspension, revocation or other sanction (TRELA §1101.659).

TREC Advisory Letters

When appropriate, TREC may close a complaint file by issuing an advisory letter to a licensee. This is generally appropriate in more technical matters, when the provision that was violated is new, or when evidentiary or procedural problems exist, such as the unavailability of witnesses. An advisory letter is not formal disciplinary action. Instead, the advisory letter is a notification that there were items revealed in the investigation that do not warrant disciplinary action but, if not corrected, could lead to further complaints and, ultimately, disciplinary action.

Informal Proceedings

TREC is also required to adopt procedures governing informal disposition of contested cases. An informal disposition must provide the complainant and the license holder the opportunity to be heard. The proceeding requires the presence of a public member of TREC for a case involving a consumer complaint and at least 2 TREC staff members with experience in the regulatory area that is the subject of the proceeding (TRELA §1101.660).

Temporary Suspension

TREC's presiding officer for a case involving a consumer is required to appoint a disciplinary panel, consisting of 3 commission members, to determine whether a person's license to practice should be suspended temporarily. If the disciplinary panel determines that the licensee constitutes a threat to the public by continuing to practice, or the licensee constitutes a continuing threat to the public welfare, the panel will temporarily suspend the person's license (TRELA §1101.662).

Association Complaints

The Associations of REALTORS®, the National Association of Real Estate Brokers (NAREB®, Realtists), and other trade associations receive complaints alleging ethics violations against their members. Such complaints can be directed to the local association to which the member belongs. Typically,

a grievance panel will conduct an initial review to determine if the complaint alleges a violation of the organization's code of ethics. If there is an alleged ethics violation, a hearing panel will convene to hear testimony and presentation of evidence, decide whether a violation of the association's code of ethics occurred, and order any warranted disciplinary action. Disciplinary action could include

- a reprimand,
- a fine,
- probation,
- suspension of membership,
- revocation of membership, or
- any combination of the above actions.

The panel will advise the parties of any rights to appeal the decision.

Citation Program

The Texas Association of REALTORS® (TAR) began a citation policy in January, 2011, to provide an option for faster resolution of ethics complaints. Only complaints related to certain articles (NAR Code of Ethics) qualify for the program. A model citation schedule lists conduct that is subject to citation. A grievance tribunal determines whether a complaint is subject to citation. If a citation is issued, the respondent is advised that he or she has the right to request a full due process hearing rather than pay the citation fine. Sanctions for an agreed-to citation include fines and education.



Agency Relationships

Chapter 2

Customer or Client?

It is important to keep in mind the difference between a customer and a client.

Customer: a person(s) who is not represented by an agent but can receive information and assistance from a licensee. Example: a listing broker who assists an unrepresented buyer

Client: a person(s) whom the licensee has agreed to represent

The example below shows how a seller's agent would treat a buyer — a customer, not a client.

A buyer (customer) might expect some or all of the following services:

- providing the customer information about and showing the customer available properties,
- disclosing any known property defects,
- preparing any offers for submission,

- assisting in coordination of inspections or surveys, etc.,
- assisting the customer in locating and obtaining financing, and
- working with all parties to solve problems and facilitate the closing.

The seller's agent is **unable** to provide the following to a buyer (customer):

- advising on how much to offer on a property, if less than the asking price,
- disclosing the amount the seller will take, if less than the asking price,
- informing the customer about the seller's motivation or deadline to sell,
- informing the customer about previous offers,
- advising the customer regarding positions to take during negotiations, or
- disclosing information to the customer that would be detrimental to the seller's negotiating position or that is confidential, unless required by law to disclose.

If the seller grants specific permission to disclose the foregoing information, the seller's agent may do so. Such permission should be documented!

Fiduciary Duties

A fiduciary is a person who has a high duty of care for another person, the client. The law requires the fiduciary to place the client's interest ahead of his or her own interest. When a licensee begins to provide agency services to a party, or a party believes that such services are being provided, the fiduciary relationship begins. Fiduciary relationships are common and can involve attorneys, trustees, investment brokers and real estate agents, among others. The principal, or client, is the person with whom the licensee has a fiduciary relationship. Although the licensee's duty is to act in the principal's interest, the licensee owes a duty of honesty and fairness to all parties in the transaction.

Information About Brokerage Services and Agency Disclosure

At the first substantive dialogue with a client or prospect, always provide the *Information About Brokerage Services (IABS)* statement, which contains the statutory information relating to brokerage services. The statement may appear in any format as long as it is in at least 10-point type [TRELA §1101.558(d)]. TREC publishes a form entitled *Information About Brokerage Services* that most licensees use to comply with the statute.

A substantive dialogue is a meeting or written communication that involves a substantive discussion relating to specific real property. A substantive dialogue does not include a dialogue at an open house or a meeting after the time of the contract. For example, a face-to-face meeting with a prospective client in which you are discussing properties is a substantive dialogue. Any written correspondence (including email or other electronic means) about specific properties constitutes a substantive dialogue. A telephone conversation by itself might or might not constitute a meeting that would require providing the form. If a telephone conversation constitutes a substantive dialogue, a prompt delivery of the form should follow.

The *Information About Brokerage Services* statement is not required if the licensee is meeting with a party represented by another licensee. For example, if you are the listing broker and happen to meet a represented buyer, you do not need to provide the form. The *Information About Brokerage Services* statement also

is not required if the transaction is a residential lease for 1 year or less and a sale is not being considered.

The *IABS* form published by TREC provides for signatures. The signatures are not required by statute; however, it is prudent to request acknowledgment of the consumer's receipt of the form.

Disclosure of Agency Representation

The *Information About Brokerage Services* form informs parties only to potential representation and does not disclose the licensee's agency or representation. A licensee representing a party is required to disclose such representation at the first contact with another party to the transaction or another licensee who represents another party to the transaction. Agency disclosure may be oral or in writing. For example, when making an appointment with a listing agent or seller to show a property, a buyer's agent must disclose that he or she represents the buyer. Another example is when the listing agent meets a prospect at an open house or listed property.

Intermediary Brokerage Relationship Services

Intermediary status was created by statute in 1996 to acknowledge that a broker could be in the position of assisting two principals involved in the same transaction. An intermediary is a broker who is employed to negotiate a transaction between parties and acts as an agent of the parties. A broker who represents the buyer and the seller in the same transaction must act as an intermediary. For a broker to negotiate a transaction for two principals as an intermediary, the broker first must obtain written permission from the parties to act in such capacity, and the agreement must state the source of any expected compensation.

When entering into an agreement with a principal, the agreement may address whether the intermediary relationship is a possibility. To authorize the possibility of an intermediary relationship in a listing agreement or buyer representation agreement, the statute requires that the agreement be in writing and that the following be in bold print [TRELA §1101.651]:

- intermediary may not disclose that the seller will accept a price less than the asking price, unless authorized in writing to do so by the seller,
- intermediary may not disclose that the buyer will pay a price greater than the price submitted in a written offer, unless authorized in writing to do so by the buyer;

- intermediary may not disclose confidential information, unless authorized in writing to disclose the information or required to do so by the Texas Real Estate License Act, a court order, or if the information materially relates to the condition of the property;
- intermediary may not treat a party dishonestly; and
- intermediary may not violate the Real Estate License Act.

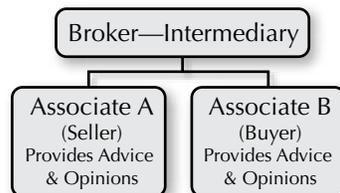
The intermediary may appoint different associated licensees to communicate with and carry out instructions of the respective parties. The appointment of associated licensees requires the written consent of the parties and written notification of appointments to the parties. The appointed licensees must still comply with the requirements listed above. Each appointed licensee may provide opinions and advice to his or her respective party. The intermediary is required to treat both parties fairly and impartially. The appointed licensees are not subject to the intermediary's duty of impartiality.

An intermediary is not required to make appointments in every transaction. There should be clear company policies regarding appointments. The issue of compensation is a matter of the brokerage's policy and is an internal concern. If appointments are made

- there must be a written authorization from both parties for the broker to act as an intermediary (this could be included in the written buyer representation agreement and the written listing agreement),
- the intermediary may not appoint himself or herself to either party,
- the intermediary cannot make appointments to one party without also making appointments to the other party,
- the intermediary must give written notice to each principal that appointments have been made and identify the respective appointees to the principals, and
- the appointees must keep confidential information confidential.

Example 1

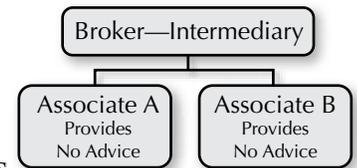
Agent A lists a shopping center. Agent B, working for the same company, comes in with a buyer (client). In this example, the broker's policy in such a situation is to appoint Associate A to the seller and Associate B to the buyer. The intermediary (broker)



does not provide any opinions or advice to either party during negotiations. Each associate may provide opinions and advice during negotiations to the parties to whom each is appointed. The intermediary (broker) and the appointed associates remain obligated to comply with the items under TREL A §1101.651(d). *All associates in a brokerage act in the role of an intermediary except for those associates who are appointed to the parties.*

Example 2

Assume the same facts as Example 1 except now the broker's policy is not to make appointments. In this example, the associates may not provide opinions or advice during negotiations to the party(s) each is serving. The associates may facilitate the transaction and assist the parties as neutral service providers.

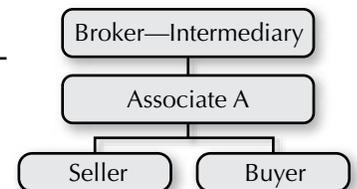


Example 3

In a multi-agent brokerage, Associate A brings in both the buyer and seller. The Real Estate License Act permits the broker to select an appropriate course of action in this example.

Alternative 1

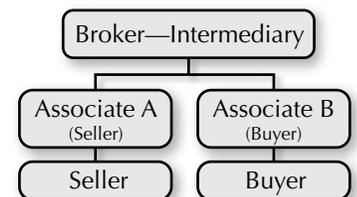
The intermediary may choose to make no appointments, in which case the intermediary (broker) and Associate A may not provide opinions or advice to either party during negotiations and remains obligated to comply with the items under TREL A §1101.651(d). Associate A and the intermediary may process or facilitate the transaction.



Alternative 2

The intermediary may choose to reassign one or both of the parties to another agent. In the following example, the buyer is reassigned to Associate B.

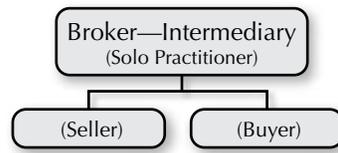
The intermediary (broker) does not provide any opinions or advice to either party during negotiations. Each associate may provide opinions and advice during negotiations to the parties to whom each is appointed. The intermediary (broker) and the appointed associates remain obligated to comply with the items under TREL A §1101.651(d). The broker must have written consent for appointment.



Example 4

What if the broker is a solo practitioner? May the solo practitioner act as an intermediary?

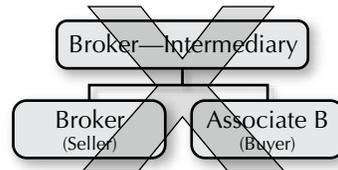
Yes, but the solo practitioner cannot make appointments of associated licensees. The intermediary (broker) does not provide any opinions or advice to either party during negotiations and remains obligated to comply with the items under §1101.651(d). No appointments are possible. The intermediary may process or facilitate the transaction.



Example 5

When a broker owns a small brokerage and actively lists and sells property, may the broker appoint himself or herself to one of the parties?

No. The broker shall not appoint himself or herself to one of the parties because the broker would be in two different roles. The broker may choose to make no appointments, and the broker and Associate B would not provide opinions or advice during negotiations. Each could process or facilitate the transaction. Alternatively, the broker could reassign the seller to another agent in the example above and make appointments.



Example 6

A broker orally agrees to represent a buyer. The buyer now wants to buy one of the broker's listings. The broker must get a written consent from both buyer and seller to act as an intermediary before proceeding, and the written consent must comply with statutory requirements (TRELA §1101.559). One practical solution is to have the broker seek a written buyer representation agreement containing the consent for the broker to act as an intermediary.

If the buyer does not agree to give written consent, the broker must advise the buyer that he or she is no longer represented and that fiduciary duties are owed to the seller under the listing agreement.

I have a listing, and an unrepresented buyer wants to make an offer. Must I act as an intermediary?

No. A broker representing one party (client) to a transaction in which the other party is unrepresented (customer) is not an intermediary. One may assist the

buyer and represent the seller in this example. Agents should check with their brokers about this situation as many companies have policies addressing this and other situations.

Conflicts of Interest

When the Licensee is a Principal

When buying, selling or leasing property on his or her own behalf, on behalf of his or her spouse, parent, or child, or on behalf of a business entity in which he or she is more than a 10 percent owner, the licensee must disclose in writing that he or she is a licensee. Due to potential conflicts of interest, care should be exercised when attempting to act in this capacity. The licensee may not use his or her expertise to the disadvantage of the other party when acting in this capacity.

Receiving Fee from a Service Provider (22 TAC §535.148)

If a licensee receives a commission, rebate or fee from a service provider, he or she must obtain his or her principal's consent and must also disclose to the person being referred to the service provider that the licensee is receiving a commission, rebate or fee.

Sharing Fees with Unlicensed Persons (22 TAC §147)

Generally speaking, a licensee may not share a commission or fee with an unlicensed person. However, several exceptions have been part of the rules for many years. One exception permits a licensee to give a gift certificate worth not more than \$50 to a person who is not licensed. The licensee may not give cash, and the gift certificate may not be exchangeable for cash. Another exception permits a licensee to pay a rebate to a buyer or seller in a transaction as long as the licensee obtains the consent of the party whom the licensee represents. Finally, a business entity licensed as a broker may share income with an unlicensed owner as long as the unlicensed owner does not personally engage in real estate brokerage activity. This rule acknowledges that an unlicensed person may own and share in the profits of a business entity licensed as a broker.

Residential Service Company Disclosure [22 TAC §535.148(e)]

A broker or salesperson is often paid a fee for providing advertising and other services on behalf of a residential service company. These fees are separate and apart from the typical services they provide as an

agent in a real estate transaction. A new TREC rule requires a licensee to use RSC-1 to disclose such fee in writing to their client. A licensee is not required to use the form if he or she is not being paid a fee by a residential service company. However, if the licensee or the sponsoring broker is paid for advertising services unrelated to any one transaction, the licensee must disclose such payments to the client. For example, if a brokerage firm is paid \$100 per month for advertising, the agent must disclose that payment in any transactions in which the licensee acted as an agent in the payment period. The disclosure form should not be attached to the contract as an addendum, but the form should be retained in the transaction records maintained by the broker as evidence that the disclosure was provided.

Conflicts Arising in Early Termination of Agency

Representation

The agency relationship is highly personal. It requires continuing consent of the principal and the agent. At any time, the agency relationship may be terminated by either party; however, an early termination without cause might expose the terminating party to liability under the representation agreement.

If an agent continues to offer the property for sale after termination, without the consent of the principal, it constitutes a violation of TREL.A. Upon receipt of

a notice of termination from a principal, the agent should cease acting as the principal's agent. A listing agent should cease all advertising. For example, remove signs, remove MLS listing, remove information from web site, etc.

Representing a Party Who is Subject to a Prior Agency Relationship

If a principal approaches a licensee and informs the licensee that the principal is subject to an existing exclusive agency relationship with another broker, the licensee should not provide any services until confirmation that the prior agency relationship has been terminated. The licensee should not interfere with an existing exclusive agency relationship under any circumstances [TREL.A §1101.652 (b)(22)]. For example, the licensee should not suggest to the principal how the existing agency relationship should be terminated.

Compensation and Release of Contractual Obligation

Upon early termination of an agency relationship, a broker might be due compensation. At the time of termination, the broker and the principal should resolve the amount of compensation, if any, that might be due. However, the broker may not take actions that, in effect, prohibit the principal from engaging the services of another broker or otherwise buying, selling or leasing the property after termination.



Chapter 3

Contract Issues

Effective Date

The effective date is the most crucial date in the contract. It is the date from which most, if not all, performance periods are measured. One of the most significant complaints that many escrow agents make about real estate licensees is that licensees often fail to insert the effective date into the contract.

Who determines the effective date?

The promulgated contract forms instruct the broker to fill in the final date of acceptance as the effective date. The broker may be either the seller's broker or buyer's broker. It may be prudent for both brokers to confirm the effective date between themselves when communicating final acceptance.

How does a broker determine the effective date?

The final date of acceptance is the date on which the contract becomes binding between the parties. It is the date that both buyer and seller have agreed to all terms of the contract and have executed the contract. Four

elements must be satisfied for final acceptance to take place. *The effective date is the date when the last element (communication back) is made after the other 3 elements are satisfied.*

1. The final contract must be in writing (typically satisfied when negotiations are made using promulgated forms).
2. Both buyer and seller must sign the final contract (including the initialing of any handwritten changes to the initially drafted offer, if applicable).
3. Acceptance must be unequivocal.
4. The last party to accept must communicate acceptance back to the other party (or the other party's agent).

Under the following example, what is the effective date?

The buyer makes a written offer through his agent to the seller on January 1. The listing agent delivers the offer to the seller on January 2. The seller signs the

offer on January 3 (making no changes) and delivers the offer back to the listing agent on January 4. The listing agent faxes the executed contract to the buyer's agent on January 5. The buyer's agent calls the buyer on January 6 and informs the buyer that the seller has accepted the offer.

The effective date is January 5, the date the listing agent communicated to the buyer's agent that the seller signed and unequivocally accepted the buyer's offer. Note that it might be prudent for the listing agent to confirm with the buyer's agent the exact effective date at the time the listing agent communicates acceptance to the buyer's agent.

Would the answer have been the same if there had been no buyer's agent and, instead, the buyer was working directly with the listing agent?

No. In this case, the effective date is the date the buyer is informed that the seller accepted the offer.

If the effective date is not filled in, does that mean that there is no contract?

No. By signing the promulgated forms, the parties have mutually instructed the broker to fill in the final date of acceptance as the effective date. He or she may be placed in the precarious position of later having to determine the effective date of the contract. The final date of acceptance must be resolved by the parties with the assistance of the brokers or, ultimately, a court of law.

When calculating the time for performance, is the effective date included as the first day?

No. Here is an example. The buyer has the right to terminate the contract within 5 days after the effective date, and the effective date is January 1. The buyer may terminate the contract at any time until 11:59 p.m. on January 6. Note that January 2 is the first day after the effective date.

Saturday or Monday?

On Saturday evening, the listing agent notifies the buyer's agent that the seller accepted the offer from the buyer. The seller accepted the offer unequivocally and signed the contract. The buyer's agent informs the listing agent that he will not be able to notify the buyer of the acceptance until Monday. Should the brokers insert Monday as the effective date?

No. Under these facts, the elements of final acceptance are satisfied on Saturday.

Proper Treatment of Option Money

When a buyer purchases an unrestricted right to

terminate pursuant to Paragraph 23 (Termination Option) in any of the 6 TREC promulgated contracts, the buyer has 2 days after the execution date of the contract to tender the agreed upon option fee to the seller. The buyer's agent/broker should deliver the option fee to the listing agent/broker or seller within the 2-day period. Delivery may be by mail, courier, certified mail, or by personally delivering the option fee to the listing office. The option fee should not be delivered to any third party involved in the transaction, such as the title company or the lender. The buyer will not have a termination option if the option fee is delivered after the 2-day period [TRELA §1101.557(b)(3)].

Paragraph 11 — Special Provisions

The TREC contract forms and rules provide that the licensee may insert only factual statements and business details into the contract forms, including special provisions. Inserting a provision that materially affects the legal rights or duties of the parties may move the licensee into the unauthorized practice of law. In the past, licensees might typically insert statements such as "*the big screen television and round sofa in the family room is to convey to the buyer.*" Recently, TREC adopted (for voluntary use) the Non-Realty Items Addendum. This form is voluntary (because of lender-related issues); however, using the addendum eliminates the need to draft a special provision dealing with personal property items.

Case Study

A broker wrote in special provisions, "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." The buyer argued that the seller defaulted when the seller failed to remove all the personal property (having left a few items). The seller prevailed because the court noted that the seller substantially complied with the provision and the word *all* did not apply to "personal property" in the special provision [Lewis v. Foxworth, 170 S.W. 3d 900 (2005)].

Case Study

In another case, a broker inserted a provision in the Farm and Ranch Contract form, with respect to minerals, that stated, "None of the above are available to be conveyed." The seller thought he was retaining the minerals. The court concluded that the provision did not

reserve the minerals and held for the buyer [Johnson v. Conner, 260 S.W. 3d 575 (2008)]. The Addendum for Oil, Gas and Other Minerals is now promulgated and licensees should provide this form to the parties who wish to negotiate mineral reservations.

As-Is Clause

Several court cases in the last few years have consistently held that the provision in Paragraph 7, which states the buyer accepts the property in its present condition, is an as-is clause. Therefore, licensees do not need to attempt to negotiate additional as-is provisions in special provisions. This type of clause should originate only with the principals' attorneys, if at all.

Brokerage Fees

Paragraph 8 of the contract forms provides that agreements to pay brokers are contained in separate written agreements. Therefore, it is prudent for the licensee to address the payment of brokerage fees outside the contract and not in special provisions.

The following clauses have been inserted into special provisions and should not have originated with licensees. These clauses are vague, incomplete, border on the unauthorized practice of law, or are addressed by other promulgated addenda.

"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)

"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."

"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." (This provision was drafted because the seller did not intend to vacate until about 10 days after the option period expired. The house was full of boxes and other items that blocked many of the walls and floors. The buyer wanted

the right to review and terminate after he saw the house vacant.)

A factual statement is a statement that can be verified as true. It is not a provision under which the parties agree to perform some obligations. A business detail is more of an accounting term that is used to provide more information helpful to an audit or transaction. Business details are, in essence, footnotes to help the reader to better understand a report. Similarly, the business detail in special provisions of the TREC contract forms should only provide information about the existing obligations of the parties found in other provisions of the contract form. Generally, it is not a place to insert additional provisions without the assistance of an attorney.

Matters that may be appropriate for special provisions include, but are not limited to the following:

- disclosure that the licensee is related to one of the parties;
- disclosure that one of the parties is a licensee;
- certain instructions to the title company, such as the buyer purchasing the boundary deletion; or
- provisions that cannot fit into the limited space or line of another provision (for example, if 4 persons are the sellers).

Electronic Signatures

UETA

The Uniform Electronic Transactions Act (UETA) was published by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1999. It was adopted in Texas in 2001 (effective 1/1/2002) and is codified as Chapter 43, Business and Commerce Code.

UETA removes barriers to electronic commerce by establishing electronic records and signatures as being the legal equivalent to paper writings and manual signatures. UETA is purely a procedural law that permits electronic records and signatures without changing existing substantive laws. UETA *does not require* the use of electronic signatures. UETA defines an electronic signature as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." No specific format is provided.

Both parties to a transaction must agree to conduct the transaction electronically. UETA also allows a person who has agreed to an electronic transaction to

withhold his or her consent in connection with other transactions. This would apply specifically to a provision in an agreement that required a person to consent to using electronic signatures in future transactions.

E-sign

In 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act (E-Sign). E-Sign overlaps with UETA, but it is not identical to UETA. E-Sign specifies the legal effect and enforceability of electronic contracts and electronic signatures, but it does not address how to establish the authenticity or validity of those signatures. Under E-Sign, if a state has adopted UETA, the state's law will preempt E-Sign and will govern electronic transactions.

Consumer's Consent

Both UETA and E-Sign require the consumer's consent to conduct the transaction electronically, and E-Sign requires that consent itself be communicated electronically. Initial consent may be given in paper or electronically. Since the definition of an electronic signature is broad, it appears that consent could be established by any reasonable means. A court might hold that "reasonable means" could include the click of a mouse, or it might require a more sophisticated means of establishing consent. Until custom and practice develop electronic transactions involving signatures, most experts are suggesting that secure platforms involving verifiable signatures be employed (for example, VeriSign or Entrust).

Under UETA, the consumer must be able to decline to use electronic means to transact. E-Sign specifically allows a consumer to withdraw his or her consent to the use of electronic records at any point in the transaction. If a consumer who initially gives consent to the use of electronic records withdraws that consent, the parties will need to complete the rest of the transaction in paper and ink format.

Brokers will need to obtain the consent of both the buyer and the seller to conduct the transaction electronically. If only one consents, the broker may continue to have an electronic relationship with him or her; however, the relationship with the other party would need to be handled in paper format. Privacy is a critical issue. Many consumers are very wary of using electronic means to conduct business.

Before relying on electronic signatures in a transaction, it seems prudent to

- obtain the necessary consents to the electronic transaction at the outset (both consent to the receipt of electronic records and consent

to the use of electronic signatures),

- disclose to consumers that they have the right to withdraw their consent at any point in the transaction, and
- provide adequate means to withdraw the consent (providing notice of any ramifications, such as additional costs or a delay in the transaction because of switching to a paper system).

Technology

The law is technology neutral. The parties must agree on the method for digitally authenticating the documents of the transaction, and the consumer must consent electronically, thereby proving they can access the information that is the subject of the consent.

Records Retention

Records can be retained electronically and must be kept for a minimum of 4 years. The storage method used must ensure that the record can be accurately reproduced for later reference by all parties who are entitled to retain the record.

Short Sale Addendum

The Short Sale Addendum is to be used when a seller desires to place a contingency in the contract under which the seller will seek approval from his lender to sell the property for a price that is less than the amount owed against the property. The parties agree that if the seller cannot obtain lender approval by a certain date, the contract will terminate.

While the parties wait for the lender's approval, does the buyer need to perform under the contract?

Paragraph C of the addendum provides that the parties only need to perform as the addendum requires. The seller is obliged to apply and make every reasonable effort to obtain the lender's approval. The seller is also obliged to furnish all information and documents required by the lender. The buyer is to deposit the earnest money and pay the option fee, if any, to the seller at the time the parties execute the addendum.

What is the effective date under the Addendum?

The effective date (for purposes of depositing earnest money and paying the option fee) is the date of final acceptance (the date both parties sign the contract). The effective date for all other performance under the contract is the "amended effective date," which is the date the seller notifies the buyer that the seller has obtained the lender's consent.

If the option applies, may the buyer terminate while the parties are waiting for approval from the lender?

Yes. Paragraph F in the addendum answers this question. The buyer may terminate at any time when the parties are awaiting the lender's approval. The option period runs from the amended effective date through the number of days specified as the option period.

If the seller never obtains the lender's approval, does the buyer receive a refund of the earnest money and the option fee?

The earnest money is returned to the buyer, but the seller retains the option fee. Note that the buyer retained the right to terminate the contract at any time while awaiting the lender's approval.

Can the seller accept more than one offer when both offers have the Short Sale Addendum attached?

Yes, if used together with the back-up addendum. The seller agrees under the addendum to use every reasonable effort to obtain the lender's consent.

How does a seller notify a buyer that the contract is terminated if lender's approval is not obtained?

Notice must be in writing.

If the seller does not notify the buyer that the contract terminated by the date specified in Paragraph D of the addendum, should the buyer notify the seller that the contract is terminated?

Such notice is not required, although it is a good way of documenting the termination.

Backup Addendum

The Addendum for Backup Contract is to be used when a prospective buyer wishes to make an offer to purchase a property that the seller has already agreed to sell to another buyer. The backup buyer and seller agree that if the first contract terminates by a certain date, the seller will sell the property to the backup buyer.

While in the backup position, does the backup buyer need to perform under the contract?

The first line in Paragraph A requires the backup buyer to deposit the earnest money and pay the option fee, if any, to the seller at the time the parties execute the backup contract.

What is the effective date under the Addendum for Backup Contract?

The effective date (for purposes of depositing earnest money and paying the option fee) is the date of final acceptance (the date both parties sign the backup contract). The effective date for all other performance under the contract is the "amended effective date," which is the date the seller notifies the backup buyer that the first contract is terminated.

If the option applies, may the backup buyer terminate when in the backup position?

Yes. Paragraph E provides that the backup buyer may terminate at any time when the backup buyer is in the backup position. The option period, then, runs from the amended effective date (the date the backup contract becomes the primary contract) through the number of days specified as the option period.

If the backup contract never moves into the primary position, does the backup buyer receive a refund of the earnest money and the option fee?

The earnest money is returned to the backup buyer, but the seller retains the option fee. Note that the backup buyer retained the right to terminate the backup contract at any time the buyer remained in the backup position.

If the seller agrees to extend closing under the first contract or otherwise change the first contract, may the backup buyer claim that the first contract is terminated?

No. Paragraph D provides that an amendment to the first contract does not terminate the first contract.

May the Addendum for Backup Contract be used to negotiate a backup contract to another backup contract?

No. The addendum is not designed for this purpose.

How does a seller notify a backup buyer that the first contract is terminated?

Notice must be in writing.

If the seller does not notify the backup buyer that the first contract terminated by the date specified in Paragraph B of the addendum, should either party notify the other that the backup contract is terminated?

Such a notice is not required by the form but may be prudent.



Chapter 4

Defect Disclosure

Seller's Disclosure of Property Condition

House Bill 3391, House Bill 3389, and Senate Bill 710, 82nd Texas Legislature, Regular Session (2011), amend §5.008 of the Texas Property Code to provide additional disclosures in the Seller's Disclosure of Property Condition Notice.

- House Bill 3391 amends the notice to require disclosure of any rainwater harvesting system connected to the property's public water supply that can be used for indoor potable purposes.
- House Bill 3389 amends the notice to require disclosure of information regarding liquid propane gas.
- Senate Bill 710 amends the disclosure notice to require disclosure of whether there is a blockable main drain in a pool, hot tub or spa.

The effective date for the changes to the disclosure notice is September 1, 2011. At a meeting on August 1, 2011, TREC approved amendments to the Seller's

Disclosure of Property Condition Notice, TREC No. OP-H, to incorporate the amendments to Section 5.008.

Property Defects

What is a defect?

It is some irregularity in a surface or a structure of the property that mars its appearance or causes some aspect of the property to weaken or fail. It involves tangible aspects of the property, whether its physical appearance or its physical structure. When we call something defective, we mean it is blemished, broken, deficient or imperfect in some physical sense (Coldwell Banker Whiteside v. Ryan Equity, 181 S.W. 3d 879).

Disclosure

A seller of real property in Texas and a real estate broker must disclose to a prospective buyer any known defect in the property. The broker's duty to

disclose known defects is the same regardless of whom the broker represents. This duty applies to all types of property (residential and commercial) [TRELA §1101.652(b)(4)].

The Texas Property Code (§5.008) provides that a seller of residential property consisting of not more than one dwelling unit is to complete a seller's disclosure notice and deliver it to the buyer on or before the effective date of a contract.

Defect Disclosure FAQ

What if, as a licensee, I learn that there is a defect, but the seller does not want it disclosed?

Inform the seller that you are obligated by statute to make the disclosure and that an attorney should be consulted if the seller chooses not to disclose the defect.

Exceptions to the Seller's Disclosure Form

The requirement to provide the Seller's Disclosure Form does not apply to any transfers:

- pursuant to a court order;
- by a trustee in bankruptcy;
- to a mortgagee by a mortgagor or successor in interest;
- by a mortgagee or beneficiary under a deed of trust who has acquired the real property by sale conducted to a power of sale under a deed of trust or a sale pursuant to a court-ordered foreclosure or has acquired the real property by deed in lieu of foreclosure;
- by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- from one co-owner to one or more co-owners;
- made to a spouse or a person or persons in the initial line of consanguinity of one or more of the transferors;
- between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incident to such a decree;
- to or from a governmental entity;
- of new residences of not more than one dwelling unit that have not previously been occupied for essential purposes; or
- of real property where the value of any dwelling does not exceed 5 percent of the value of the property.

Why do multiple variations of the seller's disclosure notice exist?

The seller's disclosure notice statute requires that the seller use the form set out in the statute or a form that is substantially similar containing all of the items in the statutory form. The TREC Seller's Disclosure of Property Condition form is identical to the statutory form. TREC publishes the form as a convenience for brokers, sellers and buyers. Some professional associations also publish seller's disclosure notice forms that comply with the statute and contain additional disclosures that those groups have determined are relevant. Whichever form the seller uses, it must contain all items in and be substantially similar to the statutory form.

Must every seller deliver the seller's disclosure notice to a prospective buyer?

The seller's disclosure notice statute contains 11 narrow exemptions that most real estate brokers typically will not encounter on a regular basis. The most common exemption is the new home exemption or builder exemption. The next two most common exemptions are the trustee or executor exemption and the foreclosure exemption. Under these exemptions, the following are not required to complete the seller's disclosure notice: a builder of a new home, a trustee or executor of an estate, and a lender after it has foreclosed on a property. Keep in mind, however, that even though these sellers are exempt under Texas Property Code §5.008, they are still required under common law and other statutes to disclose any known defect. It is the mechanism of disclosure, namely the seller's disclosure notice, which is not mandated.

Is a relocation company required to deliver a seller's disclosure notice?

If the relocation company is the seller, it must deliver the seller's disclosure notice.

Must a seller disclose a previous death at a property?

The statute provides that neither a seller nor a broker must disclose deaths that occurred by natural causes, suicide, or accidents unrelated to the condition of the property [Texas Property Code §5.008(c)].

Must a seller disclose prior water penetration in a property?

If the prior water penetration has been cured and any ensuing damage from the prior water penetration has been cured, there is no longer a defect and the seller would not be obligated to disclose the prior water

penetration. However, if the prior water penetration has not been cured or the ensuing damage has not been cured, then such items would be considered defects.

Must a seller or broker disclose to a prospective buyer the fact that a registered sex offender resides in the neighborhood?

The Code of Criminal Procedures §62.056 provides that neither the owner of a single-family residential property nor real estate agents have a duty to disclose that a nearby resident is a registered sex offender. Texas Government Code §411.088 requires that DPS information about sex offender registrants be made

available to the public at no cost over the Internet.

Is an off-site condition considered a defect (for example, roadways, landfills, feed lots, etc.)?

Generally, an off-site condition is not a defect with the property in question. However, the off-site condition might affect the property. If it affects the property in a physical way, it is possible that the off-site condition could be the source of a defect that has moved onto the property. For example, if a neighboring property contains underground tanks that leak, the contaminant might leak onto the property in question.



Chapter 5

Advertising

TRELA §1101.652(b)(23) prohibits a licensee from publishing an advertisement that

- misleads or is likely to deceive the public,
- tends to create a misleading impression, or
- fails to identify the person causing the advertisement to be published as a licensed broker or agent.

This provision is twofold: It prohibits misleading advertising and it requires licensees to identify themselves in advertising as a broker or agent.

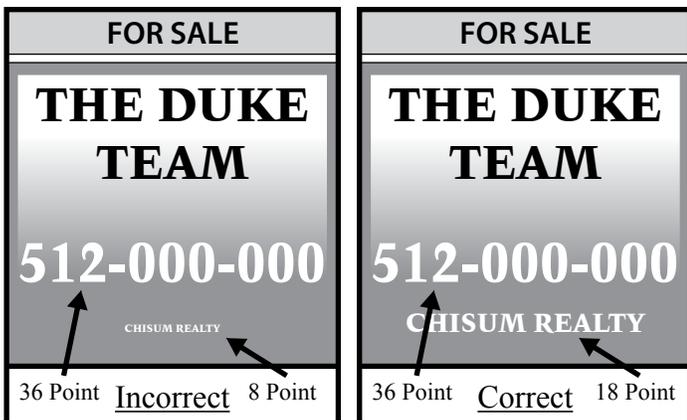
Definition

Revised 22 TAC §535.154 clarifies the statutory provision relating to advertisements. Several changes were made to address ambiguities and to update various

subsections. The definition of “advertisement” was updated to encompass a broader variety of electronic communications including social networking websites, such as Twitter or Facebook. The rule was also amended to clarify that real estate information (including a listing), that is on a licensee’s website and behind a firewall or software requiring a password or registration to access the information, is not considered an “advertisement.”

Including the Broker’s Name

The rule requires brokers and salespersons to clearly and conspicuously include the broker’s name in all advertising and permits the use of a broker’s assumed name if it has been filed with the commission. A broker must notify the commission within 30 days of starting or stopping the use of an assumed name. Although the rule does not specifically define “clear and conspicuous,” TREC adopted a safe harbor policy statement that the commission considers the broker’s name to be clear and conspicuous if it is no less than half the font size of the largest telephone number or other contact information in the advertisement.



style with a Park, Pavilion, Pool & Athletic Field. S of 220 on FM 110 on Stoneland Rd. 512-111-1111

For sale, 100 acre tract with large barn and 4 outbuildings, good pasture, fenced crossfenced Call The Duke Team, 512-000-000. **Incorrect**

10 acres heavily wooded, off Somewhere Rd. \$40,000; 512-555-9504

style with a Park, Pavilion, Pool & Athletic Field. S of 220 on FM 110 on Stoneland Rd. 512-111-1111

For sale, 100 acre tract with large barn and 4 outbuildings, good pasture, fenced crossfenced Call The Duke Team, 512-000-000, Chisum Realty. **Correct**

10 acres heavily wooded, off Somewhere Rd. \$40,000; 512-555-9504

Teams

What are the advertising implications when a team or group of licensees in a brokerage firm work together and wish to advertise under a team name? First, the broker must register the team name as the broker’s

“assumed name” with TREC. If the team name does not include the name of a salesperson, the team can advertise using that name. The broker’s name does not need to be included in the advertisement, since the assumed name belongs to the broker. In addition, the advertisement must include the additional designation of “agent,” “broker,” or trade association name. The “agent” designation is not required after each licensee’s name if the advertisement includes more than one name. As always, the sponsoring broker remains responsible for a team’s advertising.

If the team name includes the name of a salesperson, the rules against implying that the salesperson is responsible for the operations of a brokerage must be considered. TREC has determined that using names such as the “Sally Salesperson Team” or the “Sam Salesperson Group” do not imply that the salesperson is responsible for operation of a brokerage so long as the advertisement also includes the name or another assumed name of the broker. However, some names such as “Sally Salesperson and Associates” or “Sam Salesperson and Company” do imply that the salesperson is responsible for the operation of a brokerage, even when the broker’s name is included in the advertising. Thus, including the broker’s name in the advertising does not cure the potential for misleading the public, and so the use of such names is not allowed.

has the right place for you...
home, land, commercial, lot
whatever you need - we can help you

Duke

CLICK HERE : CURRENT LISTINGS

CLICK HERE : DUKE and his TEAM

links to the Heart of Texas

- how to sell
- how to buy
- why use DUKE
- weather
- schools
- government
- TREC

512.555.9504
Deep in the Heart of Texas

Duke is not the broker for this company. What is missing on this website?

Assumed Names

Assumed names that have been filed with TREC are now searchable in the “Licensee Lookup” section of the TREC website. Brokers may use the Notice of DBA or Assumed Name for Broker’s License form available on the Forms page of the TREC website to notify TREC of the use of assumed names.

Corporations

If the salesperson’s name is part of the name of a corporation or limited liability company registered with the Secretary of State and licensed as a broker, the corporation or LLC may use the salesperson’s name in advertising. The name of the designated broker must also be included because the designated broker is the person responsible for the entity’s actions. An unlicensed person’s name may be used in advertising only if the name is properly filed as a business, trade or assumed name of a broker with TREC. The advertisement may not suggest the unlicensed person is authorized to engage in real estate brokerage.

Trade Names

A licensee is prohibited from using a copyrighted trade name unless he or she has the authority to use the name. The best examples are when licensees use the

term “Realtist” or “Realtor” in advertising. A licensee may use such terms only if he or she is a member of the trade association.

Signs

The rule requires road signs to include the designation “agent” or “broker” (or presumably trade association name if a member) in a clear and conspicuous manner. Although proposed at one time, a minimum font size for this designation was not enacted. Instead, TREC adopted a policy statement that says TREC considers the print to be clear and conspicuous if it is no less than half the font size of the largest phone number or other contact information in the road sign. The subsection regarding the designation as a broker or agent does not apply to directional signs or to signs placed in the yard of a listed property.

Other Changes

The revised rule provides clarification about the types of advertising considered deceptive and misleading. A licensee may not advertise information regarding service providers that ranks the providers unless the ranking is based on disclosed objective criteria. A licensee may not advertise that he or she offers, sponsors or conducts TREC-approved courses unless the licensee is approved to offer the courses.



Chapter 7

Dispute Resolution

Mediation

In 1987, mediation became one of the five statutorily recognized types of Alternative Dispute Resolution (ADR). Texas statutes define a mediation resolution procedure as a forum before an impartial person (the mediator) designed to facilitate communication between parties and to promote reconciliation, settlement or understanding. Mediators do not make decisions or give awards. In a successful mediation, the parties agree on a settlement in writing, which becomes binding on both parties. Mediators follow ADR Procedures that are included in Chapter 154 of the Texas Civil Practices and Remedies Code. Researchers at the Real Estate Center at Texas A&M University surveyed practitioners and found that mediation has been used to settle a high percentage of disputes. Many Texas judges require court-ordered mediation before hearing a case.

Mediators are neither judges nor arbitrators. They are neutral facilitators in establishing dialogue among

the parties to reach a settlement. Mediators do not need to be attorneys or hold special licenses or credentials. There are numerous mediation service providers, such as county supported mediation services, private mediators, university law schools, and professional and trade associations. County or district court clerks usually maintain lists of mediators for their area.

Mediators should possess some knowledge of the subject matter, the outcome of prior cases involving the controversy, recoveries for similar matters in local courts, and ADR procedures. Although mediators should remain neutral, their expertise can provide valuable guidelines for settlement. Mediators may not impose their judgment on the issues.

Arbitration

Texas statutes define arbitration as a forum where parties and counsel present their positions before an impartial third party who renders a specific award. The parties must agree in writing to arbitrate a dispute.

There are numerous arbitration providers, such as the American Arbitration Association, private attorneys, private arbitrators, and professional and trade associations. Typically, the arbitration procedure calls for a complaint or petition to be filed describing the dispute. The respondent will be given the opportunity to respond. A hearing is convened at which

the parties present evidence and make arguments. The arbitrator(s) renders an award. The prevailing party may seek to enforce the award as a judgment by requesting that a court of law do so. Arbitration awards may be appealed on procedural or due process grounds.



Chapter 8

Section 535 Changes

The Texas Real Estate Commission adopted a series of rule amendments and new rules under Chapter 535 of Title 22 of the Texas Administrative Code (the Rules). Along with substantive revisions, the amendments and new rules reorganize and streamline the chapter into a more logical order. Amendments became effective in January 2011 or October 2011 unless the text of the rule provides a different date.

The following is a list of most of the substantive changes to the rules. The TREC website has comprehensive summaries and the text of the adopted amendments and new rules (www.trec.texas.gov).

JANUARY 2011 AMENDMENTS

Broker Responsibility, §535.2

A broker is required to advise a sponsored salesperson of the scope of the salesperson's authorized activities under TREL A (the Act). The section clarifies that a broker is liable for the activities of the salesperson if the broker permits a salesperson to engage in activities beyond the scope originally authorized. A broker may designate *in writing* that another licensee will be responsible for day-to-day supervision of sponsored salespersons; however, the broker will have overall responsibility of the salesperson.

A broker is responsible for any property management and advertising conducted by sponsored salespersons.

A broker must maintain business records such as disclosures, commission agreements, work files, contracts and related addenda, property management contracts, appraisal related records, and sponsorship agreements for at least 4 years from the date of closing or termination of the contract.

Brokers will be required to maintain *written* policies and procedures to ensure that

- each sponsored salesperson is advised of the scope of the salesperson’s authorized activities subject to the Act and is competent to conduct such activities,
- each sponsored salesperson maintains his or her license in active status while engaged in activities subject to the Act,
- any and all compensation paid to a sponsored salesperson for acts or services subject to the Act is paid by, through, or with the *written* consent of the sponsoring broker, and
- each sponsored salesperson is provided, on a timely basis prior to the effective date of the change, notice of any change to the Act, Rules, or TREC promulgated contract forms.

Brokers will ensure that

- each sponsored salesperson receives any education the broker may deem necessary to obtain and maintain on a current basis competency in the scope of the sponsored salesperson’s practice subject to the Act in addition to completing statutory minimum continuing education requirements,
- each sponsored salesperson complies with TREC advertising rules,
- all trust accounts and other funds received from consumers are handled by the broker with appropriate controls, and
- records retention requirements in the rules are followed.

The amendments also specify that a broker must respond promptly to a sponsored salesperson’s clients and licensees representing other parties in real estate transactions. Additionally, the sponsoring broker must also deliver to or otherwise provide correspondence on the commission to responsible salespersons.

The amendments clarify that the broker responsibility rules are not meant to create an employer/employee relationship where there is none.

Commissions for Salespersons, §535.3

Amendments to §535.3 require that a compensation agreement between a broker and sponsored salesperson must be in writing.

When a License is Required / Business Entities, §535.4, 535.5

New §535.4 is a compilation of existing rules that are put together into 1 comprehensive rule that addresses the instances in which a license is required under the Act. It clarifies that a corporation, partnership or limited liability company owned by a broker or salesperson that receives compensation on behalf of the licensee **must be licensed** as a broker under the Act. If a corporation or limited liability company is dissolved with the Secretary of State, the license becomes null and void.

Education and Experience, §535.54

Section 535.54 provides that a bachelor’s degree from an accredited college or university satisfies all of the “related” education requirements for a salesperson or broker license. A bachelor’s degree does not satisfy the required “core” courses.

Section 1101.362 of the Act authorizes TREC to waive some or all of the education and experience requirements for someone who has been licensed within the 4 years preceding the date the application is filed. TREC had previously waived the broker license education and experience if a broker had been licensed in the preceding 6 years and otherwise met the requirements of the section. The new rule changes the period from 6 years to 4 years, so that a person who was licensed in the preceding 4 years and otherwise meets the experience requirements of the section could apply to reinstate an expired broker license. If applying more than 2 years after a license expired, one would need to retake the examination. At its October 10, 2011 meeting, TREC made additional changes to the broker experience requirements along with other changes consistent with the requirements of SB 747 enacted by the 82nd Legislature. The text of the new rules is available on the TREC website at www.trec.texas.gov.

TREC will not grant credit to a student who has taken a core course with substantially the same content as one taken within the previous 2-year period.

Violations

License Under Suspension, §535.141

Section 535.141 now adds advertising to the list of prohibited activities that a licensee may not engage in while the license is under suspension. TREC may automatically suspend a license if the licensee violates certain types of terms or conditions of an agreed probated revocation or suspension. If an investigation reveals reasonable cause to believe the licensee may have committed other violations of the Act or Rules, no additional authorization shall be required to investigate to take action.

If a **salesperson** is subject to an order suspending the license, prior to the suspension, he or she must notify the sponsoring broker *in writing* that his or her license will be suspended. If the **salesperson** is involved in any real estate transaction, he or she must notify *in writing* all other parties, including principals and other brokers, that he or she cannot continue performing real estate brokerage services during the suspension.

If a **broker** is subject to an order suspending the license, prior to the suspension, he or she must notify *in writing* the following that his or her broker's license will be suspended:

- any salespersons he or she sponsors, and
- any corporation, limited liability company, or partnership for which the broker is engaged as an officer, manager or partner.

Licensee as Principal, §535.144

When engaging in a real estate transaction on his or her own behalf, on behalf of the business entity in which the licensee is more than a 10 percent owner, or on behalf of the licensee's spouse, parent, or child, the licensee is obligated to disclose *in writing* to any person with whom the licensee deals that he or she is a licensed real estate broker acting on his or her own behalf, or on behalf of the licensee's spouse, parent, or child.

Trust Accounts, §535.146

Amendments to §535.146 clarify existing requirements that apply to maintenance of trust accounts.

- Subsection (h) requires a broker to notify all parties in writing when a broker makes a disbursement to which all parties have not expressly agreed in writing.
- New subsection (k) clarifies that a broker may deposit and maintain additional amounts in a trust account to cover bank service fees.

Shared Commission, §535.147

- Section 535.147(a) clarifies that a licensee may not share a commission with an unlicensed

person except as provided by the Act or Rules.

- New subsection (b) authorizes an unlicensed person to share in the income earned by a licensed business entity as long as the person does not engage in real estate brokerage activity.
- New subsection (c) clarifies that a broker or salesperson may not share a commission with an unlicensed corporation or limited liability company created by a licensee for the purpose of collecting a commission or fees on behalf of the licensee.

Service Providers, §535.148

- New subsection (c) prohibits a licensee from contracting with a service provider to provide compensable services for or on behalf of the service provider if the contract does not allow the licensee from entering into or offering similar service on behalf of a competing service provider.
- New subsection (d) prohibits a licensee from accepting a fee for services to a service provider if the fee is contingent upon the buyer or seller purchasing a service or product from the service provider.
- New subsection (e) adopts RSC-1, Disclosure of Relationship with Residential Service Company, which licensees are required to use as of March 1, 2011, to disclose compensation for services provided to or on behalf of a residential service company.

Miscellaneous License Provisions

Email Address, §535.96

Under §535.96, licensees are required to notify TREC of the licensee's current email address, if any, and other contact information.

Probationary License Renewal, §535.94(d)

New §535.94(d) clarifies that if a person who has a probationary license renews the license within the 6-month late renewal period, the new license is subject to the remaining probationary period from the previous probationary license.

Terminated Sponsorship, §535.121

Amended section 535.121 clarifies that a salesperson's license becomes inactive if the sponsoring broker notifies TREC in writing that the sponsorship is terminated.

Home Inspectors

Online Activity

Changes were made throughout the rules to reflect a greater emphasis on online transactions and electronic delivery of notices and license certificates.

Reports

Inspection reports must be delivered to the client within 3 days unless otherwise agreed to by the client (§535.223). Inspection reports must contain the name and license number of each inspector who participated in performing the inspection, as well as the names of the sponsoring inspector (§535.223). Signatures of sponsoring inspectors are no longer required on reports (§§535.223 and 535.224).

Inspector Continuing Education, (§535.212)

Effective September 1, 2011, every real estate inspector and professional inspector (but not apprentice) is required to take a 6-hour course in Standards of Practice/Ethics/Legal Update to renew the license.

Applicants for real estate inspector or professional inspector license will be required to take a specific number of hours in each core subject matter area (plumbing, electrical, report writing, etc.). See the TREC website for more details about this requirement.

OCTOBER 2011 AMENDMENTS

Appraisals – SB 747

Amends §1101.02 to delete appraisals and add broker price opinions to the list of activities that are considered real estate brokerage. The amendments to §535.17 clarify that a real estate licensee must be licensed under Texas Occupations Code, Chapter 1103 to conduct real estate appraisals. Further, the rule is amended to provide that if a broker or salesperson provides a broker price opinion under Chapter 1101, the licensee must provide a written disclosure as provided in the rule.

Attorneys at Law; §535.31

Makes the rule consistent with the amendment to the Act which exempts attorneys licensed in the State of Texas; it previously applied to attorneys licensed in any state.

Definitions; §535.50

The amendments to §535.50 amend the list of definitions to define a designated broker of a business entity, to clarify that the designated broker must be an

officer of a corporation, a manager of a limited liability company or a general partner of a partnership, and to incorporate the relevant provisions regarding the new broker responsibility continuing education course required under amendments to §1101.458 of the Act.

Examinations; §535.51

The amendments to §535.51 clarify that an applicant must meet education and experience requirements before the applicant may take a qualifying examination.

General Requirements for a License, §535.53

The amendments to §535.53 change the title of the section to apply to all business entities, not just corporations and limited liability companies, to add partnerships to the types of business entities that must be licensed, and to address the requirement that business entities must maintain errors and omissions insurance if the designated broker owns less than 10 percent of the entity.

Corporations and Limited Liability Companies, §535.55

The amendments to §535.55 waived the education required for a salesperson license for an applicant who was licensed in the preceding two years (changed from six years) and otherwise meets the requirements of the section.

Education Requirements for a Salesperson License and Education and Experience Requirements for a Broker License, §535.56

- The amendments to §535.56(a) waive the education and experience required for a broker license for a broker who was licensed in the preceding two years (changed from four years) and deletes the reference to a salesperson so that a broker who had an active license in two of the preceding four years and otherwise meets the requirements of the section regarding MCE may apply for a broker license without meeting the new experience requirements.
- Other amendments to §535.56 add the rules to establish active experience requirements to apply for a broker license under §1101.356 and §1101.357 of the Act. For broker applications filed on or after January 1, 2012, the applicant will be required to establish that the applicant has obtained 3600 points of active experience with documentary evidence and a statement from the applicant's sponsoring broker at the time the experience was earned.

- ◆ Certain types of transactions would be worth a certain number of points and the applicant would be required to use the forms adopted by reference in the rule to summarize the transactions.
- ◆ An applicant would be able to continue to gain experience after an application has been submitted until such time that the applicant meets the total number required but before the applicant may take the qualifying examination.
- ◆ If an applicant is unable to obtain sufficient documentation and/or the signature of the sponsoring broker, the applicant would be required to use an affidavit adopted by reference in the rule to describe the applicant's efforts to obtain the documentation and/or signatures. In addition, the applicant would be required to provide two additional affidavits each signed by a different individual familiar with the applicant's circumstances and attesting to the applicant's efforts to obtain the appropriate documentation.
- ◆ The amendment gives the commission the discretion to request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by §1101.356 of the Act and §535.56.

Accreditation of Core Education Schools, §535.63

The amendment to §535.63 establishes the method in which the benchmark passage rate would be calculated for each license category and makes other conforming changes to be consistent with the amendments made by SB 747.

Broker Renewal Requirement, §535.91

The amendments to §535.91 clarify that a broker who sponsors salespersons, a designated broker of a business entity, and a license holder who is a delegated supervisor of one or more licensees under §535.2 for six months or more during the course of the current license must take the six hour broker responsibility course to renew a license.

Late Renewal Applications, §535.96

The amendments to §535.93 change to six months any references to the one year period for filing a late renewal.

Mailing Address and Other Contact Information, §535.96

The amendments to §535.96 clarify that licensees must provide and maintain contact information with the commission, including an email address if available.

Fees, §535.101

The amendments increase the salesperson and broker application fees from \$105 to \$119, the two-year renewal fees for brokers and salespersons from \$68 to \$78; and adjust the late renewal fees accordingly. The justification for the fee increases is to generate sufficient revenue to fund operations of the agency and to comply with requirements of Senate Bill 1000, 82nd Texas Legislature, Regular Session (2011).

Initiation of Investigation, §535.141

The amendments clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101 and to make conforming changes to the rule to be consistent with other rules.



Chapter 9

Property Management

TREC Rules Addressing Property Management

In January of 2011, TREC adopted a series of amendments to all the rules, which included revisions to rules dealing with property management including the following:

- a broker is responsible for any property management activity conducted by sponsored salespersons and for all advertising done by sponsored salespersons,
- all trust accounts, including but not limited to property management trust accounts, and other funds received from consumers are handled by the broker with appropriate controls,
- a broker must notify all parties in writing when a broker makes a disbursement to which all parties have not expressly agreed to in writing, and
- a broker may deposit and maintain additional amounts in a trust account to cover bank service fees.

Case Study

Theft From Property Management Accounts

Facts:

A broker established new trust and operating accounts for a recently purchased property management company. A sponsored salesperson ran the everyday business. Property owners were notified of the purchase of the business, but the broker and sponsored salesperson who ran the company both failed to obtain assignments of the prior property management agreements or enter into new ones.

Property management continued until April, 2008, when the broker discovered that over \$18,000 was missing. The salesperson admitted to having used the property management accounts for personal purchases and justified her actions based on the money spent being equal to what she would have earned as the sponsored salesperson. Additionally, the salesperson had not sent out monthly statements to the property

owners, only sending them checks for money due. The broker agreed to continue sponsoring the salesperson if the salesperson's grandmother, a former salesperson, would do the bookkeeping. Accounts would be inaccessible to the salesperson, although she would continue to run the property management company.

During May, 2008, the broker relocated her real estate business to the location of a rival real estate business, which specialized in REO and foreclosed properties for banks, maintaining them for a fee and reimbursement of their expenses. The broker, knowing this, assumed their identity by filing an assumed name adding "The" before the name, and opened a bank account in that name, collecting and cashing checks not due her (\$35,000). She kept the funds despite knowing they were not for her. The broker also never notified TREC of usage of the new assumed name.

In June 2008, the broker ran into personal financial difficulties. The broker abruptly closed the property management business with no notice to the property owners. The broker terminated sponsorship of the salesperson, and discontinued contact with the owners. The broker transferred all funds in the trust and operating accounts to her attorney for distribution to the owners. However, checks outstanding to the property owners for June and July, 2008, were returned for insufficient funds.

The salesperson obtained a new sponsoring broker and resurrected the property management business under a new name. The salesperson then notified the property owners that her prior broker had stolen their money and written them insufficient funds checks. She then sent a letter to her former broker demanding return of all of the property management business funds on behalf of the owners who were now her clients. When this effort failed, the salesperson sent each owner a partially completed TREC complaint form to file complaints against her former broker. She also sent them form letters addressed to the local district attorney.

Several property owners filed complaints against the broker with the district attorney and TREC. During TREC's investigation, the salesperson was added for her role in the property management business. The broker blamed her attorney for taking the money. The attorney claimed the funds were due him for legal fees with no knowledge of the source. The attorney later relinquished his law license. No money was returned.

In July, 2009, felony charges were filed against the broker with trial pending. The broker of the rival real estate business filed a complaint with TREC in February, 2010.

Conclusions:

- The broker was negligent in overseeing the actions of her sponsored salesperson in property management, failing to properly document assumption of property management agreements with property owners and not keeping clients informed of closing of the business; the salesperson was also negligent in failing to keep clients informed of property occupancy, accounting for security deposits, and utilizing funds properly for property maintenance in violation of Texas Occupations Code §1101.652(b)(1).
- The broker failed within a reasonable time to properly account for or remit money received by her that belonged to others to be held in trust within a reasonable time in violation of Texas Occupations Code §1101.652(b)(9).
- The broker and salesperson commingled the broker's money with money belonging to others, which must be maintained in a trust account and may not be used to pay operating expenses or withdrawn for any purpose other than proper disbursement of the monies held in trust in violation of Texas Occupations Code §1101.652(b)(10).
- The broker engaged in conduct which was dishonest or done in bad faith by failing to keep clients informed of her financial difficulties or the inability to pay monies due under the property management agreements in violation of Texas Occupations Code §1101.652(b)(2).

Orders:

- The broker's license was revoked, and the broker assessed a \$60,000 administrative penalty.
- The salesperson's license was voluntarily surrendered, and she cannot renew, attempt to renew or apply for a real estate license for 6 years.



Chapter 10

TREC Cases

Dishonest Conduct and Flagrant Course of Misrepresentation

Facts:

In May, 2009, a salesperson contacted another agent stating that he needed \$20,000 for a real estate investment in a condominium. The other agent had a buyer who wanted to purchase rental property. The buyer's agent told the buyer about the condominium, and she agreed to purchase it as a rental property. The buyer wired \$20,000 to the buyer's agent believing it would be held in escrow by a title company. The buyer's agent, upon instruction from the salesperson, wired the \$20,000 directly to the salesperson's account.

The buyer was never shown a condominium and never signed a contract or other documentation related to a real estate transaction. When the buyer questioned why she did not have to sign any documentation, she was told that the money was for an investment in real estate and not for the purchase of any particular

property, she would be a partial owner of a property when the deal was closed, and she did not need to sign any documents. When the buyer repeatedly requested to see a copy of what contract was signed using her money, she was shown an unsigned contract for a house that she was told the salesperson had listed. The contract, however, showed that the salesperson was the owner of the property.

The buyer became suspicious and demanded that her agent obtain a return of her money. The buyer's agent made repeated attempts to get the money back, as evidenced by emails; however, the salesperson acted deceptively and evasively on numerous occasions, assuring the buyer's agent that his client would receive a refund or that the refund was being processed. In fact, the salesperson commingled the funds with his own money and spent the money for his own personal use. The money was never refunded to the buyer.

The buyer's agent entered into an agreed order with TREC. The salesperson requested a hearing, and

TREC entered a final order against the salesperson based on the proposal for decision prepared by the administrative law judge.

Conclusions:

Buyer's Agent

The buyer's agent failed within a reasonable time to properly account for or remit money received by the buyer's agent and belonging to another person in violation of Texas Occupations Code §1101.652(b)(9).

Salesperson

- The salesperson engaged in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness in violation of Texas Occupations Code §1101.652(b)(2).
- The salesperson pursued a continued and flagrant course of misrepresentation or made false promises in violation of Texas Occupations Code §1101.652(b)(6).
- The salesperson failed within a reasonable time to properly account for or remit money received by the salesperson and belonging to another person in violation of Texas Occupations Code §1101.652(b)(9).
- The salesperson commingled money another person's money with his own in violation of Texas Occupations Code §1101.652(b)(10).

Orders:

Buyer's Agent

The buyer's agent was assessed a fine of \$1,500 and suspended for a period of 3 years. The 3-year suspension was probated under the following terms and conditions:

- The agent must comply with Chapter 1101 of the Texas Occupations Code and with the Rules of the Commission.
- The agent must fully cooperate with the Commission's Standards & Enforcement Services in completing its investigation of any complaints which may be filed against the agent and testify at any SOAH hearing related to this transaction.
- The agent must complete a 30-hour agency law course as defined by Texas Occupations Code §1101.003(a)(1) from a school or provider approved by or acceptable to TREC. These hours are in addition to the Mandatory Continuing Education (MCE) hours required for the next renewal of the agent's Texas real estate license.

Salesperson

- The salesperson's license was revoked and an administrative penalty in the amount of \$13,000 was assessed.

Failure to Disclose a Defect and Signing Without Authorization

Facts:

In April 2008, a broker entered into a verbal agreement to represent a client in the negotiation and purchase of residential real property. The broker was successful in locating an ideal property for the client, and a sales contract was executed for the property's purchase. Closing was scheduled in April 2008.

A home inspection for the property was ordered by the client. A pest inspection was included with the home inspection. The pest inspection company conducted an inspection of the property. At the time of the pest inspection, the broker, in the absence of the client, visited the property and delivered payment for the pest inspection service to the pest inspection company. The pest inspection company submitted the pest inspection report for the property to the broker. The pest inspection report was not provided to the client.

The pest inspection report noted active and previous infestation of the property by subterranean termites. The pest inspection report also noted swarming termites, termite mud, and termite damage in the front bedroom area of the property. The broker did not provide the pest inspection report to the client nor did he inform the client of the results.

Prior to closing, the broker signed, without proper written authorization from the client, the client's name to an amendment of the sales contract. The amendment provided a reduction in the purchase price of the property, which was negotiated based on several items, including the cost of treatment for termites. The seller signed the amendment, and the sale for the property closed with the client taking ownership of the property. After closing, the client discovered the existence of termites on the property. The client submitted a complaint to TREC.

Conclusions:

- The broker failed to disclose to the client a defect (termite damage) known to the broker that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property, in violation of Texas Occupations Code §1101.652(b)(4).

- The broker engaged in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness by signing the client's name to a contract amendment without the knowledge of or authorization from the client, in violation of Texas Occupations Code §1101.652(b)(2).

Orders:

The broker's license was suspended for a period of 3 years. The 3-year suspension was probated under the following terms and conditions:

- The broker must comply with Chapter 1101 of the Texas Occupations Code and with the Rules of the Commission.
- The broker must fully cooperate with the Commission's Standards & Enforcement Services in completing its investigation of any complaints which may be filed against the broker.
- The broker must complete 30 hours in agency law, as defined by Texas Occupations Code §1101.003(a)(1), from a school or provider approved by or acceptable to TREC and that these hours are in addition to the Mandatory Continuing Education (MCE) hours required for the next renewal of the broker's Texas real estate license.
- The broker must pay an administrative penalty of \$3,500 to TREC.

Broker Supervision of Sponsored Salesperson

Facts:

Two separate complaints were filed against a broker who was accused of not properly supervising sponsored salespersons.

Salesperson One: The broker, through his salesperson, executed a property management contract. On behalf of the owner, the salesperson executed a lease for a term of a year with a monthly rental payment of \$1,400 and collected a \$1,400 security deposit. The money was never deposited into a trust account. The salesperson suddenly informed the property owner she was unable to fulfill her management of the property. The owner requested return of the final month's rental payment and security deposit. The owner received \$1,000 of the final month's rental only. The salesperson acknowledged her failure to return the \$400 balance for rent and \$1,400 for the security deposit. The salesperson surrendered her license.

Salesperson Two: The broker, through his salesperson, negotiated a listing agreement. Under the listing agreement, the seller agreed to pay the salesperson 5 percent of the sales price or 4 percent if the salesperson was the sole salesperson in the transaction. Shortly thereafter, the salesperson began representing a buyer. The salesperson had the buyer sign and initial a blank Residential Buyer/Tenant Representation Agreement. The salesperson proceeded although the agreement was not completely filled out. Further, the salesperson prepared a Nonrefundable Buyer Agency Retainer document and required the buyer to sign it. The salesperson told the buyer that such a retainer is typical business practice. The document provided for a non-refundable \$4,000 retainer from the buyer. The buyer paid the retainer directly to the salesperson.

The salesperson negotiated a contract between the buyer and seller without properly forming the intermediary relationship. The salesperson amended the Buyer Representation Agreement by altering the terms to include that the broker would receive 5 percent of the gross sales price and the buyer would receive credit for \$6,500 paid to the broker. Additionally, the amended terms stated that if the buyer failed to close, the \$6,500 would not be refunded and would be considered commission paid.

The salesperson amended the Buyer Representation agreement for a third time by changing the terms. The new terms required the buyer to pay the broker's fees of the greater of 6 percent of the sales price or \$6,500 plus a \$275 transaction fee. The salesperson was to receive compensation from both parties to the transaction per the listing agreement and the amended buyer representation agreement. The salesperson amended agreements and attempted to unilaterally amend those agreements when previous terms were no longer to his benefit. The buyer and seller refused to agree to any additional changes to their respective representation agreements. When the transaction under the terms of the representation agreement were no long in the benefit of the salesperson, he intentionally obstructed the closing of the transaction, and the transaction failed to close.

Conclusions:

- The broker acted negligently or incompetently in the supervision of salesperson 1 in violation of Texas Occupations Code §1101.652(b)(1) and is cause for the suspension or revocation of the broker's real estate license and is further cause for the assessment of an administrative penalty against the broker pursuant to Texas Occupations Code §1101.701.

- The Broker acted negligently or incompetently in the supervision of salesperson 2 in violation of Texas Occupations Code §1101.652(b)(1) and is cause for the suspension or revocation of the broker's real estate license and is further cause for the assessment of an administrative penalty against the broker pursuant to Texas Occupations Code §1101.701.

Orders:

The broker's license was reprimanded and was subject to the following terms and conditions:

- The broker must comply with Chapter 1101 of the Texas Occupations Code and with the Rules of the Commission.
- The broker fully cooperates with the Commission's Standards & Enforcement Services in completing its investigation of any complaints which may be filed against broker.
- The broker agrees to testify at any SOAH hearing upon timely request from TREC on any complaints currently opened against him.
- The broker shall pay the sum of \$1,800 to satisfy salesperson's failure to remit rental payment and security deposit.
- The broker shall pay an administrative penalty of \$7,000 to the Texas Real Estate Commission.

Failing to Forward Funds and Commingling Funds in Property Management

Facts:

A broker began collecting monthly rents and security deposits and managed properties for several years until October of 2009 when several owners' checks were returned for insufficient funds. The broker blamed this on errors caused by the brokerage's computer being stolen, bad bookkeepers who paid several vendors twice, and a big property owner client terminating its management agreement with the LLC, which caused a shortage of trust funds. When his promises to make the checks good did not materialize and additional money became due, the owners began canceling their management agreements. The owners were unable to obtain rents due nor the security deposits being held by the broker. Several property owners filed complaints with TREC. Some of the owners obtained judgments against the broker and LLC brokerage and were later reimbursed through the Real Estate

Recovery Fund. The LLC was later forfeited by the Secretary of State for failure to pay franchise taxes.

The broker initially failed to respond to TREC but later admitted utilizing the property owners' money for unauthorized purposes and not reimbursing them.

Conclusions:

- Both the broker and LLC brokerage failed to properly account for or remit funds remitted to a license holder that belonged to another being held in trust in violation of Texas Occupations Code §1101.652(b)(9).
- Both the broker and LLC brokerage commingled money belonging to others with the license holder's own money, which must be maintained in a trust account, and which may not be used to pay operating expenses or withdrawn for any purpose other than proper disbursement of the money held in trust in violation of Texas Occupations Code §1101.652(b)(10).
- Both the broker and LLC brokerage engaged in conduct which was dishonest or done in bad faith by failing to keep clients informed of financial difficulties or the inability to pay money due under the property management agreements in violation of Texas Occupations Code §1101.652(b)(2)
- Both the broker and LLC brokerage, by failing to provide information sought by TREC within a reasonable time, were in violation of Texas Occupations Code §1101.652(a)(6).

Orders:

- The broker's license was revoked and the broker assessed a \$60,000 administrative penalty.
- The LLC brokerage's license was revoked and assessed a \$60,000 administrative penalty.

Appendix

Chapter 1 – The Canons of Professional Ethics

The duties of fidelity, integrity, and competency are aspirational goals expressed in the preamble to the Code of Ethics of the National Association of REALTORS® and the Code of Ethics of the CCIM Institute (Certified Commercial Investment Member).

The Code of Ethics of the National Association of Real Estate Brokers (Realtists) imposes a duty on Realtists to protect the public against misrepresentation, unethical practices or Fraud in their Practices (Part I, §3).

- NAR's Code of Ethics and the CCIM Code of Ethics prohibit their members from the following:
- Denying equal professional services to any person on the basis of protected class,
- Being a party to any agreement or plan to discriminate on the basis of protected classes,
- Discriminating in their employment practices on the basis of protected classes,
- Volunteering information regarding racial, religious, or ethnic composition of any neighborhood,
- Engaging in any activity that may result in panic selling, and
- Printing or distributing material that indicates any preference or limitation or discrimination based on a protect class (Art. 10).
- CCIM members may provide demographic information when involved in the sale or lease in commercial property if the information is needed to complete the transaction and is obtained from a recognized, reliable, independent, and impartial source (SP10-3).
- Part I, §2 of the Realtist Code of Ethics provides that a Realtist should never be instrumental in establishing, reinforcing or extending restrictions that limit the use or occupancy of property to any racial, religious or national origin groups.

The duty to treat other parties to a transaction honestly is also found in Article 1 of the NAR Code of Ethics and the CCIM Code of Ethics, and is expressed as a theme in the Realtist Code of Ethics.

Chapter 2 – Agency Relationships

- The duty to disclose who the agent represents at the first contact with the other party in the transaction or the other party's agent is also expressed in NAR's and CCIM's Codes of Ethics (SP 16-10, 11 & 12).

- The NAR and CCIM Codes of Ethics require the members to advise their clients of any potential for the member to represent more than one party in the transaction. This communication is required at the time a listing or buyer representation agreement is signed (SP 1-12 & 13).
- NAR's and CCIM's Codes of Ethics prohibit members from selling or acquiring an interest in real estate for themselves, their immediate families, members of their firms, or entities in which they have an ownership interest without making their true position known (Art 4.). Such disclosures must be in writing before signing a contract (SP 4-1). Part I §9 of the Realtist Code of Ethics requires the Realtist to disclose if he or she has a personal interest in the property being purchased.
- NAR's and CCIM's Codes of Ethics prohibit the member from receiving any commission, rebate or profit on expenditures without the client's knowledge and consent (Art 6). Any referral fees received for referring a person to a service provider must be disclosed to the client or customer to whom the recommendation is made.
- The prohibition against receiving compensation from more than one party without the knowledge and consent of all parties is also found in Article 7 of NAR's and CCIM's Codes of Ethics and in Part I, §6 of the Realtist Code of Ethics.
- The prohibition against interfering with the agency relationship of another broker is also found in Article 16 of NAR's and CCIM's Code of Ethics and Part II, §7 of the Realtist Code of Ethics.

Chapter 5 – Advertising

- Article 12 of NAR's and CCIM's Codes of Ethics require members to: (1) present a true picture in their advertisements; and (2) disclose their professional status (broker, REALTOR®, etc.). The advertising of inducements is permitted if the advertisements clearly state any conditions required to obtain the inducement (SP 12-3). Advertisements of listed property must disclose the firm's name (SP 12-5).

