

ADVISOR

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Federal lead-based paint rules become effective

In the coming months, Texas real estate brokers and salesmen will be responsible for ensuring that owners of residential dwellings constructed prior to 1978 comply with HUD/EPA rules concerning lead-based paint and lead-based paint hazards. The federal rules require an attachment to the contract of sale or lease which contains a lead warning statement and certain disclosures and acknowledgments by the parties and brokers.

Owners of more than four residential dwellings become subject to the federal rules on September 6, 1996. Owners of four or less dwellings must comply beginning December 6, 1996. Both leases and sales are covered by the rules, although the provisions relating to sales are more extensive.

To facilitate compliance with the federal rules, the Texas Real Estate Broker-Lawyer Committee developed a contract addendum for use with TREC-promulgated contract forms. The addendum has been approved by

TREC (see addendum on page 7, this issue or article in previous issue, "Lead-Based Paint Addendum Approved by TREC for Voluntary Use," Volume 7, Number 2, *Advisor*). The addendum is based on a sample form released by EPA/HUD. TREC is considering adoption of the form for mandatory use by licensees.

Before the prospective buyer or tenant is obligated under the contract to purchase or lease the property, the federal rules require the owner to provide the buyer or tenant with copy of a pamphlet *Protect Your Family From Lead in Your Home*, disclose any known presence of lead-based paint or lead-based paint hazards, and provide the buyer or tenant with copies of any inspection reports which reveal the presence of lead-based paint or lead-based paint hazards. "Lead-based paint hazards" are any conditions which cause exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-contami-

nated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces and that could cause adverse human health effects as determined by the appropriate federal agency.

A buyer also must be provided a minimum 10 day opportunity to have the property inspected for lead-based paint or lead-based paint hazards, although the buyer may waive the inspection. Owners are not required to provide a similar inspection opportunity to a prospective tenant. Owners and brokers are required to retain a copy of the completed attachment for at least three years from the date of the completion of the sale or from the commencement of the leasing period.

Under the federal law, brokers who represent the owner or who are either paid by the owner directly or through the broker representing the owner are responsible for the owner's compliance with the federal rules. These brokers are obligated to inform the

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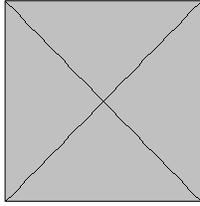
New advertising rule proposed

At its August meeting, TREC voted to propose an amendment to 22 TAC §535.154, concerning misleading advertising by real estate licensees. The proposed amendment addresses those signs likely to attract the attention of pedestrians and motorists and does not include signs placed on property which has been listed for sale or lease. The amendment would require the broker or salesman to display in clear and conspicuous language that the person placing the sign is a broker or agent. The displayed language, such as the word "broker", would comply with the rule if the language is in at least as large as

the largest telephone number in the sign. If the displayed language is in a type or print so small as not to be easily read from the sidewalk or street, the sign would not comply with the rule. TREC does not intend to apply the rule to directional signs such as those placed away from a listed property to guide consumers to an open house and which do not contain advertising such as telephone numbers or the firm's name. The proposed rule can be found on page 6 of this issue. Comments on the proposed rule may be submitted to the Office of the General Counsel for distribution to the members of the Commission.

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The *ADVISOR* (ISSN 1047-4579) is published by the Texas Real Estate Commission (TREC) as an educational service to licensees in the state of Texas. The purpose of the newsletter is to promote a better understanding of The Real Estate License Act and to inform all licensees of changes affecting laws and practices in the real estate industry. The *ADVISOR* is funded through legislative appropriations and subscriptions collected from TREC licensees.

The official text of TREC rules is filed with the Office of the Secretary of State, *Texas Register*.

TREC encourages reproduction of this newsletter with the appropriate acknowledgements. Subscriptions are available for \$3.00 for two years. Single issues are \$1.00. To order a subscription or a single issue write to: *ADVISOR*, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

If you should have any questions or comments about the information in this newsletter please contact:

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Commission Meeting Highlights

June 24, 1996

Austin - Commission heard a report of the June 24 Education Committee meeting. Items discussed were: the number of real estate related and core course hours required by Texas; the possibility of reciprocity for Texas; keeping core courses current; broadening MCE topics to include subjects relevant to today's real estate practice; the possibility of a standardized TREC course evaluation form and follow up on course evaluations; and consumer information - developing public service announcements and consumer-based seminars. Mr. Katine reported the appointment of a Task Force consisting of educators and staff which will explore development of a consumer education program.

Commission heard a report by Mr. Albers regarding the Investment Committee meeting held June 24, 1996. Commission adopted an investment policy for the Real Estate Inspection Recovery Fund as recommended by the committee and approved clarification of authority of investment officer, Alan Waters, to include the Real Estate Inspection Recovery Fund. Commission discussed completion of investment training offered by the Governor's office.

Commission adopted an amendment to 22 TAC §535.300, concerning advertising by residential rental locators (see page 6).

Commission adopted an amendment to 22 TAC §535.91, concerning renewal applications. The amendment makes a minor change to language in renewal applications of brokers and salesmen.

Commission proposed an amendment to 22 TAC §537.11 and new 22 TAC §537.45 concerning a lead-based paint contract addendum. This action begins formal rule adoption to promulgate the lead-based paint addendum for mandatory use by brokers. The Broker-Lawyer Committee developed the form to provide sellers and brokers a vehicle for complying with the Federal law that will go into effect in September and December, depending on the number of dwellings owned by the seller (see "Federal lead-based paint rules...", page 1).

Commission approved a letter notifying the Legislative Budget Board and the Governor's Office of Budget and Planning of exceptional items for TREC's Legislative Appropriation Request (LAR) for FY 1998 and 1999.

Commission discussed interpretation of law and rules regarding "bandit" signs. Commission heard from a member of the City of Houston

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Future Meeting Dates:

Broker-Lawyer Committee:
September 12-13, 1996 - Austin

TREC Education Committee:
September 30, 1996 - Austin

Texas Real Estate Commission:
September 30, 1996 - Austin

Texas Real Estate Commission:
November 4, 1996 - Austin

Broker-Lawyer Committee:
November 14-15, 1996 - Austin

The mission of the Texas Real Estate Commission is to assist and protect consumers of real estate services, and foster economic growth in Texas. Through its programs of education, licensing and industry regulation, the Commission ensures the availability of capable and honest real estate service providers.

TREC Legislative Appropriations Request includes funding to address strategic plan issues

TREC's Legislative Appropriations Request (LAR) was approved by the Commission at its regularly scheduled meeting on August 12, 1996. The LAR, which was submitted to the Governor's Office of Budget and Planning and the Legislative Budget Board on August 16, 1996, included a request for funding for four key issues which were identified in TREC's Strategic Plan (see "TREC Strategic Plan incorporates public input," Vol. 7, no. 2, *Advisor*).

TREC's request includes:

(1) Funding for additional staff for TREC's enforcement division: an attorney, a case manager and a clerical support person. These three positions will help expedite the resolution of complaints.

(2) Funding for two 1-800 tele-

phone lines which will allow TREC to be more responsive to the needs of the public and the real estate community.

(3) Funding for two committees created by the Commission's enabling legislation, the Texas Real Estate Broker-Lawyer Committee and the Real Estate Inspector Committee. The Broker-Lawyer Committee develops standard earnest money contract forms and addenda which are promulgated by the Commission for mandatory use by real estate licensees. The Inspector Committee is charged by statute to recommend to the Commission rules governing real estate inspectors.

(4) Funding for an electronic imaging system that will improve TREC's operational efficiency by enhancing its document storage and retrieval system.

Commission thanks volunteer experts

From March through May National Assessment Institute (NAI) conducted several examination development sessions. In these sessions exam questions, called "items," were written and reviewed by subject matter experts from Texas. These experts included attorneys, real estate salesmen, brokers, inspectors and educators. Over 1000 items are now in the Texas item bank, ready to be placed into the sales, broker, inspector and professional inspector examinations.

On behalf of the citizens of Texas, the Texas Real Estate Commission wishes to sincerely thank participants for assisting in the development of the Texas examinations. Their time and expertise is greatly appreciated.

Ongoing item writing and review will occur periodically as laws, rules or other changes occur. If you wish to participate in one of these panels, please write to the Examination section at the Commission office.

Meeting highlights

continued from page 1

Department of Public Works-Engineering and Sign Administration concerning various problems experienced while writing or attempting to write citations concerning the placement of signs by residential rental locators. Commission discussed proposal of an amendment to 22 TAC §535.154, concerning misleading advertising and signs. Commission adopted a motion conveying to the staff hearings officer the seriousness of the situation and their commitment to penalties within due process.

Commission adopted a policy regarding investigations of judgments against licensees indicating possible violation of the Real Estate License Act as follows: **It shall be a policy of the Commission under Section 5(s) of the Real Estate License Act (the Act) that if the staff becomes aware of a final judgment against a licensee which indicates a possible violation of the Act, the staff shall seek authority from the members of**

the Commission to conduct an investigation to determine whether disciplinary action is appropriate pursuant to Sections 15(a) or 23(m)(4) of the Act.

August 12, 1996

Austin - Commission heard a report of the TREC Education Committee meeting, held prior to the TREC meeting on August 12. Items discussed were: acceptance of real estate related courses, updating core real estate courses, regulation of core courses offered by entities not accredited by the Commission, additional MCE topics, student evaluation procedures and educational programs for consumers.

Commission proposed an amendment to 22 TAC §535.154, concerning misleading advertising by real estate licensees (see page 1, "New advertising rule proposed").

Commission requested further input from the Texas Broker-Lawyer Committee concerning adoption of a

mandatory lead-based paint contract addendum. (See page 1, "Federal lead-based paint rules become effective.")

Commission approved TREC's legislative appropriations request for fiscal years 1998 and 1999.

Commission discussed results of the first month (July 1996) of license examinations.

Watch for TREC's Fair Housing Seminar

The Texas Real Estate Commission is sponsoring a presentation of the **Association of Real Estate License Law Official's Fair Housing Seminar**. The program will take place in the fall.

The latest information on the **ARELLO Fair Housing Seminar** will be available on TREC's website and sent out to subscribers of TREC's e-mail list server.

Residential rental locators: It is time to comply

Because of a recent increase in the number of complaints about licensees working as residential rental locators, TREC has determined that more information about advertising rules, payments to unlicensed persons, and other problem areas should be provided to licensees. This article is primarily intended to make locators aware of the consequences of violating the law or TREC rules. Many of the questions are applicable to every real estate licensee, however, and TREC urges **ALL** licensees to review their business practices with this information in mind. These answers have been approved by the members of the Commission.

(1) **Q:** Is TREC interested in compliance by residential rental locators?

A: Yes. The members of the Commission have instructed the staff to enforce the law vigorously. A locator complaint task force has been created in the Enforcement Division to focus on expediting investigations and bringing disciplinary action where appropriate. A staff attorney and two investigators will prioritize resolution of complaints against locators.

(2) **Q:** Must a person be licensed to locate apartment units for prospective tenants and be paid by the owner of the apartments?

A: Yes, unless the person is an employee of the owner or otherwise exempt, residential rental locators are required to be licensed as either a real estate broker or salesman.

(3) **Q:** What must appear in a locator's signs?

A: A locator's signs, like all advertising by real estate licensees, must contain language indicating that the sign is that of a licensed real estate broker or agent. Abbreviations of this language are **not** acceptable, because

they would not clearly reveal the licensee's role as a broker or agent to the public.

(4) **Q:** Are signs permitted which display the word "broker" or "agent" in very small print, on the reverse side of the sign, or vertically on the wooden stake supporting the sign?

A: No. If the statutorily required language is difficult to read to the point that the sign is likely to deceive the public or tend to create a misleading impression that no broker or agent is involved, TREC will consider the sign to be a violation of Section 15(a)(6)(P) of TRELA.

(5) **Q:** Must a company name or telephone number appear in a sign?

A: Not under the current law or TREC rules. If the name of a salesman appears, however, the name of the broker sponsoring that salesman must also appear.

(6) **Q:** May a licensee use an assumed name in business?

A: Yes, but TREC must be notified in writing of the licensee's use of an assumed name. The licensee will also need to file the assumed name with the County Clerk in the counties in which the licensee does business. Corporations licensed as brokers will have to file with the Secretary of State, as well as with the County Clerk in most situations.

(7) **Q:** What else is required of a locator's signs or other advertising?

A: Effective April 1, 1996, TREC adopted advertising guidelines which require certain disclosures and language to appear in a locator's advertising, particularly if the locator advertises more than one property by general terms. Amendments to the guidelines will become effective October 1, 1996. The text of the current rule with the October 1 changes appears elsewhere in this issue.

(8) **Q:** Are there any restrictions on the placement of a licensee's signs?

A: Yes. Section 15(a)(6)(L) authorizes TREC to suspend or revoke a license if the licensee **places** a sign on a property offering it for lease or rental without the written permission of the owner or the owner's authorized agent. The advertising guidelines also emphasize that Section 15(a)(6)(O) is violated if the locator **offers** the unit without the permission of the owner or the owner's authorized agent.

(9) **Q:** Must the permission of the owner to offer the unit for rent be in writing?

A: No; the permission may be in writing or oral. If the permission is given orally, over the telephone, for example, the licensee should make a record that permission was given, and write down the name of the person who gave permission and when the conversation occurred.

(10) **Q:** What if the locator's signs are placed on city property, or a right of way?

A: Placement of signs in violation of city ordinance is considered an act of negligence or incompetence authorizing disciplinary action against the licensee. Licensees know or ought to know the sign ordinances in their communities, which typically prohibit placing a sign on a utility pole, traffic signal box or in a road median.

(11) **Q:** Is a locator permitted to rebate a portion of the locator's fee to the tenant?

A: If the person paying the fee knows of the rebate and consents to it, the payment is not prohibited.

(12) **Q:** Isn't paying a commission to an unlicensed person a violation?

A: Not unless the person is performing some service for which a real estate license is required. The

tenant who is leasing the unit needs no license to act as a principal in a real estate transaction. If that same tenant is paid by the locator for referring **another** prospect to the locator, however, the payment would be a violation.

(13) **Q:** May a locator advertise that tenants will receive rebates?

A: It depends. False or misleading advertising is prohibited. If the locator has prior permission to pay rebates from the owners of the property the locator represents, the advertising would be permitted. Otherwise, any mention of rebates must indicate that the payment is subject to the approval of the property owner.

(14) **Q:** Is it permitted to submit an invoice to an apartment complex falsely claiming that the locator has procured a tenant?

A: No. The Commission has recently issued an order revoking the license of a locator found to have engaged in this practice.

(15) **Q:** Are locators subject to the agency disclosure requirements of TRELA?

A: Yes. A locator representing either party would be obligated to disclose that representation on the **first contact** with the other party. If the transaction concerns a residential lease of not more than one year and no sale is involved, the locator would not be required to provide the tenant with a copy of the statutory information about agency (*Information about Brokerage Services*).

(16) **Q:** How does TREC enforce its advertising rules and the provisions of TRELA?

A: Investigations may be initiated by the Enforcement Division upon the vote of the Commission or in response to a written complaint from a consumer or licensee. Complaint forms are available by TREC Fax, through TREC's website on the Internet, and by mail from the Enforcement Division.

(17) **Q:** Is TREC going to be

conducting "sting" investigations, in which TREC employees will pose as consumers doing business with locators?

A: The possibility has been discussed by the members of the Commission, who have the authority in TRELA to approve such investigations after determining that reasonable cause exists to believe that a licensee has violated the Act.

(18) **Q:** What are the possible results for a locator who violates the TREC rules?

A: The penalties include a reprimand, suspension or revocation of the license, or an administrative penalty of up to \$1,000 per violation. In recent hearings involving locators, orders have been entered suspending or revoking licenses of persons acting as locators or sponsoring salesmen who were acting as locators.

\$535.300. **Advertising by Residential Rental Locators.**

(Changes effective October 1, 1996 are shown in bold type.)

(a) This section is intended to establish standards relating to permissible forms of advertising by a person licensed as a real estate broker or salesman and functioning as a residential rental locator ("locator"). For the purposes of this section, the term "residential rental locator" shall have the meaning provided by Texas Civil Statutes, Article 6573a, (the Act), §24. **For the purposes of this section, the term advertisement includes, but is not limited to advertising in printed form, signs, or advertising using radio, television or personal computers.**

(b) If a locator advertises more than one apartment unit in the same advertisement and lists amenities or features generally without providing the features or amenities available at a specific rent for a specific unit, the

advertisement must include a statement having a meaning substantially equivalent to one of the following.

(1) "All units do not have the advertised features or amenities."

(2) "The rent is \$_____ or more, depending on the features of the unit."

(3) "The rent quoted is the minimum for a unit which may not have all the features advertised."

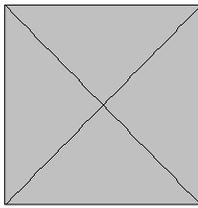
(c) Advertisements in a printed publication shall be deemed to be in compliance with the requirements of subsection (b) of this section if the publication in which an advertisement appears contains this notice at the beginning of the section in which the advertisement appears: Notice. Residential rental locators are required to be licensed by the Texas Real Estate Commission (P. O. Box 12188, Austin, Texas 78711-2188 1-800-250-8732 or 512-465-3960). Locators may advertise apartment units in general terms, and all units may not have the same features. The amount of rent quoted in an advertisement may be the starting rent for a basic unit or for a unit which does not have all advertised features.

(d) An advertisement by a locator of an apartment unit by general terms is misleading unless at the time the advertisement is placed at least one unit meeting the description of the unit contained in the advertisement is available through the locator at the lowest rent stated in the advertisement within either a time stated in the advertisement or within 30 days after the advertisement is submitted for publication if no time is stated. **Prior to offering a unit for rent or lease, the locator also must also obtain the consent of the unit's owner or of the owner's authorized agent.**

(e) Advertising by locators must also comply with the provisions of the Act, §15(a)(6)(P) and §535.154 of this title (relating to Misleading Advertising).

(f) Failure to comply with this section is grounds for the commission to reprimand a licensee, to suspend or revoke a license, or to impose an administrative penalty in accordance with the Act, §19.





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TREC disciplinary actions

Revocations:

Scott, Dwight Decil (Dallas); B#177249. §8(i). 6/4/96.

Holmes, Terrence Lee (Bastrop); PI#2595. Conviction of felony offense of indecency with a child; Article 6252-13c. 6/18/96, probated for seven years.

Suspensions:

Croft, Raymond Conway (Dallas); S#369535. Failure to advise owner of unauthorized use of owner's listed property; failure to submit an offer within the time for acceptance contained in the offer; §15(a)(6)(W). 4/5/96, 30 days.

Mikulienka, Ollie A. (Houston); B#154027. Failure to use correct contract form; (2) of §15(a)(5). Responsible for the act or conduct performed by his salesman; 1(c), §15B(b). Failure to inform seller to provide buyer with Seller's Disclosure of Property Condition; (2) of §15(a)(6)(W). 4/15/96, 6 months fully probated. Administrative Penalty of \$250 to be paid by 7/15/96.

Murray, Walter Stephen (Galveston); S#417875. Failing to disclose a defect of the property; §15(a)(6)(A). Failure to use correct contract form; §15B(b). Failure to inform seller to provide buyer with Seller's Disclosure of Property Condition; (2) of §15(a)(6)(W). 5/15/96, one year fully probated.

Lee, Lamar Christopher (Houston); B#358543. Advertisement failed to identify status as a real estate broker; §15B(b). 6/1/96, 6 months fully probated.

Eiland, Erik J. (Houston); S#436650. Advertisement failed to identify status as a real estate broker or salesman; §15B(b). 6/1/96, 6 months fully probated.

Clark, Max Banks (Sandy, UT); S#384361. Commingling money belonging to others with his own funds; §15(a)(6)(E) and §15(a)(6)(W). 6/1/96. 6 months fully probated.

Rhoades, Nadeen DeLoach (Houston); S#279900. Failure to obtain a fully executed copy of the contract and failure to deliver the contract and earnest money to the title company; §15(a)(6)(W). Failure to list excluded property in a contract; §15(a)(6)(W). 6/1/96, 30 days fully probated.

Morse, Elizabeth Jean (Plano); S#423392. Conviction of felony offense of Mailing Threatening Communication; Article 6252-13c. Failure to reveal a pending criminal charge in an application for a license; §15(a)(2). 6/3/96, one year.

Owens, James Ray (Plano); B#401777. Failure to explain dual agency provision in listing agreement; §15(a)(6)(V). Failing to have offer executed; §15(a)(6)(W). 6/6/96, one year.

Reprimands:

Granado, Tony R. (El Paso); S#421699. Failing within a reasonable time to account for or remit earnest money coming into his possession; §15(a)(6)(E). Failure to deposit earnest money with title company as required by contract; §15(a)(6)(Y). 5/15/96.

Solis, Celina (Corpus Christi); S#396309. Accepting a commission without the knowledge or consent of her sponsoring broker; §1(d). 5/15/96.

Hart, Debra Lyn (Dallas); S#350902. Acting negligently or incompetently in the negotiation of an offer; §15(a)(6)(W). 5/27/96

Countess, Nancy L. (Spring); B#193273. Placing her interest above that of her client; §15B(b). 6/24/96

Violations:

§1(d): No real estate salesman shall accept compensation for real estate sales and transactions from any person other than the broker under whom he at the time was licensed or under whom he was licensed when he earned the right to compensation

§8(i): the Commission has made a payment from the Real Estate Recovery Fund of any amount toward satisfaction of a judgment against a licensed real estate broker or salesman
§15(a)(2): the licensee has procured, or attempted to procure, a real estate license, for himself or a salesman, by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a real estate license

§15(a)(5): the licensee has disregarded or violated a provision of the Act
§15(a)(6)(A): making a material misrepresentation, or failing to disclose to a potential purchaser any latent structural defect or any other defect known to the broker or salesman
§15(a)(6)(E): failing within a reasonable time properly to account for or remit money coming into his possession which belongs to others, or commingling money belonging to others with his own funds

§15(a)(6)(V): conduct which constitutes dishonest dealings, bad faith, or untrustworthiness

§15(a)(6)(W): acting negligently or incompetently in performing an act for which a person is required to hold a real estate license
§15(a)(6)(Y): failing within a reasonable time to deposit money received as escrow agent in a real estate transaction

§15B(b): licensee violated the Act or a Rule of the Commission

Article 6252-13c: criminal conviction of a felony or misdemeanor directly relating to the duties and responsibilities of a licensee

S = salesman
B = broker
PI = professional inspector

**For this and more TREC enforcement information visit:
<http://www.trec.state.tx.us>**

