

Texas Real Estate Commission
CHAPTER 535, GENERAL PROVISIONS
Rules Adopted at the February 14, 2011 Commission Meeting

**Subchapter N. Suspension and
Revocation of Licensure**
§535.154 Advertising

The Texas Real Estate Commission (TREC or the commission) adopts new §535.154, regarding Advertising, with changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8768). The difference between the rule as proposed and as finally adopted is as follows: The requirement that licensees include their license number in advertising is deleted; the definition of clear and conspicuous in terms of font or type size is removed from subsections (c); use of an assumed name and use of a salesperson's name in advertising are clarified, and a provision is added regarding use of a copyrighted trade name.

New §535.154 replaces existing §535.154. Subsection (a) provides a definition of "advertisement;" subsection (b) clarifies what types of communications are not considered advertisements for purposes of the Act and Rules. Subsection (c) requires salespersons and brokers 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. If the broker's name includes the name of a salesperson, the advertisement must include another assumed name of the broker that does not include the salesperson's name or the name of the broker's designated broker. Subsection (d) provide a laundry list of types of advertising that are considered deceptive and misleading; subsection (e) requires brokers to file assumed names with the commission; subsection (f) requires an advertisement to contain a designation such as broker or agent; subsection (g) prohibits advertising that implies that a salesperson is the person responsible for the operation of a real estate brokerage business, or causes someone to believe that an unlicensed person is personally engaged in real estate brokerage; subsection (h) permits a business entity to do business in the name in which it was chartered or registered at the Office of the

Secretary of State with certain exceptions; subsection (i) prohibits a licensee from using a copyrighted trade name unless the licensee has the authority to use the name; subsection (j) addresses use of advertisements on the Internet; subsection (k) addresses electronic communications; subsection (l) addresses road signs; subsection (m) addresses advertisements that contain an offer to rebate a portion of a licensee's commission; subsection (n) addresses advertising that recommends or promotes the use of a service provider; subsection (o) prohibits licensees from advertising information regarding service providers that ranks the providers unless the ranking is based on disclosed objective criteria; and subsection (p) prohibits licensees from advertising that a licensee offers, sponsors, or conducts commission approved courses unless the licensee is approved to offer the courses. The revisions to the rules as adopted do not change the nature or scope so much that they could be deemed different rules. The rules as adopted do not affect individuals other than those contemplated by the rules as proposed. The rules as adopted do not impose more onerous requirements than the proposed versions and do not materially alter the issues raised in the proposed rules. The changes in the rules reflect a non-substantive variation from the proposed rules to make the affected rule consistent with other rules.

The reasoned justification for the amendments is more streamlined, consistent and readable rules. Additional justification is provided below in response to the comments on the advertising rules as proposed.

The Texas Association of Realtors, the Texas Apartment Association, and the Metrotex Association of Realtors commented on the rules proposed under Subchapter N.

The commission received 84 comments on the rules as proposed

Comments: Approximately 82 comments expressed concerns about the costs and burden of complying with §535.154 as proposed.

Texas Real Estate Commission
CHAPTER 535, GENERAL PROVISIONS
Rules Adopted at the February 14, 2011 Commission Meeting

Comment: One commenter noted that the requirements of subsection (d) of §535.154 are also overly burdensome because it places potential liability on a licensee for inadvertent advertising inaccuracies.

Comment: One commenter suggested that adding the broker's license number to advertisements and requiring the broker's name to be identified in a clear and conspicuous manner will potentially clutter advertisements making them harder to read by the general public.

Response: The commission has considered the comments to the rules as proposed and has amended the rules accordingly by removing the requirement to include the broker's license number in all advertising, and removing the definition of clear and conspicuous in terms of font or type size.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this adoption are Texas Occupations Code, Chapter 1101 and Chapter 1102. No other statute, code or article is affected by the adoption.

§535.154. Advertising.

(a) For the purposes of this section, an "advertisement" is a written or oral statement or communication by or on behalf of a licensee which induces or attempts to induce a member of the public to use the services of the licensee or service provider. The term "advertisement" includes, but is not limited to, all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards. The provisions of this section apply to all advertisements by or on behalf of a

licensee unless the context of a particular provision indicates that it is intended to apply to a specific form of advertisement.

(b) The following information is not considered an advertisement or advertising:

(1) a communication from a licensee to a member of the public after the member of the public agreed for the licensee to provide services, provided the first communication from the licensee contains the information required by this section; or

(2) real estate information, including listings, available to the public on a licensee's website, extranet or similar site that is behind a firewall or similar filtering software which requires a password or registration to access that information.

(c) An advertisement must clearly and conspicuously contain the name of the broker, either a business entity or an individual. For purposes of this section, the broker, or a salesperson sponsored by the broker, may use the broker's assumed name instead of the name in which the broker is licensed, if the assumed name is registered with the commission under subsection (e) of this section. An advertisement may not contain an assumed name unless a broker has registered that assumed name with the commission. If the broker's name or its assumed name includes a salesperson's name, the advertisement must include another assumed name of the broker that does not include a salesperson's name, or the designated agent's name.

(d) For purposes of this section and §1101.652(b)(23) of the Act, deceptive or misleading advertising includes, but is not limited to, the following:

(1) advertising that is inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies;

(2) advertising a property that is subject to an exclusive listing agreement without the permission of the listing broker and without disclosing the name of the listing broker unless the listing broker has expressly agreed to waive disclosure;

(3) failing to remove an advertisement about a listed property within a reasonable time

Texas Real Estate Commission
CHAPTER 535, GENERAL PROVISIONS
Rules Adopted at the February 14, 2011 Commission Meeting

after closing or termination of a listing agreement, unless the status is included in the advertisement;

(4) an advertisement by a salesperson which identifies the salesperson as a broker; or

(5) advertising a property in a manner that creates a reasonable likelihood of confusion regarding the permitted use of the property.

(e) A broker, individually or as the designated officer, manager or partner of a business entity licensed as a broker shall notify the commission in writing within 30 days after the broker, or a salesperson sponsored by the broker, starts or stops using an assumed name in business other than the name in which the person is licensed.

(f) An advertisement placed by a licensee must include a designation such as "agent," "broker" or a trade association name that serves clearly to identify the advertiser as a real estate agent.

(g) A broker or salesperson may not place an advertisement that in any way:

(1) implies that a salesperson is the person responsible for the operation of a real estate brokerage business; or

(2) causes a member of the public to believe that a person not authorized to conduct real estate brokerage is personally engaged in real estate brokerage.

(h) Except as provided by subsections (c) and (g) of this section, a business entity licensed as a real estate broker may do business in the name in which it was chartered or registered by the Office of the Secretary of State.

(i) A licensee may not utilize a copyrighted trade name unless the licensee has legal authority to use the name.

(j) A real estate licensee placing an advertisement on the Internet, electronic bulletin board or the like must include on each page on which the licensee's advertisement appears any information required by this section and §1101.652(b)(23) of the Act. For purposes of this subsection, "page" means each html document of a website, which may include

several screens of information that are viewed by scrolling down to the end of the document.

(k) A real estate licensee placing an advertisement by using an electronic communication, including but not limited to email and email discussion groups, text messages, and social networking websites must include in the communication and in any attachment which is an advertisement, the information required by this section and §1101.652(b)(23) of the Act. For purposes of advertising on social networking websites that limit the number of characters in a communication and the required information would consume more than 10% of the available character limit, a licensee may include a direct hyperlink containing the words "TREC DISCLOSURE" which links to the information required by this section and §1101.652(b)(23) of the Act.

(l) An advertisement placed where it is likely to attract the attention of passing motorists or pedestrians must contain language that clearly and conspicuously identifies the person publishing the advertisement as a real estate broker or agent. This subsection does not apply to signs placed on or providing directions to real property listed for sale, rental or lease with the broker who has placed the sign, provided the signs otherwise comply with this section and the Act.

(m) An advertisement containing an offer to rebate a portion of a licensee's commission must disclose that payment of the rebate is subject to the consent of the party the licensee represents in the transaction. If payment of the rebate is contingent upon a party's use of a selected service provider, the advertisement also must contain a disclosure that payment of the rebate is subject to restrictions.

(n) If an advertisement offers, recommends or promotes the use of services of a real estate service provider other than the licensee and the licensee expects to receive compensation if a party uses those services, the advertisement must contain a disclosure that the licensee may receive compensation from the service provider.

(o) A licensee may not advertise information regarding service providers that ranks such

Texas Real Estate Commission
CHAPTER 535, GENERAL PROVISIONS
Rules Adopted at the February 14, 2011 Commission Meeting

providers unless the ranking is based on disclosed objective criteria.

(p) A licensee may not advertise that such licensee offers, sponsors, or conducts commission approved courses in conjunction with an approved school or other approved organization unless the licensee is approved by the commission to offer such courses.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 17, 2011.

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