

Legal Update and Ethics MCE

Additions and Changes

March 2012



Legal Update

Location	Edition 5.0 Text	Edition 5.1 Text
Page 5, column 1	HB 111, HB 1162, HB 1168, HB 1862: Property Management	HB 1111, HB 1168, HB 1862: Property Management
Page 7, column 1 Under “Choice of Title Company” – last sentence	While a licensee might have a preferred title company or closer, the choice of the title company must be made by the buyer.	While a licensee might have a preferred title company or closer, the choice of the title company must be negotiated by agreement of the parties.
Page 9, column 2, 2 nd paragraph	...TREC Form No. 20-9...	...TREC Form No. 20-11...
Page 9, column 2, 3 rd paragraph	...TREC Form No. 20-9...	...TREC Form No. 20-11...
Page 9, column 2, 4 th paragraph	...TREC Form No. 20-9...	...TREC Form No. 20-11...
Page 9, column 2, 5 th paragraph	...TREC Form No. 20-9...	...TREC Form No. 20-11...
Pages 9–10 Holmes v. Beatty case		Add the following paragraph to the end of the Holmes v. Beatty case, on page 10: The 82 nd Legislature (2011) overruled this case with SB 1198, which in part provides that a “survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with similar language.”
Page 15, column 1 2 nd paragraph of bordered box		Add the following sentence to the end of the paragraph: The Court of Appeals affirmed.
Page 17, column 1 1 st paragraph below the bordered box	The Texas Supreme Court reversed a Court of Appeals ruling that was reported in the prior Legal Update textbook (edition 4).	<u>The Texas Supreme Court reversed a Court of Appeals ruling that was reported in the prior Legal Update textbook (edition 4).</u>
Page 18, column 1 2 nd paragraph of bordered box	After a jury trial, trial court held for buyer on claims of fraud, DTPA violation and negligent misrepresentation. Seller moved for JNOV which was denied. Court of Appeals reversed.	After a jury trial, trial court held for buyer on claims of fraud, DTPA violation and negligent misrepresentation. Seller moved for JNOV,* which was denied. Court of Appeals reversed the denial of the JNOV and granted JNOV to Seller. Proposed footnote added to bordered box after 2 nd paragraph: <i>*JNOV means a judgment awarded by the trial judge notwithstanding (or disregarding) the jury’s findings. It is not commonly granted and reserved to situations when the judge finds the party failed to establish even a prima facie case. It is a rather extraordinary remedy or determination.</i>
Page 19, column 1 bordered box	A buyer is charged with knowledge of all facts appearing in the chain of title. The appellate court found no evidence that the buyer had knowledge of all facts or should have been put on inquiry	A bonafide purchaser is one who takes title without knowledge of another’s claim. A person is not a bonafide purchaser if he has actual or constructive knowledge of others’ claims. A buyer is obligated to make reasonable inquiry on matters in the chain of title. The property sold to 2 different buyers. The trial court held for the 1 st buyer. The appellate court reversed and found that there was no evidence in the record to establish that the 2 nd buyer had knowledge of the 1 st buyer or that the 2 nd buyer had a duty to make additional inquiry outside the chain of title in the property records.
Page 22, column 2	Last sentence: The sellers and the brokerage firm appealed.	Last sentence: The buyer appealed.

Ethics

Rule Changes (based on SB 747) adopted at October 10, 2011 Commission Meeting Additions to Chapter 8, pp. 26-27

Location	Edition 5.0	Edition 5.1
Page 25, column 2 "Service Providers, §535.148"	<p>First Bullet: New subsection (c) prohibits a licensee from contracting with a service provider if the contract does not allow the licensee from entering into or offering similar service on behalf of a competing service provider.</p> <p>Second bullet: New subsection (d) prohibits fee arrangements based on a party to the real estate transaction purchasing a contract or services from a specific service provider.</p>	<p>First Bullet: 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 to enter into or offer similar service on behalf of a competing service provider.</p> <p>Second bullet: 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.</p>

Additions to Chapter 8, pp. 26-27 Rule changes based on SB 747 adopted at October 10, 2011 Commission Meeting

Appraisals – §535.17

SB 747 amends §1101.02 to delete appraisals from 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 from license requirements 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 waive the education required for a salesperson license for an applicant who was licensed in the preceding two years (changed from six years) and who otherwise meets the requirements of the section.

Additions to Chapter 8, pp. 26-27, continued

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 must 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 are worth a certain number of points and the applicant is required to use the forms adopted by reference in the rule to summarize the transactions.
 - An applicant may 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 must 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 must 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 are calculated for each license category and makes other conforming changes to be consistent with the amendments made by SB 747.

Broker Renewal Requirements – §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.

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 make conforming changes to the rule to be consistent with other rules.