Texas Real Estate Commission
Chapter 535, General Provisions
Rules Adopted at the February 27, 2012 Commission Meeting

Subchapter B. General Provisions Relating to the Requirements of Licensure
§535.16

The Texas Real Estate Commission (TREC) adopts an amendment to §535.16, concerning Listings; Net Listings, without changes to the proposed text as published in the December 30, 2011, issue of the Texas Register (36 TexReg 9169) and will not be republished. The amendment is adopted to make the section consistent with the relevant provisions of Senate Bill 747 (SB 747), 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amends Texas Occupations Code, §1101.002, to add to the list of activities that are considered real estate brokerage which requires licensure as a real estate broker or salesperson a new item regarding broker price opinions.

The amendment to §535.16 clarifies that a real estate licensee must provide a broker price opinion rather than opinion of market value when negotiating a listing or offering to purchase the property for the licensee's own account as a result of contact made while acting as a real estate agent.

The reasoned justification for the rule as adopted is consistency between the Texas Occupations Code, Chapter 1101, and 22 TAC Chapter 535 regarding the definition and use of the phrase "broker price opinion."

No comments were received on the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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

§535.16 Listings; Net Listings

(a)A broker is obligated under a listing contract to negotiate the best possible transaction for the principal, the broker has agreed to represent.

(b)A "net listing" is a listing agreement in which the broker's commission is the difference ("net") between the sales proceeds and an amount desired by the owner of the real property. A broker may not take net listings unless the principal requires a net listing and the principal appears to be familiar with current market values of real property. The use of a net listing places an upper limit on the principal's expectancy and places the broker's interest above the principal's interest with reference to obtaining the best possible price. If a net listing is used, the listing agreement must assure the principal of not less than the principal's desired price and limit the broker to a specified maximum commission.

(c)A real estate licensee is obligated to provide a broker price opinion or comparative market analysis on a property when negotiating a listing or offering to purchase the property for the licensee's own account as a result of contact made while acting as a real estate agent.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 1, 2012

TRD# 201201254

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Effective date: March 21, 2012