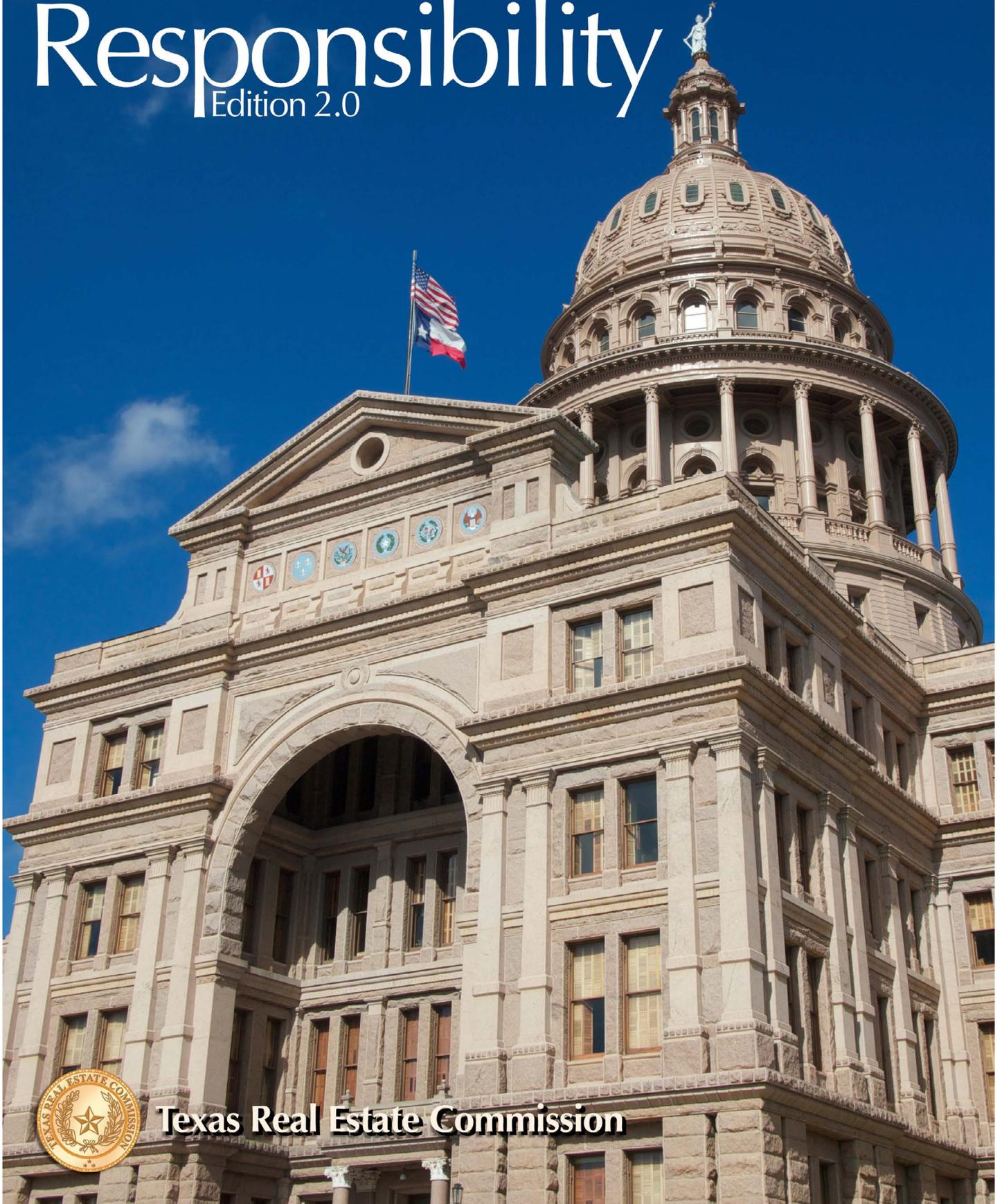


January 2015

# Broker Responsibility

Edition 2.0



**Texas Real Estate Commission**



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# Foreword

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# Contents

Chapter 1: Introduction	1
* Purpose	1
* Who Must Take This Course?	1
* Regulations for Brokers	1
Chapter 2: Scope of Activities and Authorization	3
* Authority and Competency	3
* Recruiting License Holders from Other Brokerages	4
* Employee or Independent Contractor?	4
* Errors and Omissions Policy	5
Chapter 3: Fiduciary Responsibility/Agency	7
* Representation	7
Chapter 4: Trust Funds	11
* A Salesperson Shall Not Maintain a Trust Account	12
Chapter 5: Property Management	13
* Check the Right Box	13
* Leasing Agent Responsibilities	13
* Property Management Responsibilities	13
Chapter 6: Delegated Licensed Supervisor	17
* Relationship Management Tool (Appendix A)	17
* Relationship Management Tool (RMT) Highlights	17
Chapter 7: Advertising/Assumed Names	19
* Safe Harbor Policy	20
* Open House Signs	20
Chapter 8: Record Keeping	21
* Maintaining Records	21
* Personal Information	21
Chapter 9: Written Policies	23
* Receiving Compensation	23
* Compensation from a Service Provider	23
* Compensation from a Residential Service Company	24
* License Holders Buying or Selling Their Own Property	24
* Sharing Fees with Attorneys	24
* When an Attorney Performs a Brokerage Service	24
* Text and Email Negotiations	24
* When an Attorney is a Principal in a Transaction	25
* Unlicensed Assistants	25
* Background Checks	25
* Sudden Cessation or Termination of Sponsoring Broker or Designated Broker of a Licensed Business Entity	25
* Safety	26
* Disaster Plan	26

* Privacy of Personal Information	26
* Federal Regulations and Other State Laws	26
* TREC Case Summaries	26
Chapter 10: Additional Broker Duties	27
* Informing and Responding to Clients	27
* Minimum Services Requirements	27
Chapter 11: Business Entity Requirements	31
* Selection of an Appropriate Entity	31
* Assumed Name	31
* Business Entities FAQs	31
Chapter 12: Complaints	33
* Do's and Don'ts If You Are Named in a Complaint	33
Appendix A: TREC Relationship Management Tool (RMT)	35
Appendix B: Signs	41
Appendix C: Model Privacy Policy	45
Appendix D: TREC Complaints	49
Appendix E: Scripts	51

# Chapter 1

## Introduction

### Purpose

The purpose of this course is to address the regulatory aspects of the management, operation and supervision of a real estate brokerage firm in Texas. The course provides an understanding and working knowledge of a broker's responsibilities and obligations under 22 TAC §532.2. This rule sets out specific requirements and best practices for brokers.

### Who Must Take This Course?

Section 535.92 of the Texas Real Estate Commission (TREC, the commission) Rules requires a broker who sponsors salespersons, a designated broker of a business entity, and a license holder who is a delegated supervisor of one or more license holders (for six months or more during the supervisor's current license period), to complete this six-hour broker responsibility course to renew a license. Any license holder may take this course, which counts for six hours of MCE elective credit. Additionally, a sponsoring broker may, by policy, require certain license holders and employees to take this course.

### Regulations for Brokers

There are a number of regulations and standards with which brokers may need to comply; some of the more notable include:

- \* Chapter 1101 of the Texas Occupations Code (TRELA, Act)
- \* Title 22 Texas Administrative Code, Chapters 531-543 (TREC Rules, Rules)
- \* Texas Property Code, Chapters 91 & 92 (Landlord and Tenant)
- \* National Association of Realtors® (NAR) Code of Ethics
- \* Texas Department of Insurance, Procedural Rule 53
- \* Real Estate Settlement Procedures Act (RESPA)
- \* Truth in Lending Act (TILA)
- \* Consumer Financial Protection Bureau rules (currently proposed)
- \* Can-Spam Act & Federal Trade Commission Tele-marketing Sales Rules (Do Not Call/Email/Fax)



### TREC RULES §535.2 – Broker Responsibility

- (a) A broker is required to notify a sponsored salesperson in writing of the scope of the salesperson's authorized activities under the Act. Unless such scope is limited or revoked in writing, a broker is responsible for the authorized acts of the broker's salespersons, but the broker is not required to supervise the salespersons directly. If a broker permits a sponsored salesperson to conduct activities beyond the scope explicitly authorized by the broker, those are acts for which the broker is responsible.
- (b) A broker owes the highest fiduciary obligation to the principal and is obliged to convey to the principal all information known to the agent that may affect the principal's decision unless prohibited by other law.
- (c) A broker is responsible for the proper handling of trust funds placed with the broker and must comply with §535.146 of this title.
- (d) A broker is responsible for any property management activity which requires a real estate license that is conducted by the broker's sponsored salespersons.
- (e) A broker may delegate to another license holder the responsibility to assist in administering compliance with the Act and Rules, but the broker may not relinquish overall responsibility for the supervision of salespersons sponsored by the broker. Any such delegation must be in writing.

- (f) Listings and other agreements for real estate brokerage services must be solicited and accepted in a broker's name.
- (g) A broker is responsible to ensure that a sponsored salesperson's advertising complies with §535.154 of this title.
- (h) Except for records destroyed by an "Act of God" such as a natural disaster or fire not intentionally caused by the broker, the broker must, at a minimum, maintain the following records in a format that is readily available to the Commission for at least four years from the date of closing, termination of the contract, or end of a real estate transaction:
  - (1) disclosures;
  - (2) commission agreements such as listing agreements, buyer representation agreements, or other written agreements relied upon to claim compensation;
  - (3) work files;
  - (4) contracts and related addenda;
  - (5) receipts and disbursements of compensation for services subject to the Act;
  - (6) property management contracts;
  - (7) appraisals, broker price opinions, and comparative market analyses; and
  - (8) sponsorship agreements between the broker and sponsored salespersons.
- (i) A broker shall maintain, on a current basis, written policies and procedures to ensure that:
  - (1) Each sponsored salesperson is advised of the scope of the salesperson's authorized activities subject to the Act and is competent to conduct such activities.
  - (2) Each sponsored salesperson maintains their license in active status at all times while they are engaging in activities subject to the Act.
  - (3) Any and all compensation paid to a sponsored salesperson for acts or services subject to the Act is paid by, through, or with the written consent of the sponsoring broker.
  - (4) Each sponsored salesperson is provided on a timely basis, before the effective date of the change, notice of any change to the Act, Rules, or Commission promulgated contract forms.
  - (5) In addition to completing statutory minimum continuing education requirements, each sponsored salesperson receives such additional educational instruction the broker may deem necessary to obtain and maintain, on a current basis, competency in the scope of the sponsored salesperson's practice subject to the Act.
- (6) Each sponsored salesperson complies with the Commission's advertising rules.
- (7) All trust accounts, including but not limited to property management trust accounts, and other funds received from consumers are maintained by the broker with appropriate controls in compliance with §535.146.
- (8) Records are properly maintained pursuant to Subsection (h).
- (j) A broker or supervisor delegated under Subsection (e) must respond to sponsored salespersons, clients, and license holders representing other parties in real estate transactions within three calendar days.
- (k) A sponsoring broker or supervisor delegated under Subsection (e) shall deliver mail and other correspondence from the Commission to their sponsored salespersons within 10 calendar days after receipt.
- (l) When the broker is a business entity, the designated broker is the person responsible for the broker responsibilities under this section.
- (m) This section is not meant to create or require an employer/employee relationship between a broker and a sponsored salesperson.

### TREC Case Study 1

Broker Darius did not have a written Buyer's Representation Agreement with Buyer Sue. Darius promised to pay Sue a one percent rebate of the sales price of a new home if Sue listed Darius on the new home sales contract, earning Darius a three percent commission. Darius specified that the rebate would be paid outside of closing. After closing, Darius received legal advice that he should not pay a rebate of the commission outside of the closing, because the lender had not been informed, and it would be illegal under RESPA. Therefore, Darius informed Sue that it would be illegal to pay the rebate and did not pay the promised rebate. Sue filed a complaint with TREC.

### DISCUSSION

Are there any violations of the Act or TREC rules if the rebate was not paid to avoid violation of RESPA?

# Chapter 2

## Scope of Activities and Authorization

### TREC Rules §535.2

- (a) A broker is required to notify a sponsored salesperson in writing of the scope of the salesperson's authorized activities under the Act. Unless such scope is limited or revoked in writing, a broker is responsible for the authorized acts of the broker's salespersons, but the broker is not required to supervise the salespersons directly. If a broker permits a sponsored salesperson to conduct activities beyond the scope explicitly authorized by the broker, those are acts for which the broker is responsible.
- (i) A broker shall maintain, on a current basis, written policies and procedures to ensure that:
  - (1) Each sponsored salesperson is advised of the scope of the salesperson's authorized activities subject to the Act and is competent to conduct such activities.

### Authority and Competency

TRELA §1101.002 defines the following:

**Person** An individual, partnership, corporation, limited liability company, or other legal entity, including a state agency or governmental subdivision

**Business Entity (Entity)** Any entity as defined by Business Organizations Code §1.002, Business Organizations Code (corporation, LLC, partnership, etc.)

**Real Estate** Any interest in real property, including a leasehold, located inside or outside Texas

**Salesperson** A person who is associated with a licensed broker for the purpose of performing real estate brokerage

**Real Estate Broker** A person who, for another person and for a fee, commission, or other valuable consideration, or with the expectation of receiving a commission or other valuable consideration from another person

- \* sells, exchanges, purchases, or leases real estate;
- \* offers to sell, exchange, purchase, or lease real estate;

- \* negotiates or attempts to negotiate the listing, sale, exchange, purchase, or lease of real estate;
- \* lists or offers, attempts, or agrees to list real estate for sale, lease, or exchange;
- \* auctions or offers, attempts or agrees to auction real estate;
- \* deals in options on real estate, including buying, selling, or offering to buy or sell options on real estate;
- \* aids, offers or attempts to aid in locating or obtaining real estate for purchase or lease;
- \* procures or assists in procuring a prospect to effect the sale, exchange or lease of real estate;
- \* controls the acceptance or deposit of rent from a resident of a single family residential real property unit, or
- \* provides a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion
  - » is not referred to as an appraisal;
  - » is provided in the ordinary course of the person's business, and is related to the actual or potential management, acquisition, disposition, or encumbrance of an interest in real property.

**Real Estate Broker** also includes a person who is employed by or for an owner of real estate to sell any portion of the real estate or engages in the business of charging an advance fee or contracting to collect a fee under a contract that requires the person primarily to promote the sale of real estate by

- \* listing the real estate in a publication primarily used for listing real estate, or
- \* referring information about the real estate to brokers.

A broker is required not only to explicitly tell a salesperson which brokerage activities a salesperson can perform while under the broker's supervision, but the broker must also have policies and procedures in place to ensure that the salesperson is competent to conduct any such authorized acts [TREC Rules §535.2 (a) & (i)].

What is an authorized act? Almost any act related to buying, selling, or leasing real estate by a license holder, when performed for another, and for or in

expectation of receiving valuable consideration, constitutes the practice of brokerage [Tx. Occ. Code §1101.002]. TREC may discipline brokers who fail to define the scope of authorized acts or fail to properly train their salespersons before authorizing them to conduct such acts.

If an act is performed for the license holder's own account, that action does not fall under the definition of brokerage. However, TREC may discipline license holders who buy, sell or lease property for their own account under certain circumstances [Tx. Occ. Code §1101.652(a) and TREC Rules §535.144].

Specifically, a license holder may not engage in fraud, deceit, or misrepresentation when buying, selling, or leasing property on his or her own account.

## Recruiting License Holders from Other Brokerages

There is no provision in the Act or the TREC Rules prohibiting a broker from recruiting a salesperson or broker-associate affiliated with another broker. Custom and courtesy within certain market areas may be taken into account, but they do not necessarily govern recruitment. Any questionable recruitment practice by a broker should be discussed with the broker's attorney for the purpose of avoiding allegations of interference with contractual relationships. Generally, however, recruitment of a salesperson by a broker is not regulated with the exception that instructors or other persons associated with a school may not recruit or solicit prospective salespersons or brokers in a classroom during class time [TREC Rules §535.65(1)].

**TREC Rules §535.2 (m) This section is not meant to create or require an employer/employee relationship between a broker and a sponsored salesperson.**

### Employee or Independent Contractor?

Must a salesperson be an employee or independent contractor? Depending on the model used in your office, do you understand the difference?

You probably know that real estate salespersons are considered, by statute, independent contractors for federal tax law purposes unless the broker chooses to hire the salesperson as an employee and treat them as an employee. Brokers who wish to preserve the independent contractor status should ensure that they have a written independent-contractor agreement and a memorandum of understanding with every broker and salesperson associated with the firm. An annual memorandum of understanding should be renewed, and TAR has promulgated forms 2301 and 2302 for this purpose.

Failure to obtain a written independent-contractor agreement could result in the broker being held liable for withholding of FICA and income taxes on commissions paid to salespersons. The annual memorandum of understanding solidifies any changes on the agreement and helps avoid the argument that the independent-contractor agreement was waived.

For other workers and other statutes, the definition of employee vs. independent contractor is not as clear. The IRS uses a 20-part test to determine whether a worker is an employee or independent contractor. The typical non-salesperson worker in a real estate office is likely to be considered an employee by the IRS, and the employing entity is likely to be liable for paying the employer's portion of the FICA and income-tax withholding (as well as withholding the employee's portion) for the worker. If a broker wishes to treat a worker other than a salesperson as an independent contractor, it would be advisable to consult an attorney regarding the structure of the arrangement to avoid liability for failure to withhold taxes. For salespersons, the broker should try to adhere to the 20-point test to avoid allegations by a disgruntled salesperson that, for the purposes of state unemployment laws, the salesperson was an employee.

Excerpted from "Employee vs. Independent Contractor" by Tom Morgan, Texas Realtor Magazine, April 2003, Used with permission from Texas Association of Realtors®

## Errors and Omissions Policy

TRELA §1101.355 and TREC Rules §535.53 require Errors and Omissions (E&O) insurance for a designated broker for an entity in which the broker does not own 10 percent or more of the entity. Other than §1101.355 and §535.53, the broker makes the independent decision whether to buy E&O coverage for the brokerage.

An E&O policy is a contract between the insurance company and the broker/license holder; therefore, each policy should be scrutinized to determine coverage issues and duties of the insured. Most E&O policies require timely and full disclosure of potential claims.

Brokers/license holders may wish to consider creating a written risk management policy that includes but is not limited to

- \* broker safety,
- \* client safety,
- \* cell phone use,
- \* check lists for office personnel,
- \* listing and contract files,
- \* copyright and license obligations, and
- \* other risk management issues the broker deems necessary.

## DISCUSSION

1. What are the best methods to communicate limitations on activities?
2. Knowing that I am responsible for my salespersons, am I required to have E&O coverage? If not required, what are the reasons I might want to have E&O?
3. What does my policy cover?
4. What could be covered by my E&O policy?
5. When should I notify my E&O carrier of threats of action?
6. What is the difference between civil liability and my responsibility to adhere to TRELA and the TREC rules?

## TREC Case Study 2

Broker Lydia was the designated broker for Happy Buyer Realty, which had a listing on a house through sponsored Salesperson Eddie. Eddie found a buyer for the house and prepared a contract representing both parties. No consent to intermediary was obtained. The sales contract did not show that the transaction was subject to financing approval, and no financing addendum was attached, even though financing was contemplated. The parties entered into a temporary lease prior to closing, and the sellers agreed to this if the earnest money was increased to \$1,500. The closing and the lease were extended. The buyer became delinquent in rent. Eddie prepared a Release of Earnest Money, which all parties signed; the release named the buyer as receiving the earnest money. Eddie then delivered the earnest money to the sellers to be used to offset the delinquent rent. There was a dispute as to whether the buyer authorized Eddie to deliver the earnest money to the sellers. The sale did not close because the buyer did not qualify for financing. Lydia was unaware of Eddie's action in this transaction.



# Chapter 3

## Fiduciary Responsibility/Agency

### TREC Rules §535.2 (b)

A broker owes the highest fiduciary obligation to the principal and is obliged to convey to the principal all information known to the agent that may affect the principal's decision, unless prohibited by other law.

### Representation

Commonly, a real estate broker will enter into an agreement to represent a buyer, seller, landlord or tenant. While it is prudent for the broker and the client to have the agreement in writing, the agreement to represent another party may also be established by an oral agreement or by implication from the parties' actions. Once an agreement to represent a party exists, an agency relationship is created and the broker has fiduciary obligations to the client.

### General Fiduciary Duties

In Texas, the general fiduciary duties a broker owes to his or her client are loyalty, good faith, honesty, refraining from self-dealing, integrity, fair and honest dealing, and disclosure.

### Specific Duties

The specific duties a broker owes to his or her client, which are described in TREL A or the TREC Rules, may be summarized in the following categories.

- \* The broker must represent the interest of the client as his or her primary duty. The broker is to be faithful to the client and be observant (mindful) of the duty of trust. The broker may not place his or her personal interest above the client's interest.
- \* The broker must disclose to his or her client any conflict of interest or any matter that would materially affect the client's decision in a transaction.
- \* The broker must be clear to all parties in a transaction whom the broker represents.
- \* When performing brokerage duties, the broker is to
  - » act meticulously and scrupulously;



- » exercise integrity;
- » employ prudence and caution to avoid any misrepresentation;
- » exercise judgment and skill; and
- » not act negligently, in an untrustworthy or dishonest manner, or in bad faith.
- \* The broker is to keep informed about his or her practice, the market and developments in the industry.
- \* The broker must keep the client informed of material information related to a transaction, including but not limited to the receipt of any offer.
- \* The broker must be available to answer the client's questions.
- \* The broker must give the client a proper accounting of all funds received in the transaction. The broker may not commingle any funds held for another with the broker's own funds.

TRELA and the TREC Rules also specify duties the broker has to other persons who may or may not be the broker's clients. For example, the broker must disclose to a buyer all known material defects of a property, regardless of whether the buyer is the broker's client. Additionally, a broker may not publish advertisements that are misleading or that fail to include the required statutory disclosures. These obligations are more commonly known as compliance obligations and are not necessarily fiduciary in nature.

If a dissatisfied client is successful in establishing a

breach of a fiduciary duty in court, the remedies may include, but are not limited to

- \* actual damages resulting from the breach (out-of-pocket losses or lost profits), as well as mental anguish damages foreseeable as a result of the breach;
- \* fee forfeiture; and
- \* exemplary damage when the breach is intentional or done willfully with no regard for the interest of the client.

Section 1101.652 (b) of the Act lists the types of violations for which TREC may suspend, revoke or take other disciplinary action against a license holder.

### **Section 1101.652 Grounds for Suspension or Revocation of License**

(b) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder, while acting as a broker or salesperson:

- (1) acts negligently or incompetently;
- (2) engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness;
- (3) makes a material misrepresentation to a potential buyer concerning a significant defect, including a latent structural defect, known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property;
- (4) fails to disclose to a potential buyer a defect described by Subdivision (3) that is known to the license holder;
- (5) makes a false promise that is likely to influence a person to enter into an agreement when the license holder is unable or does not intend to keep the promise;
- (6) pursues a continued and flagrant course of misrepresentation or makes false promises through an agent or salesperson, through advertising, or otherwise;
- (7) fails to make clear to all parties to a real estate transaction the party for whom the license holder is acting;
- (8) receives compensation from more than one party to a real estate transaction without the full knowledge and consent of all parties to the transaction;
- (9) fails within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person;

- (10) commingles money that belongs to another person with the license holder's own money;
- (11) pays a commission or a fee to or divides a commission or a fee with a person other than a license holder or a real estate broker or salesperson licensed in another state for compensation for services as a real estate agent;
- (12) fails to specify a definite termination date that is not subject to prior notice in a contract, other than a contract to perform property management services, in which the license holder agrees to perform services for which a license is required under this chapter;
- (13) accepts, receives, or charges an undisclosed commission, rebate, or direct profit on an expenditure made for a principal;
- (14) solicits, sells, or offers for sale real property by means of a lottery;
- (15) solicits, sells, or offers for sale real property by means of a deceptive practice;
- (16) acts in a dual capacity as broker and undisclosed principal in a real estate transaction;
- (17) guarantees or authorizes or permits a person to guarantee that future profits will result from a resale of real property;
- (18) places a sign on real property offering the real property for sale or lease without obtaining the written consent of the owner of the real property or the owner's authorized agent;
- (19) offers to sell or lease real property without the knowledge and consent of the owner of the real property or the owner's authorized agent;
- (20) offers to sell or lease real property on terms other than those authorized by the owner of the real property or the owner's authorized agent;
- (21) induces or attempts to induce a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract;
- (22) negotiates or attempts to negotiate the sale, exchange, or lease of real property with an owner, landlord, buyer, or tenant with knowledge that that person is a party to an outstanding written contract that grants exclusive agency to another broker in connection with the transaction;

- (23) publishes or causes to be published an advertisement, including an advertisement by newspaper, radio, television, the Internet, or display, that misleads or is likely to deceive the public, tends to create a misleading impression, or fails to identify the person causing the advertisement to be published as a licensed broker or agent;
- (24) withholds from or inserts into a statement of account or invoice a statement that the license holder knows makes the statement of account or invoice inaccurate in a material way;
- (25) publishes or circulates an unjustified or unwarranted threat of a legal proceeding or other action;
- (26) establishes an association by employment or otherwise with a person other than a license holder if the person is expected or required to act as a license holder;
- (27) aids, abets, or conspires with another person to circumvent this chapter;
- (28) fails or refuses to provide, on request, a copy of a document relating to a real estate transaction to a person who signed the document;
- (29) fails to advise a buyer in writing before the closing of a real estate transaction that the buyer should:
  - (A) have the abstract covering the real estate that is the subject of the contract examined by an attorney chosen by the buyer; or
  - (B) be provided with or obtain a title insurance policy;
- (30) fails to deposit, within a reasonable time, money the license holder receives as escrow agent in a real estate transaction:
  - (A) in trust with a title company authorized to do business in this state; or
  - (B) in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state;
- (31) disburses money deposited in a custodial, trust, or escrow account, as provided in Subdivision (30), before the completion or termination of the real estate transaction;
- (32) discriminates against an owner, potential buyer, landlord, or potential tenant on the basis of race, color, religion, sex, disability, familial status, national origin, or ancestry, including directing a prospective buyer or tenant interested in equivalent properties to

a different area based on the race, color, religion, sex, disability, familial status, national origin, or ancestry of the potential owner or tenant; or

- (33) disregards or violates this chapter.

## DISCUSSION

A common area of concern involves the early termination of listing or buying representation agreements.

1. I am the listing agent. The seller wants to terminate the listing before the end of the listing. What should I do, and what are my rights?
2. I am the buyer's agent. The buyer wants to terminate representation before the end of the buyer representation agreement. What should I do, and what are my rights?
3. A buyer informs me that he wants me to represent him. The buyer informs me that he may be subject to a buyer representation agreement with another broker. How should I proceed?
4. I began working with a buyer, but I did not sign a buyer representation agreement with the buyer. I think that the buyer has started working with another agent and may be looking at some of the same properties I showed or called to the buyer's attention. How should I proceed, and what are my rights?

## TREC Case Study 3

Broker Jamal sponsored Salesperson Crystal. Over the span of 14 months, TREC received five complaints against Crystal and Jamal. In all five transactions, Jamal, individually or by and through Crystal, failed to provide the Information About Brokerage Services to the seller. In three of the transactions, Jamal was acting as intermediary, but neither he nor Crystal obtained prior written consent to intermediary from either party. In two transactions, the property was listed in the Gillespie County MLS even though the property

was located in the Kerrville MLS jurisdiction. At the same time the properties were listed in MLS, a notation was added falsely stating that there was a contract pending. In another transaction, the property, which again was located in the Kerrville MLS jurisdiction, was listed first in the Highland Lakes Association of Realtors MLS, and then one month later in the Central Hill Country Board of Realtors MLS (which did include Kerrville).

### DISCUSSION

1. Does placing the property in an MLS other than the MLS where the property is located a violation of TREC rules? Of NAR Code of Ethics? Of local MLS rules? Why or why not?
2. Does it make a difference if the listing agreement required the Broker to “list the property in the appropriate local multiple listing service for the property?”
3. Does it make a difference if, in the first two transactions, Crystal then negotiated a contract for the sale of the first two properties to a relative of Jamal?
4. Does it make a difference if, in the third transaction, Jamal knew that Broker Martha had a client interested in the property and Jamal told her he would let her know when the property was listed in the Kerrville MLS and that Jamal only told Martha that he listed the property in a Kerrville MLS after he had completed negotiation of a contract where he was acting as intermediary?

# Chapter 4

## Trust Funds



### TREC Rules §535.2 (c) Trust Funds

A broker is responsible for the proper handling of trust funds placed with the broker and must comply with §535.146 of this title.

### TREC Rules §535.146

#### Maintaining Trust Money

- (a) Definitions. In this section:
  - (1) “Trust money” means client’s money, earnest money, rent, unearned fees, security deposits, or any money held on behalf of another person.
  - (2) “Trust account” means an account managed by one party for the benefit of another in a banking institution authorized to do business in Texas.
- (b) Acceptance of Trust Money.
  - (1) Any trust money accepted by a broker is held in a fiduciary capacity and must be maintained in a designated trust account maintained by the broker or delivered to an escrow agent authorized in Texas in accordance with the agreement of the principals of the transaction.
  - (2) A salesperson shall not maintain a trust account. Any trust money received by a salesperson must be immediately delivered to the salesperson’s sponsoring broker.
  - (3) Unless a different time to deposit trust money is expressly agreed upon in writing by the principals to the transaction, any trust money received by the broker must be deposited in a trust account or delivered to an authorized escrow agent within a reasonable time, which the Commission has determined to be not later than the close of business of the second working day after the date the broker receives the trust money.
- (4) The broker shall not:
  - (A) commingle trust money with the broker’s personal money or other non-trust money; or
  - (B) deposit or maintain trust money in a personal account or any kind of business account.
- (5) The following is prima facie evidence of commingling trust money with the broker’s own money:
  - (A) placing trust money in a broker’s personal or operating account; or
  - (B) paying operating expenses or making withdrawals from a trust account for any purpose other than proper disbursement of trust money.
- (c) Trust account requirements.
  - (1) The trust account must be clearly identified as a trust account.
  - (2) The broker may, but is not required to, maintain separate trust accounts for each client or type of trust money maintained by the broker, such as earnest money deposits or security deposits received for the management of rental property.
  - (3) If trust money held by a broker is deposited in an interest bearing account:
    - (A) the money must be available for disbursement at the appropriate time; and
    - (B) unless otherwise provided for by an agreement signed by the party depositing the money with the broker, any interest earned on the money must be distributed to any parties to whom the money is disbursed.

- (4) A broker may deposit and maintain a reasonable amount of money in the trust account to cover bank service fees, including fees charged for insufficient funds. Detailed records must be kept for any funds deposited under this exception.
  - (5) If a broker acquires ownership of trust money held in a trust account, including entitlement to compensation, such money must be removed from the trust account not later than the 30th day after the date the broker acquires ownership of the money.
  - (6) The broker must retain a documentary record of each deposit or withdrawal from the trust account.
  - (7) A broker may only authorize another license holder to withdraw or transfer money from any trust account but the broker remains responsible and accountable for all trust money received by that broker and all deposits to or disbursements from the trust account.
  - (8) If a broker deposits trust money in the form of a check in a trust account and the check is dishonored by the financial institution on which it was drawn, the broker shall immediately notify all parties to the transaction in writing.
- (d) Disbursement of trust money.
- (1) A broker may only disburse money from the broker's trust account in accordance with the agreement under which the money was received.
  - (2) If any or all of the parties to a real estate transaction make a written demand for trust money, the broker must pay the trust money to the party or parties entitled to the money within a reasonable time, which the Commission has determined to be not later than the 30th day after the date the demand is made.
  - (3) If by a subsequent written agreement, all parties to a real estate transaction authorize the broker maintaining trust money to disburse the trust money in a manner not in accordance with the agreement under which the money was received, the broker must pay the trust money to the party or parties entitled to the money under the subsequent written agreement within a reasonable time, which the Commission has determined to be not later than the 30th day after the date the broker receives the subsequent written agreement.
- (4) The broker must immediately notify all parties in writing of any disbursement of trust money.
  - (5) If the broker cannot reasonably determine to which party or parties the trust money should be paid, the broker may pay the trust money into the registry of a court and interplead the parties.
- (e) Records. A broker must maintain all documentation regarding a trust account for four years from the date the document is received or created by the broker.

## DISCUSSION

1. May property deposits be placed in my brokerage operating account?
2. May a salesperson have a trust account?
3. Who may be authorized to deposit and withdraw money from the trust account?
4. What are you able to use trust funds for?
5. What documentation do I need to put trust funds in an interest-bearing account?
6. Is it legal to keep some of my own money in a trust account to cover bank fees?
7. Am I allowed to pay myself a commission out of the trust account?
8. Do I have to keep separate trust accounts for security deposits for each property or client?

## A Broker's Tale

### A Salesperson Shall Not Maintain a Trust Account

"In two separate conversations this year, I have discussed with two sales teams their property management activities. Both teams manage multiple properties and keep their own trust accounts for depositing rents and security deposits. When I questioned one team, they assured me their broker allowed them to manage clients' properties and keep a trust account. The other said their broker was unaware of their property management, but they didn't realize they were violating any rules. I recommended that this couple talk to their broker immediately."

# Chapter 5

## Property Management

### TREC Rules §535.2 (d)

A broker is responsible for any property management activity which requires a real estate license that is conducted by the broker's sponsored salespersons.

#### A Broker's Tale

##### Check the Right Box

"My broker policy states that salespersons may lease property only and not conduct property management. One of my salespersons checked the box in the lease agreement that the broker was managing the property. He then asked the tenant to make the security deposit check out to me and the first month's rent to the owner.

"When the lease was up and the tenants wanted their deposit back, the owner refused to give it back to the tenant for various reasons. The tenant contacted me and said that I had the deposit, and they wanted the money back. I was not aware that the security deposit check had been made to me and had paid most of the month's rent as commission to the salesperson.

"I investigated and told my salesperson that he was in violation of the company policy of not conducting property management. He responded that his unlicensed assistant had written up the form and checked the wrong box in error. TREC investigated and gave my salesperson a reprimand, and I fired him."

#### Leasing Agent Responsibilities

Many brokers list homes for lease without the intention of providing property management services. Even when the lease form states the broker won't be providing property management services, landlords and tenants are often confused about the role the leasing agent plays. Simply put, the duty of the broker and the sponsored salesperson ends when the lease is signed between the landlord and the tenant. Situations arising after the lease is signed, such as rekeying the home, tenant walk through, and problems occurring during



the leasing period are considered property management services and fall outside the scope of the services that a leasing agent provides. Some leasing agents will sometimes perform duties that cross the line into property management services, because they want to be helpful. However, providing property management services without a written agreement to do so can result in undesired consequences and should be avoided.

#### Property Management Responsibilities

Different responsibilities arise if a broker is acting as a manager of real estate, rather than simply as a broker in a sales transaction. In addition to leasing activities, duties to owners and third parties in this situation relate to service contracts for services to be performed on a particular project, as well as to properly maintaining the property, so no one suffers an injury caused by the broker's negligence in maintaining the property.

Property management complaints have been on the rise at TREC in recent years. Most of these cases involve misappropriation, commingling, failure to properly account for rents or security of deposits received or negligence in the performance of property management duties. These pointers will assist brokers and salespersons when engaging in property management:

- \* **CLARIFY AUTHORITY/RESPONSIBILITY.** A salesperson may not perform property management activity that requires a license except through that salesperson's sponsoring broker [TRELA §1101.351(c)]. Although a salesperson may own

a property management firm, the business must be conducted through the salesperson's sponsoring broker. A broker is responsible for any property management activity, which requires a real estate license, and that is conducted by the broker's sponsored salespersons [TREC Rules §535.2(d)]. If a broker does not authorize salespersons to manage property, the broker must make clear in writing that limitation on the scope of their authorized activities [TREC Rules §535.2(a)].

- \* **KNOW YOUR AUTHORITY/DUTIES UNDER YOUR AGREEMENT.** The property management agreement sets out what a broker is authorized to do for the owner and what the broker is expected to do. Although TREC does not have jurisdiction over disputes regarding contract terms, if the broker exceeds the authorization or fails to fulfill the broker's duties, TREC could consider that to be negligence and the broker could be subject to discipline. For example, did the property management agreement allow the broker to execute the lease on behalf of the landlord? Were periodic written accountings provided as required by property management agreement? Did the broker obtain permission to pay for a repair that was over the stated limit in the agreement?
- \* **UNDERSTAND LANDLORD REQUIREMENTS UNDER THE PROPERTY CODE.** Under most property management agreements, the duties of and requirements placed on the landlord under the Property Code become the responsibility of the property manager as the landlord's agent. TREC can look at the property manager's conduct to see if what the manager did or did not do hurt the property owner's interest. For example, once a tenant vacates a leased property, failure to provide a written accounting within 30 days could subject the property owner to a number of monetary penalties. The manager should also keep documentation to prove that any deductions taken from the security deposit are reasonable. See Property Code §92.109. Brokers engaged in property management or leasing residential properties should become familiar with Texas Property Code Chapter 92. Brokers in commercial property management and leasing should be familiar with Chapter 91, as well as TREC rules.
- \* **USE A BROKER'S TRUST ACCOUNT.** Any money received on behalf of a landlord must always be deposited into a broker's trust account. A salesperson may not operate a trust account. A broker is prohibited from commingling trust account funds with the broker's own funds [TRELA §1101.652(b)

(10)]. Paying operating expenses or making withdrawals from a broker's trust account for any purpose other than proper disbursement of money held in trust is evidence of commingling [TREC Rules §535.146(b)(5)].

- \* **RESPOND AND REMIT TIMELY.** A broker is required to properly account for or remit money received on behalf of another person within a reasonable time [TRELA §1101.652 (b)(9) and TREC Rules §535.146(c)(6)].
- \* **KEEP GOOD RECORDS.** Keeping accurate records is required [TREC Rules §535.2(h)], and it just makes good business sense. In many cases, good documentation helps prove that the broker did not violate the Act or TREC Rules. Documents that should be kept include
  - » property management agreements,
  - » lease application forms,
  - » executed leases,
  - » move-in property condition forms,
  - » written move-out notice from tenants,
  - » tenants' written notice to manager of forwarding addresses,
  - » written accounting of security deposit provided by property managers, and
  - » copies of checks.

## DISCUSSION

1. I have an associate who is conducting property management in violation of our policy against property management activities. What do I do?
2. If my brokerage does not allow property management, may I conduct property management on my own?
3. For someone else?
4. What if I indemnify the broker?

## TREC Case Study 4

Broker Mildred entered into a one-year exclusive right-to-lease listing agreement with an owner of a fourplex in Austin. The listing agreement provided for a commission of 80 percent of the first month's rent for each lease and a flat fee of \$75 for each renewal. The agreement did not provide for property management by Mildred and specifically stated that Mildred may not arrange for contractors to make repairs or alterations to the property. Under special provisions, the agreement specified that Mildred would collect the security deposit and first month's rent and run any credit/background checks on possible tenants prior to move in. It also stated that the 80 percent commission would be removed from first month's rent, 50 percent paid to leasing agent and remaining 30 percent to be split at a rate of 25 percent to Mildred and 5 percent to owner.

The four units were leased. Mildred had her son mow and do some repairs to the fourplex, because she wanted to help out the owner. It was her understanding the owner would pay her son for the work that was done. On another occasion, one of the tenants called the broker, when the tenant could

not reach the owner, to report that there had been a break-in to the unit, and the front door was broken. Mildred bought a steel door and lock to secure the unit for the tenant that night until the owner could be reached to order a new door. The owner was upset with Mildred for installing a non-conforming door without authority from the owner.

The next year, three of the tenants renewed their leases directly with the owner. There was some dispute between the owner and Mildred as to whether the rental listing agreement was renewed or not, but both agreed that Mildred found a tenant for the fourth unit. The security deposit and first month's rent was paid to Mildred in the same manner as set out in the rental listing agreement. The money was deposited in Mildred's operating account. Mildred did not keep a record of receipts and disbursements for the checks received.

### DISCUSSION

1. What issues do you see with this arrangement?
2. Why do you think a complaint was ultimately filed with TREC?

## TREC Case Study 5

Broker Rosa was the sponsoring broker of Salesperson Stanley. Stanley owned a company that he used to perform property management. Stanley entered into two commercial property management agreements with a local bank. Both agreements provided that Stanley, through Rosa, would remit rents collected less authorized deductions to the bank on a monthly basis. After six months, the bank was owed \$12,232 on one property and \$12,527 on the other for rents collected. Stanley issued two checks to the bank for these amounts from his own operating business account. Both checks were returned for insufficient funds. Stanley claimed that he was the sole owner of the property management company and Rosa had no involvement. Rosa was not aware of the business name or bank account that Stanley used for property management.

In other transactions, Stanley formed a partnership with an investor to purchase commercial properties. Stanley individually handled the purchase of the properties for the partnership and was listed on the contracts, with Rosa, as the buyer's agent and was paid commissions through Rosa at the closing of the purchases. Title was not properly conveyed to

the partnership in the first transaction. In the second transaction, the other investor partner gave Stanley cash to pay for the property, but Stanley financed the purchase and used most of the money for other purchases. That property was subsequently foreclosed upon by the lender. In the third transaction, \$50,000 earnest money was given to Stanley by an investor to purchase a ranch property through the partnership. The contract was terminated and a release of earnest money was signed to return the earnest money to the sellers. Stanley convinced the title company to release the money directly to him. The sellers filed a lawsuit against the partnership and the title company. Complaints were filed against Stanley by the bank and the investor. Rosa claimed she was unaware of any of these transactions, despite commissions being paid through her on the first two transactions.

### DISCUSSION

1. What issues do you see with this arrangement?
2. Why do you think a complaint was ultimately filed with TREC?

## TREC Case Study 6

Broker Noah entered into a residential property management agreement with Owner Abe. Broker Emily, who was a former salesperson for Noah, managed Abe's property for Noah while a salesperson and then took over full management of the property when she became a broker herself. Emily did not have Abe sign a new property management agreement listing, but continued managing the property under the agreement signed with Noah.

Emily entered into a residential property management agreement with Owner Skip to manage two properties. The mother of Skip engaged Emily to also manage four properties she owned. Emily added

these properties under the existing agreement with Skip as she was told the mother wanted the son to handle all of the properties.

Emily's husband assisted her with the property management duties. Her husband had previously been licensed as an agent. Four leases for Skip or his mother's properties were signed by the husband for the landlord.

### DISCUSSION

What issues do you see with this arrangement?

# Chapter 6

## Delegated Licensed Supervisor



### TREC Rules §535.2 (e)

A broker may delegate to another license holder the responsibility to assist in administering compliance with the Act and Rules, but the broker may not relinquish overall responsibility for the supervision of salespersons sponsored by the broker. Any such delegation must be in writing.

### DISCUSSION

1. By policy, who in a brokerage should be a designated, licensed supervisor?
2. How does a broker effectively make the delegation?
3. Which duties may be delegated?

### Relationship Management Tool (Appendix A)

The TREC website includes a relationship management tool (RMT), which can be used to manage broker/salesperson relationships. The RMT is located on TREC's "My License Online Services," which can be accessed from TREC's website. License holders need to log on to their account and access the RMT by clicking the dropdown menu under "Update License Information" and select "Manage My Sponsorship" for salespeople, and "Manage My Salesperson Sponsorship" for brokers.

### Relationship Management Tool (RMT) Highlights

- \* The RMT can be used for sponsorship requests, termination requests, and designation of supervisory or inactive status.
- \* License holders are required to have a current email address on file with the agency to use it.
- \* Both sales and broker license holders can initiate, accept and decline sponsorship requests.
- \* Invitations are not sent to recipient until the fee is paid by the initiator.
- \* As soon as the requested party accepts the invitation, sponsorship is effective immediately.
- \* License holders will receive a copy of their new license within 24 hours.
- \* Status of sponsorship will be reflected in the license holder look up within 24 hours.
- \* Fees are not refundable, even when the invitation is not accepted.

See Appendix A for the complete RMT user guide.



# Chapter 7

## Advertising/Assumed Names

### TREC Rules §535.2 (g)

A broker is responsible to ensure that a sponsored salesperson's advertising complies with §535.154 of this title.

### TREC Rules §535.154

- (a) For the purposes of this section, an "advertisement" is a written or oral statement or communication by or on behalf of a license holder which induces or attempts to induce a member of the public to use the services of the license holder 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 license holder 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 license holder to a member of the public after the member of the public agreed for the license holder to provide services, provided the first communication from the license holder contains the information required by this section; or
  - (2) real estate information, including listings, available to the public on a license holder'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 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 license holder 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 license holder may not utilize a copyrighted trade name unless the license holder has legal authority to use the name.
- (j) A real estate license holder placing an advertisement on the Internet, electronic bulletin board or the like must include on each page on which the license holder'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 license holder 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 license holder 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 license holder's commission must disclose that payment of the rebate is subject to the consent of the party the license holder 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 license holder and the license holder expects to receive compensation if a party uses those services, the advertisement must contain a disclosure that the license holder may receive compensation from the service provider.
- (o) A license holder may not advertise information regarding service providers that ranks such providers unless the ranking is based on disclosed objective criteria.
- (p) A license holder may not advertise that such license holder offers, sponsors, or conducts commission approved courses in conjunction with an approved school or other approved organization unless the license holder is approved by the commission to offer such courses.

### Safe Harbor Policy

TREC has adopted a safe harbor policy for staff and enforcement to use in directing license holders as to what might be considered clear and conspicuous in advertising. On a sign or other advertising media, the broker's name or assumed name must be at least 50 percent of the size of the largest item of contact information.

### DISCUSSION

Tell what's wrong with each sample ad (Appendix B).

### A Broker's Tale Open House Signs

"I just paid a fine to TREC because someone in my office placed open house signs on public property (\$500 per sign). The signs had no agent name, so I was fined, because I'm the sponsoring broker. No one will admit who placed the signs, but be assured we're going to have an extensive training session on sign placement and other advertising, too!"

### TREC Case Study 7

Broker Linh published an Internet advertisement to lease an Austin property on his website. Linh did not have permission from the owner of the property or the owner's agent to offer the property for lease. Salesperson Jonas, who was sponsored by Linh, then advertised the property for lease on Craigslist. The advertisement on Craigslist did not state Linh's name or identify Jonas as an agent.

# Chapter 8

## Record Keeping

### TREC Rules §535.2 (h)

Except for records destroyed by an “Act of God” such as a natural disaster or fire not intentionally caused by the broker, the broker must, at a minimum, maintain the following records in a format that is readily available to the Commission for at least four years from the date of closing, termination of the contract, or end of a real estate transaction:

- (1) disclosures;
- (2) commission agreements such as listing agreements, buyer representation agreements, or other written agreements relied upon to claim compensation;
- (3) work files;
- (4) contracts and related addenda;
- (5) receipts and disbursements of compensation for services subject to the Act;
- (6) property management contracts;
- (7) appraisals, broker price opinions, and comparative market analyses; and
- (8) sponsorship agreements between the broker and sponsored salespersons.

### Maintaining Records

The importance of properly maintaining records in current and past transactions is well established. The above rule lists only those records that TREC requires of brokers. There are other laws and purposes that suggest or require a broker to develop a more comprehensive records retention and destruction policy for a period longer than four years. For example, brokers should consider laws governing taxes, corporate structures and operations, privacy policies, and financial accountability (to name a few). Additionally, consideration should be given to other benefits of such a policy, such as the development of historical databases, risk reduction and responses to possible litigation. All these reasons encourage brokers to maintain organized records and adhere to well-drafted records retention and destruction policies.

### Personal Information

Chapter 521 of the Texas Business and Commerce Code requires a business to have procedures to protect against the unlawful use or disclosure of sensitive personal information received in the regular course of business. It requires the business to destroy such records that are not required or needed for business operations. Sensitive personal information includes an individual’s first name or first initial and last name in combination with any one or more of the following:

- \* Social Security number;
- \* driver’s license number or government-issued identification number;
- \* account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual’s financial account; or
- \* information that identifies an individual and relates to the physical or mental health or condition of the individual, the provision of health care to the individual, or payment for the provision of health care to the individual.

### DISCUSSION

1. What are the goals of a well-drafted records retention and destruction policy?
2. Define “records” for the purpose of a records retention and destruction policy.
3. Classifying records into certain categories is helpful in developing a records retention and destruction policy. What are some of the categories that might be used?
4. For each of the categories identified in question 3, assign a period of time to retain the record. Why did you choose the amount of time assigned to each?

**(Discussion cont.)**

5. How are the records of the organization received and how does the organization want the records stored either on a temporary or permanent basis?
6. Does the organization have a policy about the destruction of information received in formats that it does not keep permanently or for a long period of time?
7. How and when are files destroyed (both paper and electronic)? Who is responsible for enforcing the broker's file destruction policy?
8. As independent contractors, agents may maintain their own files (on their own computers, at home, etc.). What policies does the broker require of the agent with respect to these files?
9. Does the brokerage operation have a privacy policy in place concerning the receipt, storage and transmission of personal information? What is personal or private information? What should the privacy policy look like? If personal information is in a permanent file, is the personal information redacted or eliminated? Does the organization have a method to determine where personal information may be received and how it is handled or processed?
10. Does the organization educate its employees and agents about the policies under this section? Describe such educational efforts.
11. Is there need in some brokerages for multiple records retention and destruction policies (firms with departments or divisions)?

# Chapter 9

## Written Policies

### TREC Rules §535.2 (i)

A broker shall maintain, on a current basis, written policies and procedures to ensure that:

- (1) Each sponsored salesperson is advised of the scope of the salesperson's authorized activities subject to the Act and is competent to conduct such activities.
- (2) Each sponsored salesperson maintains their license in active status at all times while they are engaging in activities subject to the Act.
- (3) Any and all compensation paid to a sponsored salesperson for acts or services subject to the Act is paid by, through, or with the written consent of the sponsoring broker.
- (4) Each sponsored salesperson is provided on a timely basis, before the effective date of the change, notice of any change to the Act, Rules, or Commission promulgated contract forms.
- (5) In addition to completing statutory minimum continuing education requirements, each sponsored salesperson receives such additional educational instruction the broker may deem necessary to obtain and maintain, on a current basis, competency in the scope of the sponsored salesperson's practice subject to the Act.

- (6) Each sponsored salesperson complies with the Commission's advertising rules.
- (7) All trust accounts, including but not limited to property management trust accounts, and other funds received from consumers are maintained by the broker with appropriate controls in compliance with §535.146.
- (8) Records are properly maintained pursuant to Subsection (h).

### Additional Policy Topics

The following topics are additional areas for which a broker might need a written policy.

#### Receiving Compensation

Under TREC Rules §535.148, a license holder may not receive compensation from someone other than the person whom the client represents unless the license holder obtains the client's consent. This does not apply to referral fees between license holders.

#### Compensation from a Service Provider

If a license holder intends to accept compensation from a service provider for referring a non-client to the service provider, the license holder must also obtain the consent of that person (non-client). As used in this rule, the term "service provider" is not limited to Settlement

## DISCUSSION

1. Based on what you learned in Chapter 2, what might be the written policies a broker could create to assure basic competencies in the areas and disciplines the broker will authorize a salesperson to engage in?
2. Based on what you learned in chapter 7 and what you know about the rules, what would be the minimum policy you might create as a broker to assure compliance with the rules? What would be your minimum oversight of compliance with the rules in all media types?
3. Based on what you learned in Chapter 5, what might a policy need to include to comply with the requirement for this section of the Rules?
4. Discuss ways in which a brokerage can
  - \* make sure the agents' licenses do not expire;
  - \* insure the broker is aware of any and all compensation the agents receive;
  - \* keep the agents informed of changes in TREC's Act, its Rules, or its forms; and
  - \* make sure that agents satisfy the educational requirements the broker requires.

Service Providers as defined by RESPA. It includes any person who provides a service to a consumer.

A license holder may not enter into a contract with a service provider to provide services on behalf of the service provider in a transaction if the contract is exclusive (prohibits the license holder from offering similar services on behalf of other service providers). For example, if a broker agrees to perform compensable services for a home warranty company (that does not otherwise violate RESPA), the agreement should not be exclusive so as to prohibit the broker from offering those same services to other home warranty companies.

A license holder may not accept compensation from a service provider if the license holder provides a service on behalf of the service provider and the compensation is contingent on a party in the transaction purchasing a contract or service from the service provider.

### **Compensation from a Residential Service Company**

A license holder must use Form RSC-1, Disclosure of Relationship with Residential Service Company if the license holder (or the brokerage firm) will receive compensation from the residential service company. The compensation to the broker or salesperson may be in any form, such as a one-time payment or a periodic payment, under a contract between the broker and the residential service company.

### **License Holders Buying or Selling Their Own Property**

#### **Tx. Occ. Code §1101.652(a)(3) and TREC Rules §535.144**

A broker should maintain a policy related to transactions in which a license holder is involved in buying or selling his or her own property. Items to consider when developing such a policy include

- \* a determination from the broker's E&O provider on coverage in such transactions,
- \* how much property is advertised,
- \* disclosure of the license status in or contemporaneous with the contract,
- \* whether the license holder must be represented by another license holder in the firm when listing property owned by the license holder.

### **Sharing Fees with Attorneys**

The Texas Real Estate License Act prohibits brokers from sharing fees received for services as a real estate agent with anyone not licensed as a real estate broker or salesperson in Texas or any other state. With such seemingly clear statutory prohibitions, why is this still an issue with many brokers?

### **When an Attorney Performs a Brokerage Service**

Attorneys are exempt from any of the provisions of the Texas Real Estate License Act. They are permitted to represent clients in real estate transactions by virtue of their license to practice law.

That representation could include those actions typically referred to as real estate brokerage services.

Because brokers cannot share their fees with attorneys who perform a brokerage service, attorneys must seek compensation for that service directly from one of the principals in a transaction.

It is permissible for listing brokers to reduce their fee agreement with a seller, so that the seller can pay an attorney for his or her services, whether those services are performed for the seller or buyer.

Such a reduction of the listing fee would be a matter of private agreement between the listing broker and the seller. While brokers are not required to forgo their contractual rights to compensation, some circumstances might require brokers to balance their right to a fee against the best interest of their client.

Attorneys, however, should not insist that listing brokers reduce their fees in such a situation, because that might be construed as interference with the listing agreement. Brokers should not participate in any arrangement designed to circumvent the portion of the act which prohibits splitting compensation.

### **Text and Email Negotiations**

Under TREC's rules (§535.2), brokers and salespersons need to maintain business records including transaction files. These records must be kept in a retrievable format, whether paper or electronic. Communications between clients or customers may be considered to be part of negotiations and may be important records in a transaction. Therefore, brokers and salespersons should develop protocols for how these communications are retained as part of the business record.

Additionally, brokers and salespersons need to exercise care to avoid any statements in these communications that may be later construed as "misrepresentations" of any type, including but not limited to misrepresentations about the intentions of the client(s) with respect to making or accepting offers. The agent's statements in an email need to avoid giving the impression that a "deal is done" or that "a party accepts" an offer or counteroffer unless that is clearly the intention of the client and is supported with documentation such as the proper signatures or initials on the written contracts. With few exceptions, agents do not have the authority to bind their clients, but they communicate for their clients regarding negotiations. That difference needs to be clearly understood by all those involved in the negotiations.

## When an Attorney is a Principal in a Transaction

In Section 1101.652 (b) (11), the Real Estate License Act prohibits sharing a broker's fee with a person not licensed as a broker or salesperson "for services as a real estate agent."

An essential element in the definition of a real estate agent is that the person performs "for another person."

Because a principal in a transaction does not perform services for another person, a principal would not fit the definition of a real estate agent.

It follows that brokers may share a fee with a principal, whether the principal is an attorney, plumber, teacher, etc., and the broker would not be violating the prohibitions contained in the Act.

Obviously, when an attorney is the seller, the broker could reduce his or her fee at any time during the course of the transaction. However, when the attorney is the buyer, brokers should consider sharing a fee with that attorney only with full disclosure to all parties, including the seller and any lender involved in the transaction.

Because the buyer's receipt of a portion of the broker's fee could affect the lender's loan-to-value ratio or otherwise violate the lender's loan-underwriting guidelines, lender permission for the sharing of the broker's fee with the buyer is essential. By including such a fee arrangement in the earnest money contract, brokers can ensure they obtain the lender's permission.

Excerpted from "When an Attorney is a Principal in a Transaction" by Ron Walker, *Texas Realtor Magazine*, November 1995, Used with permission of Texas Association of Realtors®.



§1101.652(b) (11) and (26). For these reasons, it is important to distinguish between those activities that require a real estate license and those that do not.

TRELA §1101.002 (1)(a) lists activities requiring licensure. The real estate brokerage activities must be "for another" person or entity. The activities must also be for a fee or something of value, or with the intention of collecting a fee or something of value. Note TREC Rules §535.4,147.

## Background Checks

A sponsoring broker may find it prudent to require a background check policy for all unlicensed employees with access to the office, both employees of the sponsoring broker and any employees of the broker's salespersons. A broker may wish to consult with an attorney on the implementation of such a requirement, including but not limited to the creation of the proper authorization to obtain background checks, the type of service that will perform any background checks, the interpretation of any background reports, and the criteria to use when basing decisions on information in the background reports.

## Sudden Cessation or Termination of Sponsoring Broker or Designated Broker of a Licensed Business Entity

What happens when a sponsoring broker passes away or otherwise becomes incapacitated due to sudden illness? It is prudent for the sponsoring broker or brokerage firm to have a written policy, which addresses the sudden cessation or break of sponsorship due to illness or death. Under the TREC Rules, a business entity broker license is automatically placed on

## Unlicensed Assistants

Real estate license holders often use unlicensed personnel for assistance in conducting their real estate brokerage activities. A prudent broker will have a written policy regarding the use of unlicensed assistants. Care must be taken to ensure that the unlicensed person does not conduct any of the activities for which real estate licensure is required. TRELA §§1101.351(a) and 1101.758 establish that it is a crime for an unlicensed person to engage in activity for which a real estate license is required. The license holder who employs an unlicensed person might be criminally charged for the crime, as well. In addition, TREC may take disciplinary action against a license holder who pays or associates with an unlicensed person who engages in activities that require a real estate license. Authority for this disciplinary action is set out in TRELA

inactive status upon the death of the designated broker. The licenses of salespersons sponsored by the business entity are also placed on inactive status. A written policy addressing this type of emergency situation may help alleviate any client concerns and meet regulatory requirements during the transition so that the firm can continue to conduct business without a break in service.

## Safety

Each year one hears of reports of a real estate agent being assaulted, threatened, or harmed while showing property or working with prospects. Different sources place the number of personal attacks involving both residential and commercial agents near 10 attacks each year, some of which result in death or serious injury. Personal safety is not unique to the real estate industry, but the real estate agent is, many times, placed in situations and in locations that require heightened scrutiny for safety.

Several groups have developed suggestions, tips, and educational materials to assist brokers and agents to reduce the risk of being a victim. One can find information from the National Association of Realtors, several state associations of Realtors, the Real Estate Safety Council, other real estate organizations, and law enforcement organizations.

Brokers and real estate agents may wish to gather information to review safety precautions and procedures regarding safety

- \* in the broker's offices,
- \* in the agent's vehicles,
- \* while showing properties to prospects,
- \* while hosting open houses,
- \* when meeting prospective clients for the first time, and
- \* at the agent's home.

## Disaster Plan

A prudent broker will have a written policy in place in the event of a major disaster. Are the broker's records safeguarded in case of a fire, flood or other natural disaster?

## Privacy of Personal Information

Confidentiality of information while performing as a fiduciary does not have a termination date unless this duty is released in writing, such as in a conventional listing or buyer representation agreement. Appendix C includes a model privacy policy.

## Federal Regulations and Other State Laws

A broker may find it helpful to create and maintain a written policy for compliance with all federal

regulations including but not limited to RESPA, Truth in Lending, Do-Not-Call, Do-Not-Fax, Rules being established by the Consumer Financial Protection Bureau, as well as state laws, such as the Texas Department of Insurance Procedural Rule 53.

## TREC Case Summaries

Below is a sample of sanctions from recent TREC orders against brokers for failing to have required written policies. Agreed Orders were reached with the brokers following TREC's receipt of complaints against their sponsored salespeople (mostly advertising violations).

Broker K – Reprimand and assessment of an administrative penalty of \$4,000 for the following violations:

- \* Failing to advise a sponsored salesperson of the scope of the salesperson's authorized activities (two counts) [TREC Rules §535.2 (a)]
- \* Failing to ensure that a sponsored salesperson's advertising complies with TREC Rule 535.154 (two counts) [TREC Rules §535.2 (g)]
- \* Failing to maintain on a current basis required written policies and procedures (two counts) [TREC Rules §535.2 (i)]

Broker L – Reprimand and assessment of an administrative penalty of \$1,000 for the following violations:

- \* Failing to advise a sponsored salesperson of the scope of the salesperson's authorized activities [TREC Rules §535.2 (a)]
- \* Failing to maintain on a current basis required written policies and procedures [TREC Rules §535.2 (i)]

Broker M – Reprimand and assessment of an administrative penalty of \$1,000 for the following violations:

- \* Failing to maintain on a current basis required written policies and procedures [TREC Rules §535.2 (i)]
- \* Placing an advertisement that in any way 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 [TREC Rules §535.154 (g)(2)]

# Chapter 10

## Additional Broker Duties

### TREC Rules §535.2

- (f) Listings and other agreements for real estate brokerage services must be solicited and accepted in a broker's name.
  - (j) A broker or supervisor delegated under Subsection (e) must respond to sponsored salespersons, clients, and license holders representing other parties in real estate transactions within three calendar days.
  - (k) A sponsoring broker or supervisor delegated under Subsection (e) shall deliver mail and other correspondence from the Commission to their sponsored salespersons within 10 calendar days after receipt.
- (2) must inform the party if the broker receives material information related to a transaction to list, buy, sell, or lease the party's real estate, including the receipt of an offer by the broker; and
  - (3) shall, at a minimum, answer the party's questions and present any offer to or from the party.
- (c) For the purposes of this section:
    - (1) a license holder who has the authority to bind a party to a lease or sale under a power of attorney or a property management agreement is also a party to the lease or sale;
    - (2) an inquiry to a person described by Section 1101.005(6) about contract terms or forms required by the person's employer does not violate Section 1101.652(b)(22) if the person does not have the authority to bind the employer to the contract; and
    - (3) the sole delivery of an offer to a party does not violate Section 1101.652(b)(22) if:
      - (A) the party's broker consents to the delivery;
      - (B) a copy of the offer is sent to the party's broker, unless a governmental agency using a sealed bid process does not allow a copy to be sent; and
      - (C) the person delivering the offer does not engage in another activity that directly or indirectly violates Section 1101.652(b)(22).

## Informing and Responding to Clients

### *Duty to Respond*

A supervising broker, perhaps more so than other license holders, has a duty to respond to parties in a transaction. A sponsoring broker must also promptly respond to a sponsored salesperson.

Promptness will be judged on the nature of the request, the time of day and the type of transaction. A supervising broker should be reasonably available to supervised salespersons to provide needed advice and counsel.

Being responsible for the supervised salesperson, the supervising broker should be available during all normal business hours of the brokerage to provide experienced, informed advice and counsel to assist the salespersons and the brokerage's clients. The supervising broker should monitor transactions handled by salespersons.

## Minimum Services Requirements

### TRELA §1101.557 ACTING AS AGENT; REGULATION OF CERTAIN TRANSACTIONS

- (a) A broker who represents a party in a real estate transaction or who lists real estate for sale under an exclusive agreement for a party is that party's agent.
- (b) A broker described by Subsection (a):
  - (1) may not instruct another broker to directly or indirectly violate Section 1101.652(b)(22);

## DISCUSSION

1. May a broker stipulate in an MLS listing that all offers be sent directly to the seller?
2. May a broker, with the seller's agreement, list the seller's property on MLS, have offers sent to the seller and the broker and let the seller be solely responsible for negotiating the terms of a contract with a buyer?
3. May a broker charge only a minimal fee for listing a property on MLS, and by contract with the seller, allow the seller to choose to pay for each additional brokerage service the seller desires?

## Problem With A Part-Time Agent Representing A Buyer

A broker had a million dollar listing for a property. A buyer was found, and the buyer's mother, a licensed salesperson, wrote the offer. The buyer wanted his mother to write the offer, because she was going to waive the commission. The mother did not live in the city where the property was located and was not a member of the Board of Realtors®.

The first problem arose when the mother allowed the option period to end without negotiating repairs. The buyer began asking for repairs. When he was reminded his option period had expired, he became combative and threatened to sue or back out of the purchase.

Additionally, the mother did not complete a CMA, and the offer was over the price the listing broker hoped to get for the home. The buyer began communicating with the listing broker directly, because the mother said, "I can't deal with my son. I told him I would never do this again."

### DISCUSSION

1. What are the ramifications of this arrangement for the client and the listing broker?
2. What are the possible violations of the Act or TREC rules?

## The Hands-Off Virtual Broker

A salesperson was dealing with a listing broker who worked in another Texas city. The listing broker had listed a property in the salesperson's city. The listing broker advised the salesperson that he was a "virtual" broker and did not see any problem with not knowing where the listing property was located or anything about the area. He stated that he did it all the time. The listing broker's website offered money back to sellers who list with him. He stated everybody wins; he saves time, and his clients save money.

### DISCUSSION

1. What are the ramifications of this arrangement for the virtual broker's client and the buyer's agent?
2. What are the possible violations of the Act or TREC rules?

## Multiple-City Misstep

A real estate brokerage had offices in cities A and B. A salesperson in city A took a listing for a residence in city B. The salesperson asked the office manager in city B to assist with the listing. When the office manager questioned the salesperson about the home's location, the salesperson responded that she did not know where the home's subdivision was and asked if city B's office was nearby.

### DISCUSSION

What action should the office manager in city B take?

## The “No-Show” Buyer’s Broker

A broker advertised that he would rebate two percent of the sales price of a home in any Texas city to buyers if the buyers would list him as their broker on the sales contract. The website stated that the buyers would do the initial legwork and then when they find a home for which they want to make an offer, the broker would write up the offer, a buyer’s representation agreement for that property, and handle the negotiations. The website linked the buyers to resources for finding homes and general information about neighborhoods and instructed the buyer to drive around. The site made all MLS listed property available for public viewing from a website link. The site also gave pointers on how to persuade the listing agent to show the buyers the property without committing to representation by telling the buyers, “According to Texas real estate law, you are not represented by an agent until you have a written agreement with that agent.” The site told buyers to say to the listing agent, “We don’t have an agent at this time but are considering having someone represent us,” because this line would give listing agents “more incentive to show you the house, because they

might have a shot at representing you in your quest of finding your ideal home.”

The website concluded by explaining that once the buyers had found the home they wanted to purchase, the buyers would sign a buyer’s representation with the broker who would assign an agent to help them write an offer, negotiate and follow up with a list of important contract dates and even help them schedule inspectors and appraisers.

### DISCUSSION

1. Is the no-show broker committing any actionable ethics violation by teaching buyers to mislead the listing agent about representation to get them to show the property?
2. What is the listing agent’s obligation to show the property to someone they know or suspect is represented by another agent?
3. What are the possible violations of the Act or TREC Rules?



# Chapter 11

## Business Entity Requirements



### TREC Rules §535.2(i)

When the broker is a business entity, the designated broker is the person responsible for the broker responsibilities under this section.

### TRELA §1101.002

The Act defines “business entity” as any entity as defined by Business Organizations Code §1.002, Business Organizations Code (corporation, LLC, partnership, etc.).

### Selection of an Appropriate Entity

Many license holders utilize business entities for their practices. The primary benefits of business entities commonly selected by license holders are liability protection of the individual license holder and pass-through tax status (no double taxation). The selection of the appropriate entity for a particular license holder should be made after careful consideration and consultation with legal and accounting advisors.

If a license holder establishes a business entity, the entity must be licensed in order to be paid commissions. The legal entity must designate an individual broker who will be responsible for the actions of the licensed business entity. The designated broker must be

- \* an officer of the corporation,
- \* a manager of the limited liability company, or
- \* a general partner of the partnership.

If the designated broker owns less than 10 percent of the business entity, the business entity must obtain and maintain E&O insurance of at least \$1 million.

### Assumed Name

A business entity may have one legal name and do business under another assumed name. If a business entity elects to conduct business under an assumed name, the assumed name should be filed with the Secretary of State and the local county clerk.

Rules require license holders using an assumed name to notify TREC in writing within 30 days of starting to use the assumed name. A license holder may use form TREC DBA-2 “Notice of DBA or Assumed Name for a Broker’s License” to notify TREC.

### Business Entities FAQs

1. Can a broker be the designated officer for more than one company?
2. Can a licensed salesperson own his or her own real estate company?
3. May a license holder use an assumed name in business (DBA)?
4. I am the sponsoring broker for a salesperson, John Smith, who owns an LLC. We are co-managers of the LLC. The name of the LLC is John Smith Realty, LLC. Is my salesperson permitted to use John Smith Realty, LLC in general and in his advertising?
5. I know LLCs and corporations need to be licensed, but do partnerships need to be licensed if real estate brokerage activity is performed under the partnership’s name?

6. If I have a licensed limited partnership, can the general partner be an LLC if a manager of the LLC is a designated broker?
7. Does the designated broker own 10 percent of a licensed business entity if the designated broker owns 10 percent or more of another business entity that owns 100 percent of the licensed business entity?
8. What qualifies as proof of ownership of the business entity?
9. Does TREC determine which brokerage business names may be registered with the agency if a name is similar to others already registered?
10. May a broker pay a commission to a salesperson's unlicensed entity?

# Chapter 12

## Complaints

A person may file a complaint with TREC against a real estate license holder if the person believes the license holder violated TREL.A. If TREC has jurisdiction over the complaint, it will typically investigate the

allegations by interviewing the parties and witnesses and gathering relevant information (See Appendix D for details on complaint process).

### Do's and Don'ts If You Are Named in a Complaint

- \* **Do read the complaint.** Determine what TREC is asking you to respond to and what information it needs. Gather all applicable records and requested documents, and try to recall as much as possible about the transaction related to the claim.
- \* **Do cooperate.** A TREC complaint process can take anywhere from one month to two years. Promptly returning your thorough response, answering investigators' questions, and being honest can keep the process on track and help those investigating your case understand your perspective.
- \* **Do notify TREC if you hire an attorney.** If you hire an attorney, you need to let TREC know as soon as possible. TREC attorneys have a legal obligation to work with your attorney once you have hired one.
- \* **Do keep your contact information current** Your address on record with TREC is the address required for legal service. Always keep your email and mailing address up to date with TREC. If TREC files a disciplinary action against you based on a complaint, a default order may be rendered against you even if you did not receive notification.
- \* **Don't panic.** Just because you have a complaint filed against you does not mean that TREC has concluded that you are guilty of anything. TREC is just trying to gather information at the initial contact.
- \* **Don't assume you will lose your license.** There are many complaints that are closed as no violation, which means that TREC examined the evidence and determined the license holder had not committed a violation. Some complaints fall under insufficient evidence, which means there is not enough evidence for TREC to determine a violation occurred. Other complaints can sometimes be resolved in an alternative dispute resolution process, and there are other levels of discipline available to TREC other than revocation of a license.
- \* **Don't procrastinate or fail to respond.** This can result in additional administrative penalties and suspension of your license.
- \* **Don't make misrepresentations.** It won't help your case.

Excerpted and edited from "Do's and Don'ts If You Are Named in a TREC Complaint," Texas Realtor, May 2012, Texas Association of Realtors; Kerri Lewis, Texas Real Estate Commission, Used with permission.



# Appendix A

## TREC Relationship Management Tool (RMT)

Welcome to the TREC Relationship Management Tool User Guide. This new tool allows both brokers and salespersons to easily manage their relationships.

### STEP 1 REGISTRATION

Are you a current license holder and registered with “My License Online Services?”

If yes, go to Step 2.

If no, you will need to register. Go to TREC’s home page and click the yellow oval at the top **My license online services**.

The Welcome to “My License Online Services” page appears. Scroll to the bottom and click the yellow oval **My license online services**.

The Online Services – Login and Registration page appears. At the bottom of the page, click the link **REGISTER HERE to get a User ID...**



The User Registration page appears. Enter your details and click **Next**.

The Preview Registration page appears. Click **Edit** to make changes. Click **Save** to continue.

The User Registration – Temporary Password Issued page appears. Check the email address you registered with to retrieve your temporary password. Password will be sent from Its@trec.texas.gov. Note: this could take a few minutes. Be sure to check your spam folder!

Click the link in your email (<https://mylicense.trec.state.tx.us>) to return to the Online Services – Login and Registration page. Enter your User ID and temporary password.

The Update Default Registration Information page appears. Enter required password information and click **Save**.

## STEP 2 LOGGING IN

If this is your first time logging in, you will need to add your license to your account. The system will guide you through a three-step process to help find your license information. After you confirm your license information, you will access the Quick Start Menu.

If you have already registered and added your license to your account, you will access the Quick Start Menu automatically upon logging in.

Go to TREC's home page and click the yellow oval at the top **My license online services**.

The Welcome to "My License Online Services" page appears. Scroll to the bottom and click the yellow oval **My license online services**.

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Registration Help Guide For education hours and license status: Search License Info / Education

### Online Services - Login and Registration

This is your starting point to apply/renew a license and to do things such as changing address information or license status. Click the "REGISTER HERE" link below to get started.

#### Licensee or Applicant Login

User ID: (your Email Address - but first, REGISTER at lower left link if you haven't yet)

Password:

Log On

Are your User ID and Password not working as you expected? [Reset your password here](#)

You must first REGISTER HERE to get a User ID in this new system - even if you've been a licensee for years!

## STEP 3 QUICK START MENU

Welcome to the TREC/TALCB Online Services Quick Start menu. Please take a moment to familiarize yourself with its available features.

- \* User Profile – update your user ID and password; add an existing license to your account
- \* Contact Us – send an email to TREC (please include your license number)
- \* License Information – View information TREC/TALCB has on record for your license
- \* Change your license information – drop-down menu with options for managing relationships including sending and receiving sponsorship invitations
- \* Start a new application – shows all the applications available to you (new license, not renewals)
- \* Incomplete Application – appears when you have begun an application but have not completed it

NOTE: "It's time to renew!" will appear on your main menu within 90 days of your license's expiration date. If your license is not within this 90-day renewal period, this option will not appear.

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Logged in as [redacted] User Profile | Logoff | Contact Us

### Quick Start Menu

To start choose an option and you will return to this Quick Start menu after you have finished. If you would like to add a license, please go to user profile

#### What would you like to do today?

Select one to begin

- Change your license information  
Salesperson [redacted] <Choose Application> Select
- OR
- Start a New Application  
What are you applying for?
  - Texas Real Estate Commission - Application for Corporate Broker License Select
  - Texas Real Estate Commission - Application for LLC Broker License Select
  - Incomplete Applications (1) Select

License Information Show Details  
License Number: [redacted]  
License Type: [redacted]

## STEP 4 SENDING AN INVITATION

On the Quick Start Menu page under the Change Your License Information drop-down menu, select Change your license information. Select your license option. Click **Next**.

The Manage My Sponsorship—Introduction page appears. Read the page information and click **Next**.

**Manage My Sponsorship (Sales) - Introduction**

A salesperson, who will be active for the first time, should mail sponsorship form #2 since it does not require a fee. Requesting the active status through the Relationship Management Tool will require a fee.

An active salesperson must be sponsored by an active Texas Real Estate Broker or a Business Entity.

When an active salesperson enters the sponsorship with a new broker, the salesperson and broker must notify the commission and pay the fee within 10 business days. The salesperson may act as the broker's salesperson from the date the notice and fee are submitted to the commission.

When an inactive salesperson enters the sponsorship with a new broker, the salesperson must have completed the required 15 hours of MCE during the two year period preceding the date the sponsorship application is filed and must notify the Commission of such before the license is returned to active status.

The commission will no longer consider the broker to sponsor the salesperson when:

- the broker terminates the sponsorship,
- the salesperson requests the inactive status or
- the salesperson requests to change brokers.

Click "Next" to continue.  
Click "Cancel" to cancel this application and return to the main menu.

**Next** **Cancel**

The Manage My Sponsorship – Manage My List page appears. You can access a list of your current or requested sponsorships and send new sponsorship requests. To request a new sponsor, click **Request Sponsorship**.

**Manage My Sponsorship (Sales) - Manage My List**

To request or change brokers, click on the "Request Sponsorship" button. You can obtain a list of active Texas Brokers by utilizing the search function. You can narrow your search by selecting:

- License Type
- License Number
- City
- County
- Name

Once you have selected a broker you may customize your invitation request in Step 3. Once your invitation message is complete, click the "Invite" button to continue.

To remove the current Broker from the salesperson's relationship list click on the "Terminate" link in the Actions column.

To complete transaction click "Next" button.

**\*Note: The "filter" button is only applicable for searching the current sponsoring broker.**

Filter List

Name	Desg Spvsr	License #	Effective Date	Sponsor Status
TREC/ALCB TEST AMC/REO	<input type="checkbox"/>	9001662	10/30/2012	Active

Filtered Records: 1  
Sponsoring Brokers: 1  
Showing: 1

**Request Sponsorship** **Download List**

**Previous** **Next** **Cancel**

The Request Sponsorship page appears. Enter your search information and click **Search**.

**Request Sponsorship**

License type and one other field are required for you to conduct your search. Select the Broker, edit your message and click on 'Invite'. To pay the fee click invite, then click next.

**Step 1: Search**

License Type:   
License #:   
License Rank:

State:   
City:   
County:

**Search** **Cancel**

**Request Sponsorship** **Download List**

**Previous** **Next** **Cancel**

The Request Sponsorship page appears. Select your broker or salesperson. Click **Invite**.

The Request Sponsorship page displays the selected broker or salesperson. An invitation message may be entered in the Compose Request box. When finished, click **Request**.

**Request Sponsorship**

License type and one other field are required for you to conduct your search. Select the Broker, edit your message and click on 'Invite'. To pay the fee click invite, then click next.

**Step 1: Search**

License Type: Real Estate Individual (Salesperson or Broker) | State: [Dropdown]  
 License #: [Text Field] | City: [Text Field]  
 License Rank: [Dropdown] | County: [Dropdown]  
 First Name: Avis | Last Name: Wukasch

**Step 2: Select Sponsor**

License #	License Expiry	License Type	License Status	Name
[Redacted]	08/31/2014	REI	Current	[Redacted]

**Step 3: Compose Request**

Subject: Real Estate Salesperson Request for Sponsorship

Message: A Real Estate Salesperson has sent you a request for sponsorship. To honor the request, visit the TREC website at www.trec.texas.gov and log on to your "My License Online Services" account. If you have not registered on the "My License Online Services", you will be required to do so before continuing to process this request. To register, simply click the "Register Here" link at the bottom of the "My License Online Services" homepage and follow the instructions. Once

**Step 4: Send Request**

Buttons: Search, Cancel, Request, Cancel, Previous, Next, Cancel

## STEP 5 MAKING A PAYMENT

The Manage My Sponsorship page appears. Click **Next** to make payment. Note: Invitation(s) will not be sent until payment is received.

**Manage My Sponsorship - Manage My Sponsorship**

To request or change brokers, click on the "Invite a Broker" button. You can obtain a list of active Texas Broker's by utilizing the search function. You can narrow your search by selecting:

- License Type
- License Number
- City
- County
- Name

Once you have selected a broker you may customize your invitation request in Step 3. Once your invitation message is complete, click the "Invite" button to continue.

To remove the current Broker from the salesperson's relationship panel click on the "Remove" button under the action field and press the "Next" button.

\*Note: The "filter" button is only applicable for searching the current sponsoring broker.

**Filter List**

Name: [Text Field] | Desg Spvr: [Dropdown] | License #: [Text Field] | Effective Date: From: [Text Field] To: [Text Field] | Sponsor Status: [Dropdown]

Filtered Records: 1  
Sponsoring Brokers: 1  
Showing: 1

Name	Desg Spvr	License #	Effective Date	Sponsor Status	Actions
[Redacted]	[Redacted]	[Redacted]	08/22/2011	Terminate	View   UNDO   Terminate

Buttons: Request Sponsorship, Download List, Review Changes, Previous, Next, Cancel

The Application Summary page appears. Review this page and click **Submit**.

**Manage My Sponsorship - Application Summary**

Confirm the sponsorship information that has been selected to be removed from the Salesperson's relationship list and click on the "Submit" button.

Review the data and press "Submit" to submit this application.

Press "Previous" to the return to the previous section.

Press "Cancel" to cancel this application and return to the main menu.

**Manage My Sponsorship Summary**

License Type: Salesperson  
 Application Date: 08/14/2012 (mm/dd/yyyy)

**Panel Modification Details**

Terminate	Name	Desg Spvr	License #	Effective Date	Sponsor Status
<input type="checkbox"/>	[Redacted]	[Redacted]	[Redacted]	08/22/2011	Active

Buttons: Previous, Submit, Cancel

The Manage My Sponsorship – Attestation page appears. Read the attestation and if in agreement, click the **Yes** button. Click **Next**.



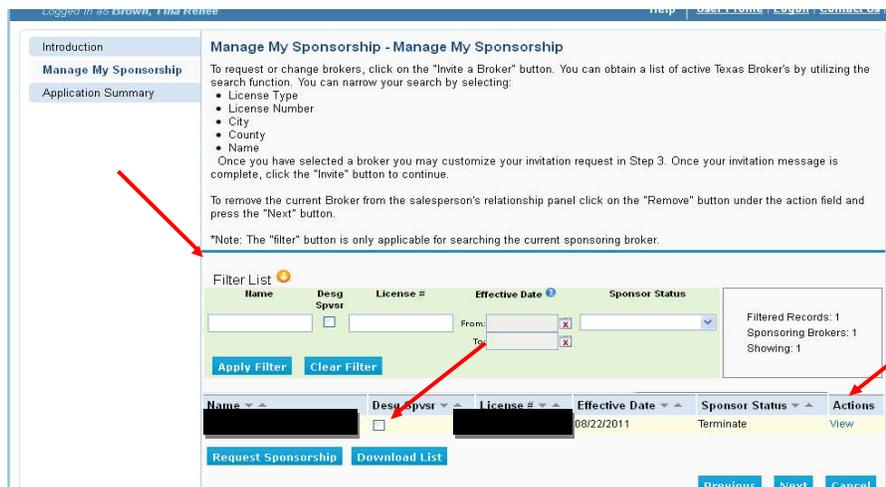
After you have submitted your payment, an application summary page appears and can be printed for your records.

## STEP 6 MANAGING INVITATIONS AND RELATIONSHIPS

After payment is made and an invitation is sent to the requested license holder, he or she can log in and select Manage My Relationships to access your invitation. The license holder can view, accept, or decline an invitation in the same location. The options are available under the Actions column of the menu.

After a sponsoring broker establishes a relationship with a salesperson, the sponsoring broker can use the tool to easily filter sponsorees or search for sponsorees by license number. Brokers can also designate supervisory status for their salespersons by clicking the box next to their name in the DesgSpvr column.

Both brokers and salespersons have the option to terminate their current relationship at any time by choosing to do so under the Actions column of the menu.



Thank you for using the Relationship Management Tool. The tool is designed to help license holders manage their businesses easily. If you have additional questions, please contact TREC at [information@trec.texas.gov](mailto:information@trec.texas.gov) or call 512-936-3000.



# Appendix B

## Signs

Sign 1- McCandles Realty



Sign 2 - Bond Real Estate



Sign 3 - Tiger Tanaka

Sign 4 - Hondo Lane



Sign 5 - May Maxwell



Sign 6 - Golden Eye Properties



Sign 7 - Golden Eye, Realtors



Sign 8 - Golden Eye Realty





# Appendix C

## Model Privacy Policy

### Disclaimer Concerning the Use of This Model Policy

This model policy is a suggested format with suggested text that Texas REALTORS® may use as a guide to develop an office policy related to maintaining customers' personal information private. The Texas Association of REALTORS® does not represent or warrant that this model policy addresses all items that should be addressed in an office policy or that compliance with this model policy will eliminate any potential responsibility or liability by the company or its agents.

### Summary of Applicable Law

When adopting a privacy policy one should consider the following rules and statutes:

- (a) the Fair and Accurate Credit Transactions Act of 2003 and the FTC rules adopted under that Act (16 CFR 682); and
- (b) Sections 501.051, 501.052, and 501.053, Business and Commerce Code.

You should maintain the confidentiality and security of a social security number you have obtained. You may want to maintain the privacy policy in a location that is easily accessible for agents to provide to customers and clients upon request, such as a company website.

You do not have to provide a copy of the policy every time you obtain personal information. Instead, you must make it available to any such person upon request.

When drafting your privacy policy five main questions need to be answered.

1. How is personal information collected?
2. How and when is the personal information used?
3. How is the personal information protected?
4. Who has access to the personal information?
5. How is the personal information disposed?

Federal and state law requires businesses to implement proper procedures for the disposal of personal information the business maintains in its records. The law requires the business to take reasonable measures to protect against unauthorized access. Reasonable measures include shredding, erasing, pulverizing, and other types of destruction. Mere deletion of electronic records is not sufficient. The destruction of electronic records must render the electronic records "unreadable or undecipherable."

A business is also required to delete any electronic record that was established when the customer issued a bad check which is later found to be in error. The law applies to any business that accepts checks.

Below are model answers to the above questions that you may include in your privacy policy. Generally, property managers are more likely to require and retain personal information than most other types of real estate license holders, but any real estate office in Texas should give consideration to adopting a privacy policy. You may change the text of the policy to apply to your particular practices and procedures.

### Privacy Policy for \_\_\_\_\_ (Company)

#### What is personal information?

Personal information is

1. Information in a consumer report; or
2. An individual's first name or initial and last name in combination with any of the following:
  - a. birth date;

- b. Social Security number or other government issued identification numbers;
- c. mother's maiden name;
- d. unique biometric data (fingerprint, voice print, retina image);
- e. unique electronic identification number or routing code;
- f. telecommunication access devices including debit or credit card information; or
- g. financial institution account or information.

## **What Is a Consumer Report?**

A consumer report is a report related to a person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living prepared by or obtained from an agency that collects such information, such as a credit reporting agency.

## **How Is Personal Information Collected?**

*[Add to or delete from the list to best describe the ways in which the company collects personal information.]*

This company obtains personal information in the following ways:

1. in consumer reports from reporting agencies to which this company subscribes in connection with lease applications, loan applications, or for other reasons that the consumer may authorize this company to obtain;
2. in lease applications a prospected tenant completes;
3. in loan applications a borrower or buyer completes;
4. in other real estate related forms the customer or client completes in or related to a transaction; and
5. in tax reporting forms that the customer or client is required to complete and which are given to this company.

When completing the forms required above, the customer or client may send the information to this company by mail, fax, personal delivery, or by e-mail. Customers or clients may occasionally provide personal information to this company or its agents by other means such as telephone calls, fax messages, or e-mail messages in order expedite a transaction in which the customer or client is involved.

## **How and when is the personal information used?**

### **Personal Information from Prospective Tenants**

The personal information that prospective tenants provide to this company is primarily used to obtain consumer reports (credit checks). It may also be used to perform background checks and rental history searches. The information in the consumer reports may be discussed with landlords for whom this company manages property. This company also reports information to credit reporting agencies and uses personal information to complete those reports.

### **Personal Information from Owners of Properties Managed by the Company**

When this company acts as a property manager for a property owner, the company uses the property owner's personal information only: (a) to deliver the required management services; (b) to file any required reports with governmental agencies (for example, the IRS); or (c) for other purposes the property owner may authorize.

### **Personal Information from Clients**

When this company represents a person (buyer, seller, landlord, or tenant) in a transaction the agent servicing the client may, on the client's behalf and at the client's instruction, convey personal information he or she provides to the agent to service providers (for example, mortgage lenders and title companies) as those service providers may require for the products or services the client needs or requests. If this company represents a prospective tenant in a lease transaction, the personal information may, on the tenant's behalf and with the tenant's knowledge, be discussed with and provided to landlords or their agents. This company and its agents exercise reasonable discretion when discussing any personal information with others.

## **How is the personal information protected?**

Written files in this company are protected under lock and key. *[Describe any additional precautions or make any necessary modifications.]*

Electronic records are protected under an access name and password assigned to persons in this company.

This company and its agents exercise reasonable discretion when discussing any personal information with others and releases personal information to others only as described by this policy.

This company does not permit its employees or agents to make copies of consumer reports or records of insurance claims. The consumer reports retained in the company's files are not to be accessed in the future as a convenience to customers or clients.

The individual agents that work with this company are independent contractors, and the agent with whom a customer or client works with may maintain a separate transaction file. The company instructs its agents to not permit other persons to access the personal information in files the agents maintain. The company instructs its agents to protect the personal information in the agents' files in the same manner as described in this policy.

*Include additional statements about additional protections.*

## **Who has access to the personal information?**

The following persons have access to personal information in this company's files:

- \* the agent or broker who is servicing or coordinating the transaction;
- \* the office manager to whom the agent reports; and
- \* the owner of the company.

Property owners for whom the company manages properties do not have access to personal information in the company's files. However, the company and its agents may discuss the information in a tenant's consumer report or lease application with a property owner. Copies of such information are provided to the landlord only:

- \* with the tenant's consent; or
- \* if the company ceases to be the property manager and the landlord requests that the files be sent to the landlord, the landlord's attorney, or the new property manager.

Personal information from a buyer, seller, landlord, or tenant may be discussed with others (such as mortgage lenders or prospective landlords) only as is reasonably necessary to negotiate or close the transaction or to provide the services the customer or client seeks from this company.

This company may, at the customer's or client's request, provide personal information to service providers in a transaction such as a title company or mortgage company if it is necessary to expedite or complete a transaction.

If the company is required by law to allow others to access the personal information in the company's files, the company will comply with the law (for example, compliance with court orders, subpoenas, or governmental investigations). The company will also allow law enforcement agencies access to personal information in order to cooperate with such investigations.

*Include any specific statements that better describe the company's typical use of personal information and the typical situations in which the company may discuss or share personal information with others.*

## **How is the personal information disposed?**

This company uses reasonable measures to dispose of personal information. Personal information is usually disposed of by shredding or burning documents, erasing electronic files by means that make the files unreadable or undecipherable, or by eradicating personal information from documents or electronic files in ways that make the personal information unreadable.

*Include a statement if the company employs a document and record destruction company.*

## **Erroneous Records**

If this company erroneously reports information to a consumer reporting agency, the company will act to correct the information in the company's records and request the reporting agency to correct the information in its records promptly after the company has learned and determined that the report was in error.

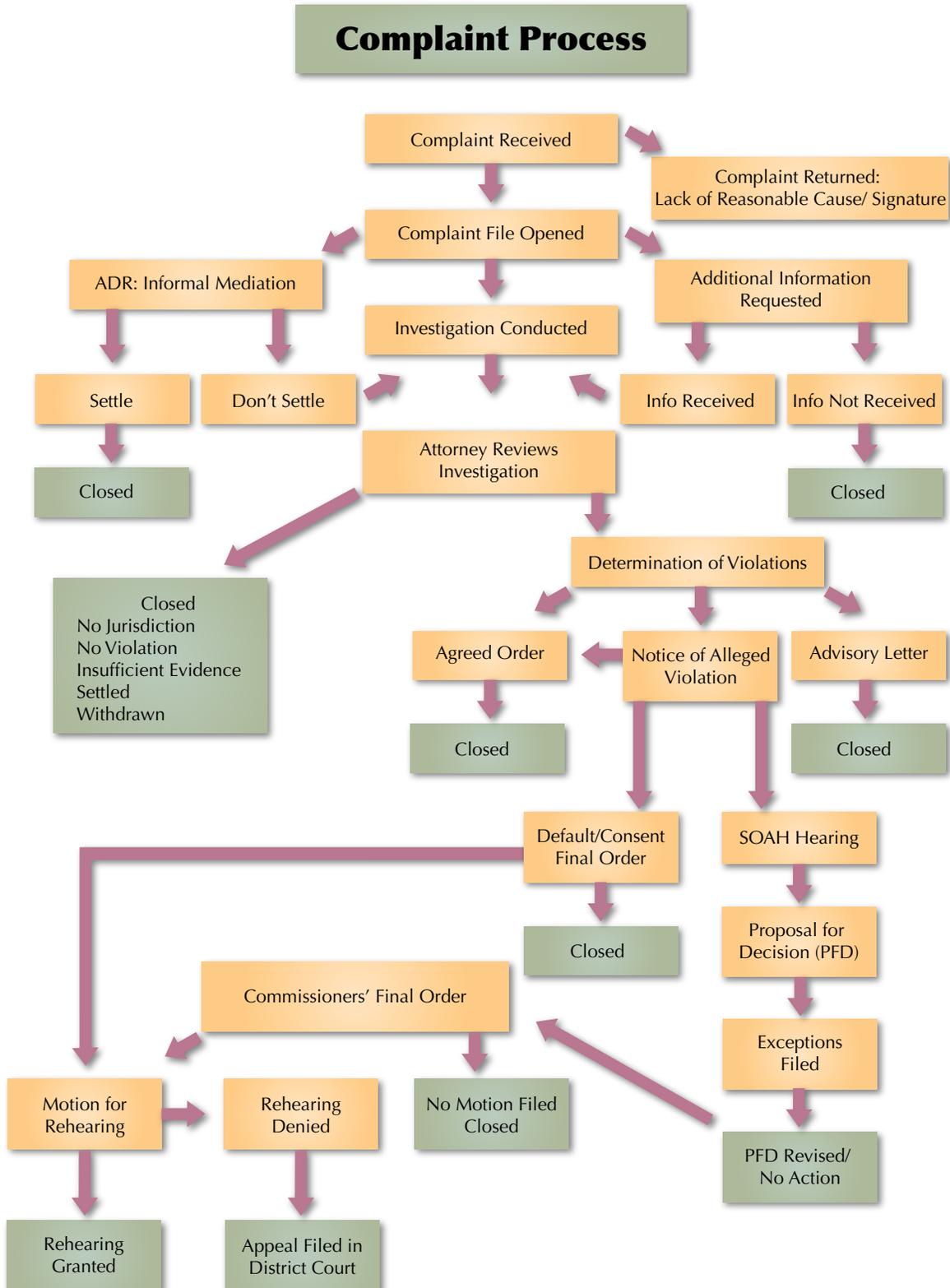
If this company maintains an erroneous record that a consumer has issued a dishonored check, the company will promptly delete the record after the company and consumer agree that the information is in error or after the consumer provides the company with a law enforcement agency report stating that the dishonored check was not authorized.

**Notice: This company asks any person who provides personal information to this company or one of its agents to identify the information at that time as "personal information."**

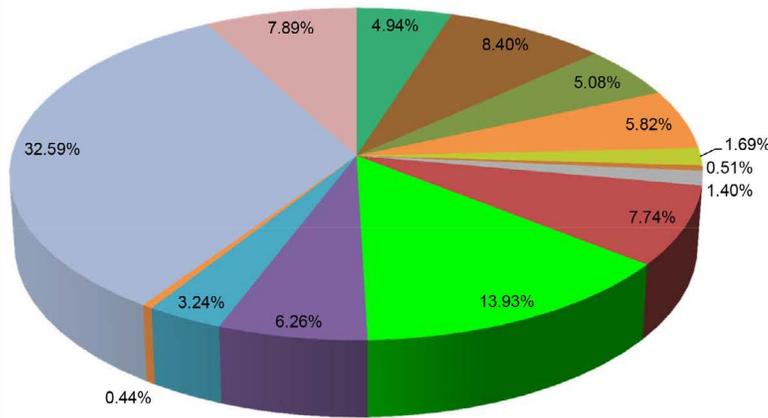


# Appendix D

## TREC Complaints



## Complaint Subject Categories for Fiscal Year 2014 (September 2013 through August 2014)



- Administrative - 4.94%
- Advertising - 8.40%
- Breach of Fiduciary Duty - 5.08%
- Broker Supervision - 5.82%
- Failure to Disclose - 1.69%
- Improper contract/Seller Disclosure form usage - 0.51%
- Intermediary/IABS - 1.40%
- Leasing/Property Management - Misappropriation - 7.74%
- Leasing/Property Management - Other - 13.93%
- Licensure Issues - 6.26%
- Licensee Acting as Principal - 3.24%
- Sales Misappropriation - 0.44%
- Sales Other - 32.59%
- Unlicensed Activity - 7.89%

## Complaint Subject Categories by Month

Subject Matter Categories	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Aug-14	YTD
<b>Administrative</b> <i>Bad check, contact information, uncooperative, etc.</i>	17	9	9	2	1	6	6	3	3	5	1	5	<b>4.94%</b>
<b>Advertising</b> <i>Includes misleading &amp; dba</i>	6	9	5	6	8	15	13	6	6	11	16	13	<b>8.40%</b>
<b>Breach of Fiduciary Duty</b> <i>Including false promise</i>	2	3	3	4	1	8	6	6	14	5	9	8	<b>5.08%</b>
<b>Broker Supervision</b>	8	8	3	8	11	10	6	7	0	5	9	4	<b>5.82%</b>
<b>Failure to Disclose</b>	1	0	2	1	0	1	2	3	0	5	6	2	<b>1.69%</b>
<b>Improper contract/Seller Disclosure form usage</b>	0	1	0	2	1	2	0	0	0	1	0	0	<b>0.51%</b>
<b>Intermediary/IABS</b>	0	2	1	1	2	2	4	0	2	2	3	0	<b>1.40%</b>
<b>Leasing/Property Management - Misappropriation</b>	4	4	8	3	2	10	6	10	7	8	6	37	<b>7.74%</b>
<b>Leasing/Property Management - Other</b> <i>Includes negligence, referral, etc.</i>	12	17	17	10	19	14	13	17	15	18	14	23	<b>13.93%</b>
<b>Licensure Issues</b> <i>Criminal background check, disapprovals, probationary license, etc.</i>	8	7	4	6	9	8	8	10	5	7	7	6	<b>6.26%</b>
<b>Licensee Acting as Principal</b>	2	6	2	3	2	2	6	6	3	2	7	3	<b>3.24%</b>
<b>Sales Misappropriation</b> <i>Other than Leasing/Property Management - Misappropriation</i>	0	0	0	0	0	0	0	1	1	0	1	3	<b>0.44%</b>
<b>Sales Other</b> <i>Includes negligence, rebate, referral, earnest money, etc. (other than Leasing/Property Management - Other)</i>	38	37	41	27	36	44	39	31	43	32	33	41	<b>32.59%</b>
<b>Unlicensed Activity</b>	4	10	7	4	6	8	10	12	16	8	18	4	<b>7.89%</b>
<b>Total</b>	<b>102</b>	<b>113</b>	<b>102</b>	<b>77</b>	<b>98</b>	<b>130</b>	<b>119</b>	<b>112</b>	<b>115</b>	<b>109</b>	<b>130</b>	<b>149</b>	<b>1356</b>

# Appendix E

## Scripts

### Script A

#### Information About Brokerage Services

An agent (May Maxwell) is sitting at her desk in an office. Her buyer (David Goodbuyer) is seated across the desk from her.

MAY

(fumbling with papers and glances at her computer's screen)

Okay, David, let's see you want a 3-bedroom, 2-bath home on 2 acres of unrestricted property with no mobile homes within 10 miles, correct? Okay, I'm pulling those properties up in MLS.

(hands some papers to David)

I need to run down the hall to the printer. While I do that, here's a form the state requires you to sign before I show you any properties. You go ahead and sign it. I'll be right back with the printouts.

DAVID

(takes papers from May)

Okay.

## Script B

### No Time for Questions

A buyer, Melanie Innocent, is working with Mark Badagent of Mediocre Realty. They have looked at several properties over the last week. Melanie wants to make an offer on a property listed by Marvin Goodguy, also with Mediocre Realty. Mark and Melanie walk into a conference room.

MARK

(points at conference table)

Okay, Melanie. Have a seat, and I'll get a contract form for us to fill out and get to Marvin so he can take it over to the seller. This will just take a minute. Do you want some coffee?

MELANIE

No coffee, thanks.

(Mark leaves room. A moment later, Mark enters conference room holding a stack of papers and shuffles them around.)

MARK

(handing stack of papers to Melanie)

Melanie, I have a couple of things you need to sign before we get down to the contract. Here is a buyer representation agreement...just a formality, you know since we have already been working together, and it doesn't really mean anything. Just initial each page and sign the last one. Then there is this one-page thing required by the state. I need you to sign. While you're doing that, I'll go print out the MLS so I can get the legal description.

MELANIE

(Melanie looks quizzically at Mark)

What if I have some questions?

MARK

Oh, I'll be right back.

(Melanie shifts around in her chair and begins to read the papers. Mark returns with more papers.)

MELANIE

Okay, Mark. This paper says that if the seller does not pay you that I will pay you. We NEVER talked about that.

MARK

Oh, that'll never happen. The seller pays us. Everybody knows that.

MELANIE

Okay, it also says that I'm doing something called interme...intermed...intermediary. What's that?

MARK

Yep...I represent you, and Marvin represents the seller, 'nuf said! Now, Melanie, we need to get on with this. There might be other people interested in this property. Remember there was another couple driving up with an agent when we left? We don't want to lose this house while we're sitting around working through silly questions. Here's the contract all filled out the way we talked about in the car. So go ahead and sign the buyer

rep and the state form, and then I'll have the contract ready  
for you to sign.

MELANIE

I don't know, Mark. I'm not going to be able to pay the down  
payment and pay you.

MARK

(sighs deeply)

YOU won't be paying me. The seller is paying me. Melanie, do you  
still want this house?

MELANIE

Yes...uh...

MARK

(hands contract papers to Melanie)

Initial each page, sign the back page, give me the option money  
check made out to the seller and the earnest money check made  
out to the title company, and I will get all this down the hall  
to Marvin.

MELANIE

(shaking her head slowly, looks alarmed)

Mark, I don't have a checkbook. I do all my business online with  
credit card or wired funds.

MARK

(shakes his head)

You're kidding! I never heard of such a thing. Well, you just sign away and then run down to the 7-11 and get some money orders done, okay? I'm sure I can convince Marvin to present your offer while you're getting the money orders.

MELANIE

(nods her head slowly)

Okay.

(Melanie signs all the papers. Mark reaches for the papers)

MARK

Great! Give me all the papers, and I will get them to Marvin.  
Now you hurry out and get those money orders.

## Script C

### Easy Does It!

Sally Fontleroy, an agent with Chisum Realty, has a buyer for the listing of Raul Martinez, another agent with Chisum Realty. The company policy allows agents to act in an appointed intermediary situation with proper documentation (Raul has a listing agreement with the seller authorizing the intermediary relationship; Sally has a buyer representation agreement with the buyers authorizing the intermediary relationship. Sally has shown Raul's listing to the buyers, Jack and Mary Wade, and they have returned to Chisum Realty to put together an offer.

SALLY

(leads Jack and Mary into her office where they sit down at her desk)

This is so exciting! I'm so happy you've found a property you and your family want to call "home." We just need to get the paperwork put together.

(holds up a form)

The first document I want to go over with you is the intermediary relationship notice form. Now, do you remember when we first met last weekend, and we sat here and signed the buyer representation agreement? I told you it was possible you might want to see and even buy a property listed with our company.

JACK

I remember all that. Can we just get on with it? I don't want to lose this house!

MARY

(pats Jack on shoulder)

Now, Jack. Sally is just covering all her bases. You know about all this from the last house we bought in Amarillo.

SALLY

(smiling)

Certainly Jack, I understand your anxiety. This will just take a moment or two. Then I will sent it to Raul electronically. Right now Raul and the sellers are out looking at new homes. Remember I sent him a text from the house? Okay...now you have chosen to make an offer on a property listed with our company, which means our broker, in Texas law, is in an intermediary position, representing both the sellers and you, the buyers. On the buyer representation agreement, you authorized me to show you property listed with our company by agreeing to allow us to enter into an intermediary relationship. The form I mentioned just a minute ago? I will need you to sign it before we proceed with the other paperwork. This will authorize the actual intermediary relationship. Our broker is John Chisum. By policy, he allows me to fill in this portion of the form. It appoints me to be your agent and Raul to be the agent of the seller. This form reaffirms the agreement for our company and for Raul and I to act in this intermediary capacity. The appointment process allows me to communicate with, carry out instructions of, and provide opinions and advice during negotiations to you. AND, Raul will be able to perform those activities for the seller.

Are both of you still okay with his relationship? If so, please  
sign this form.

JACK

(grabbing paper and picking up a pen)

Just give it to me, and let me sign so we can get this over and  
tie up this property.

MARY

(nods and smiles)

Thank you, Sally. You have made what could be a very scary  
situation very easy to understand.

## Script D

### Is That Buyer Represented by Another Broker?

Inside agent's office. Agent (Pat Usurperman) sitting at desk.  
Buyer (Esteban Eager) dials phone.  
Phone rings. Pat picks up phone.

PAT

Keepin' It Real, Realty...this is Pat.

ESTEBAN

Hi, Pat. I'd like to buy a home in Windy River, and a friend gave me your name.

PAT

(smiles broadly)

Great! Are you currently working with another real estate broker?

ESTEBAN

An agent showed me a few properties, but he was a real clown.

PAT

Didn't know what he was doing, huh?

ESTEBAN

No, he was an actual professional clown. I couldn't get him to return my calls on weekends...working all those kids parties, I guess.

PAT

That's inconvenient.

ESTEBAN

My entire family fit in his tiny car, though.

PAT

(laughs, shaking his head)

Listen, forget that Bozo. I can help you find the home of your dreams in Windy River. We can even look at some houses today if you want.

ESTEBAN

(thumbs up, smiling)

That would be perfect. I can already tell that you're the real estate agent for me.

PAT

(nods his head)

Just keepin' it real, my friend. See you this afternoon.

ESTEBAN

See you then. Bye.

## Script E

### I'm Just Going to Handle This One Lease, OK?

An agent (Jasmine Leasemore) walks into the office of her sponsoring broker (Chris Doormat). Chris is seated at a desk.

JASMINE

Chris, my listing on Lake Street isn't getting any bites, so I'm going to help my seller lease it out.

CHRIS

(shakes head)

Jasmine, don't you remember your training session? I don't allow my agents to do any leasing or property management.

JASMINE

(smiles reassuringly)

This is just a temporary thing. My seller's being relocated to Phoenix, and he can't afford two mortgages.

CHRIS

Have you ever leased a property?

JASMINE

Sure, I rented half of this cool duplex on Parkview for three years after college.

CHRIS

(leans forward)

I meant have you been an agent on a lease transaction before?

JASMINE

Can't be that hard. I'll just use the TAR forms.

CHRIS

(shakes head)

I don't know...

JASMINE

Come on, Chris—I'll get the house leased on a month-to-month deal, manage it for my seller for a bit, and as soon as I get it sold, I'm out of the property management and leasing business.

CHRIS

(looks surprised)

You're gonna manage it, too? I guess you've never managed property before, either.

JASMINE

(waves hands)

Chris, Chris, Chris...what could go wrong? It'll just be a few months.

CHRIS

(sighs deeply, sits back in chair)

Well, you are having an incredible month, Jasmine. I guess it's the lease I can do. Get it? The lease I can do?

JASMINE

(laughing)

Good one! You won't regret this, Chris.







**REAL ESTATE CENTER**  
TEXAS A & M UNIVERSITY