

**Texas Real Estate Commission
Chapter 535, GENERAL PROVISIONS
Rules Adopted at the November 15, 2010 Commission Meeting**

**Subchapter C. Exemptions to
Requirements of Licensure
§535.31, §535.32, and §535.34**

Texas Real Estate Commission (TREC or the commission) adopts amendments to §535.31, regarding Attorneys at Law; §535.32, regarding Attorneys in Fact; and §535.34, regarding Salespersons Employed by an Owner of Land and Structures Erected by the Owner, without changes to the proposed text as published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8253) and will not be republished.

The amendments to §535.31 shorten the reference to the Act as defined in the definitions section of the rules. The amendments to §535.32 clarify that a power of attorney must be valid and changes the term "agency" to "brokerage." The amendments to §535.34 reference the provision in the Act to which it refers, clarify that an independent contractor is not an employee, and incorporate the text repealed from §535.35.

Generally speaking, the amendments correct typographical errors, reorganize, clarify, and streamline existing rules, and update cites to new laws and codes.

The reasoned justification for the amendments is more streamlined, consistent and readable rules.

No comments were received on the rules as proposed.

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.

§535.31. Attorneys at Law. A licensed attorney is exempt from the requirements of the Act but cannot sponsor real estate salespersons or serve as the designated officer or manager of a licensed corporation or limited liability company unless the attorney is also licensed as a real estate broker. This provision is not a waiver of the standards of eligibility and qualification elsewhere established in the Act.

§535.32. Attorneys in Fact. A person holding a valid power of attorney recorded in the county in which the particular real property is located and which specifically describes the real property to be sold may act as a real estate agent for the owner of such property without being licensed as a real estate broker or salesperson, provided the person does not use powers of attorney to engage in the real estate brokerage business.

§535.34. Salespersons Employed by an Owner of Land and Structures Erected by the Owner.

(a)As referenced in §1101.5(6) of the Act, "salesperson, employed by an owner" means a person employed and directly compensated by an owner. An independent contractor is not an employee.

(b)Withholding income taxes and Federal Insurance Contributions Act (F.I.C.A.) taxes from wages paid another person is considered evidence of employment.

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 December 6, 2010

TRD # 201006907
Effective Date January 1, 2011
Loretta R. DeHay
General Counsel
Texas Real Estate Commission