Subchapter B. General Provisions Relating to the Requirements of Licensure
§535.4

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.4 regarding License Required as published in the October 28, 2011, issue of the *Texas Register* (36 TexReg 7260) and will not be republished. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends the Texas Occupations Code Chapter 1101 to define a real estate broker to include a person who controls the acceptance or collection of rent from a resident of a single-family residential unit, and to require licensure as a broker for a business entity as defined in Section 1.002 of the Business Organizations Code which receives compensation on behalf of the licensee.

The amendment to §535.4(f) replaces an existing reference to a corporation or limited liability company to "business entity" to more closely track the text of the statute. The amendment to §535.4(g) defines the meaning of "controls the acceptance or deposit of rent" and "single family residential property unit" for purposes of §1101.002(1)(A)(x) of the Act.

The reasoned justification for the amendment is to have consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535. The reasoned justification for the rule is further described below in response to the comments.

Six comments were received on the rule as proposed including comments from the Texas Apartment Association.

Comment Two commenters believe that there is no difference between a person who controls the acceptance and deposit of rent for a single family home and a person who does so for a duplex, triplex or four-plex. The commenters believe that the intent and spirit of the statutory change is to require licensure of a person who controls the collection or acceptance of rent on any type of property.

Response: While the Commission understands the commenters' concerns, the language of the statute controls and purpose must be given to the phrase "single-family residential real property unit." Condominiums are owned as single family units with a non-exclusive interest in common areas such as hallways and elevators. On the other hand duplexes are typically owned as one unit with two dwellings. If ownership of a duplex is by condominium regime where two different owners own each unit of the duplex, then such properties could be considered single family and therefore subject to the real estate license requirement if a person controls the acceptance or deposit of rent for either of the units.

Comment Two comments inquired as to whether a license would be required if the owner managed the properties.

Response: No license is required if an owner manages the properties and collects the rent for him or herself.

Comment One commenter suggests deleting the term "condominium" from the proposed definition because it would inadvertently require licensure of an employee of a property management company who merely accepts or deposits rent from tenants in a residential condominium building.

Response The commission respectfully disagrees with the commenter. The purpose of the statutory provision was to redefine the definition of real estate brokerage to require licensure of a person who controls the acceptance or deposit of rent. An employee of a property management company who merely collects the rent or deposits the rent in a bank account but who does not have the authority to sign checks or withdraw money from the account would not need to be licensed as long as the person did not engage in any other type of real estate brokerage activity as defined in the Act.

Comment One commenter suggested including an additional provision in the rule to exempt from the requirements of licensure an employee who only controls the acceptance or deposit of rent, but does not engage in any other brokerage activity for a licensed broker because the licensed broker would be responsible for the employee's acts.

Response The Commission respectfully disagrees with the commenter. An employee that

controls the acceptance or deposit of rent for a licensed broker would need to be licensed under the new law even if the employee did not engage in any other real estate brokerage activity. However, if the employee collects rent and manages the company's books, but does not control the disbursement of funds, the new rule would not require that the employee obtain a license.

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, Chapter 1102, 1303, and Texas Property Code, Chapter 221. No other statute, code or article is affected by the amendments.

§535.4.License Required.

(a) The Act applies to persons acting as real estate brokers or salespersons while physically within this state, regardless of the location of the real estate involved or the residence of the person's customers or clients. For the purposes of the Act, a person conducting brokerage business from another state by mail, telephone, the Internet, email or other medium is also considered acting within this state if all the prospective buyers, sellers, landlords, or tenants are legal residents of this state, and the real property concerned is located wholly or in part within this state.

(b) This section does not prohibit cooperative arrangements between non-resident brokers and Texas brokers pursuant to §1101.651(a)(2) of the Act and §535.131 of this title (relating to Unlawful Conduct: Splitting Fees).

(c) Unless otherwise exempted by the Act, a person must be licensed as a broker or salesperson to show a broker's listings.

(d) The employees, agents or associates of a licensed broker, including a business entity licensed as a broker, must be licensed as brokers or salespersons if they direct or supervise other persons who perform acts for which a license is required.

(e) A real estate license is required for a person to solicit listings or to negotiate in Texas for listings.

(f) A business entity owned by a broker or salesperson which receives compensation on behalf of the licensee must be licensed as a broker under the Act.

(g) For purposes of §1101.002(1)(A)(x) of the Act:

(1) A person controls the acceptance or deposit of rent from a resident of a single-family residential real property unit and must be licensed under the Act if:

(A) the person has the authority to use the rent to pay for services related to management of the property; or

(B) the person has the authority to deposit the rent into a trust or bank account and sign checks or withdraw money from the account.

(2) A single-family residential unit includes a single family home or a unit in a condominium, co-operative, row-home or townhome. The term does not include a duplex, triplex or four-plex unless the units are owned as a condominium, cooperative, row-home or townhome.

(h) A person must be licensed as a broker to operate a rental agency.

(i) A real estate license is required of a subsidiary corporation, which, for compensation, negotiates in Texas for the sale of its parent corporation's real property.

(j) Arranging for a person to occupy a residential property is an act requiring a real estate license if the actor:

(1) does not own the property or lease the property from its owner;

(2) receives a valuable consideration; and

(3) is not exempted from the requirement of a license by §1101.005 of the Act.

(k) Except as provided by this section a real estate license is required for a person to receive a fee or other consideration for assisting another

person to locate real property for sale, purchase, rent, or lease, such as the operation of a service which finds apartments or homes.

(l) The compilation and distribution of information relating to rental vacancies or property for sale, purchase, rent, or lease is activity for which a real estate license is required if payment of any fee or other consideration received by the person who compiles and distributes the information is contingent upon the sale, purchase, rental, or lease of the property. An advance fee is a contingent fee if the fee must be returned if the property is not sold, purchased, rented, or leased.

(m) A person must be licensed as a broker or salesperson if, for compensation, the person:

(1) advertises for others regarding the sale, purchase, rent or lease of real property;

(2) accepts calls received in response to such advertisements; and

(3) refers the callers to the owner of the property.

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 13, 2011.

TRD-201105533
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Effective Date: January 2, 2011