

# Broker Responsibility

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# Acknowledgments

## **Texas Real Estate Commission**

R. Scott Kesner, Chair  
Jan Fite Miller, Vice Chair  
Jason Hartgraves, Secretary  
Leslie Lerner  
Benjamin “Ben” Peña  
Barbara Russell  
DeLora Wilkinson  
Micheal Williams  
Mark Woodroof  
Chelsea Buchholtz, Executive Director

## **Broker Responsibility Writing Group**

Chance Brown  
Kerri Lewis  
Charles Porter  
Byron Underwood  
Avis Wukasch

## **TREC Writing Staff**

Jennifer Grube  
Vanessa Burgess  
Summer Mandell  
Michael Molloy  
Jennifer Wheeler

## **Texas Real Estate Research Center Staff**

Gary Maler, Executive Director  
David Jones, Communications Director  
Cheryl Pruitt, Program Coordinator  
Robert Beals II, Associate Editor, Creative Manager  
JP Beato III, Graphics Specialist, Photographer  
Alden DeMoss, Graphic Designer

## **Texas Real Estate Research Center Advisory Committee**

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Besa Martin  
Walter F. “Ted” Nelson  
Rebecca “Becky” Vajdak  
Barbara Russell, Ex-Officio

# Foreword

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# Chapter 1

## Introduction

### Learning Objectives

After this chapter, you will be able to

- \* Identify who is required to take the Broker Responsibility course.
- \* Explain the purpose of this course.
- \* Identify two statutes or rules related to broker responsibility.
- \* Describe three important elements regarding the fiduciary responsibilities brokers and sales agents owe to their clients.

### Use of the Term “broker” in This Manual

The term “broker” is used throughout this book. Requirements and best practices are applicable to anyone who fits in one of the categories described below. Others may also gain important information relevant to their practice by completing this course. Anyone taking this course should consider how the responsibilities described in this course apply to their roles in real estate, regardless of whether they are a broker.

### Who Is Required to Take This Course?

The simple answer:

- \* brokers who sponsor one or more sales agents;
- \* a designated broker of a business entity that sponsors one or more sales agents; and
- \* license holders who are delegated supervisors according to TREC rule §535.2(e).

Brokers and sales agents help consumers with the largest personal and sometimes most important business purchases of their lives. It is the broker’s responsibility to ensure that not only they are competent to engage in different types of brokerage activity, but that the sales agents they sponsor are competent as well.

### Did you know...

Any license holder who leads, supervises, directs, or manages a team must be delegated as a supervisor by the broker and is required to complete this course before each license renewal.



Sponsoring brokers may, by policy, require all sponsored agents to complete this course. Even license holder who don’t fit into one of the categories listed above will earn six hours of elective continuing education (CE) credit for completing this course.

### Quick Questions

1. **Could a broker requiring their sponsored agents to take this course be considered a best practice?**  
Yes, it would be considered a best practice for a broker to require all sponsored agents to take this course. If you are a broker, you may want to consider adding this to your broker policies.
2. **How would having such a requirement in a brokerage benefit the sales agents and the brokerage’s clients?**  
Knowledge about brokerage operations can be gained through courses like this. It can help the agents be more confident in the real estate profession and may result in better services provided to clients while minimizing the risk of complaints.

### Why is This Course Required?

This course serves to remind brokers and designated sales agents of their responsibilities according to TREC

rule §535.2 (Broker Responsibility). It addresses responsibilities and expectations within the broker-agent relationship, as well as fiduciary responsibilities and duties to clients. This course is revised every two years to include components that address shifting industry hot topics and trends. Throughout the course, minimum service requirements, as well as best practices for brokers will be presented. See Appendix A where the Broker Responsibility rule is presented in its entirety.

## How To Utilize This Manual

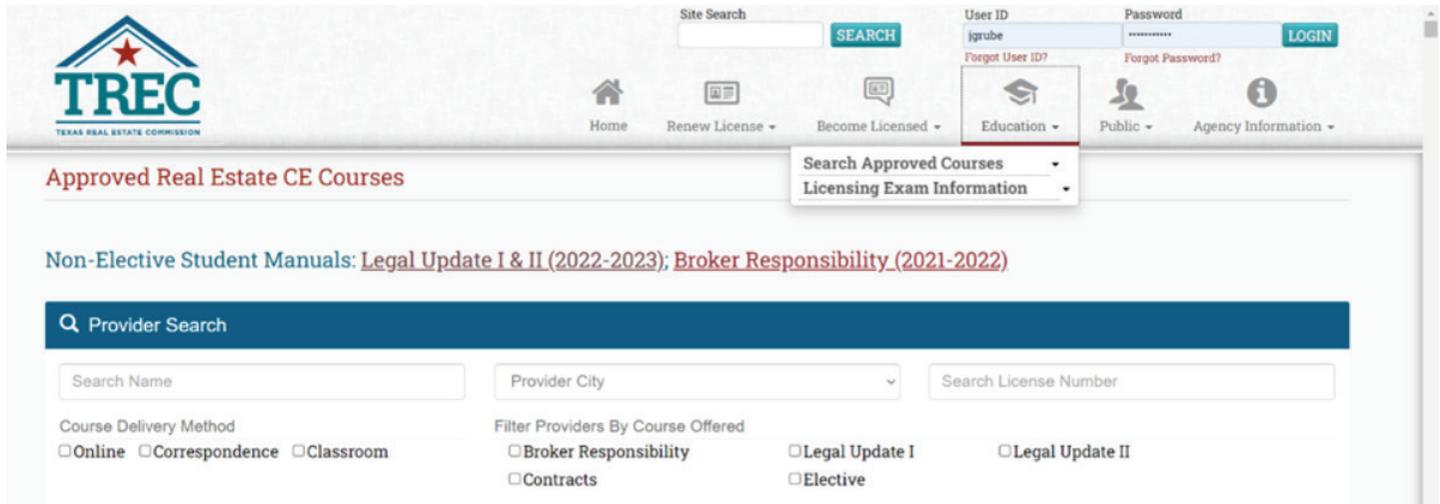
This manual is intended to serve as a resource that license holders can refer to even after the course has been completed. Hyperlinks to TREC rules and other information are available in the online version. The appendices contain other helpful resources for brokers and sales agents to refer to in their daily practice.

An electronic copy of the student manual is available on the TREC website.

such as advertising, trust accounts, and required disclosures and notices. As a broker, knowing these requirements and ensuring sales agents know these requirements is crucial to staying in compliance and out of TREC Enforcement.

## Additional Regulations for Brokers

- \* Texas Property Code, Chapters 91 & 92 (Landlord and Tenant)
- \* Texas Department of Insurance, Procedural Rule 53
- \* Real Estate Settlement Procedures Act (RESPA)
- \* Truth-in-Lending Act (TILA)
- \* Consumer Financial Protection Bureau rules
- \* Can-Spam Act & Federal Trade Commission Tele-marketing Sales Rules (Do Not Call-Email-Fax)
- \* National Association of REALTORS® (NAR) Code of Ethics (Voluntary Standard)



## “Is There a Law About That?” Broker Responsibility in Statute and Rule

Absolutely! The broker responsibility rule is part of the Texas Administrative Code, Title 22 and was adopted by TREC through the rulemaking process. This means that all licensed brokers in Texas must adhere to the rule requirements as though they were in statute. Speaking of statute, there are additional requirements that all brokers should be aware of. Chapter 1101 of the Texas Occupations Code, also known as the License Act or TRELA, contains the law related to real estate brokers and sales agents. You can find provisions in Chapter 1101 regarding licensing and education requirements, as well as provisions regarding grounds for suspension or revocation of a license. Additionally, there are other TREC rules, like §535.2, that detail legal requirements for brokers and sales agents on topics

## Rules Spotlight: Fiduciary Responsibilities as a Broker

TREC rule §531.2 (Fidelity) defines the special obligations imposed on a broker and sales agent as fiduciaries. It states, “A license holder, while acting as an agent for another, is a fiduciary. Special obligations are imposed when such fiduciary relationships are created.” The rule then goes on to list those duties and relationships.

The fiduciary role is so important that TREC rule §535.2(b) (Broker Responsibility) reiterates the fiduciary role by stating “A broker owes the **highest fiduciary obligation** to the principal and is obliged to convey to the principal all information known to the agent which may affect the principal’s decision unless prohibited by other law.” What does that mean as it relates to broker responsibility? Well, it means a lot. A broker is held to a

higher standard when it comes to dealing with clients. A broker must always put their client ahead of themselves and ensure they are communicating all relevant facts and details of a transaction in a timely and thorough manner. A broker has a **legal duty** to their client to represent them and a legal obligation to treat other parties to a transaction fairly (and honestly).

Remember, brokers are responsible for the authorized acts of their sponsored sales agents. Brokers must be sure that their sponsored agents fulfill their fiduciary duties to both broker and clients. A third place that TREC rules mention the license holders' fiduciary duty is found in TREC rule §535.156 (Dishonesty; Bad Faith; Untrustworthiness).

TREC mentions fiduciary responsibility three times in the rules, so you know TREC means it!



# Chapter 2

## Delegated Supervisors and Teams

### Learning Objectives

After this chapter you will be able to

- \* Define the role of a delegated supervisor.
- \* Explain the difference between a broker and a broker associate.
- \* Identify the types of written policies that can support the training of team leads.
- \* Understand how to use TREC's website to delegate a license holder as a supervisor.

### Delegated Supervisors

Brokers may have a sales agent, or a broker associate assist in supervising sponsored sales agents. The TREC term for this individual is “delegated supervisor.” Though the delegated supervisor may act as a manager or a team leader, the sponsoring broker is ultimately responsible for compliance with the TREC rules and the License Act. As a reminder, the broker’s level of responsibility doesn’t remove or reduce the responsibility that a delegated supervisor or sales agent also has for compliance with the rules or the License Act.

The broker must notify TREC of the delegation of a supervisor within thirty (30) days of delegation if the agent will act as a delegated supervisor for more than three consecutive months. The broker must also notify TREC within 30 days after the delegation of supervision ends. This can be done in real time using the “My License Services” on the TREC website (except for broker associates who must be delegated using the Notice of Delegation of Supervising License Holder form TREC DL-2).

As written in TREC rule §535.2(e)

1. *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 license holders sponsored by the broker. Any license holder who leads, supervises, directs, or manages a team must be delegated as a supervisor. Any such delegation must be in writing. A broker shall provide the name of each delegated supervisor to the Commission on a form or through the online process approved by the Commission*



*within 30 days of any such delegation that has lasted or is anticipated to last more than three consecutive months. The broker shall notify the Commission in the same manner within 30 days after the delegation of a supervisor has ended. It is the responsibility of the broker associate or a newly licensed broker to notify the Commission in writing when they are no longer associated with the broker or no longer act as a delegated supervisor.*

*A responsible and effective broker will have specific written policies and procedures for the delegated supervisor to follow. These should include responsibilities and expectations of the delegated supervisor, along with any additional education the broker requires of the delegated supervisor.*

### DISCUSSION

What types of education, besides this Broker Responsibility course, may a broker require a delegated supervisor to complete?

### Teams

With the broker’s approval, a sponsored sales agent, a group of sales agents, and/or broker associates may operate and advertise as a team (Chapter 5 discusses advertising in more detail). Advertising as a team could facilitate branding and specialization in specific niche markets. Operating as a team may also help organize

workflow with team members taking on specific roles in transactions. For example, there may be an agent or agents who work only with sellers as listing specialists, while other team members focus solely on buyer representation. Role specialization could also include transaction coordination, marketing, and staging. Working in teams may also provide an opportunity for support, increased appointments, and maximized efficiency. It can provide the opportunity for collaboration, support,

and the exchange of constructive feedback.

The team leader must be delegated as a supervisor by the broker. This delegation can be completed using the online Relationship Management Tool on TREC's website. In the drop-down menu of the **Change your license information and manage sponsorships**, choose **Manage Sales Agent Sponsorships (Broker)**. Once this selection is made, choose **Manage My Sales Agents**.

## 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 new license to your profile (not for managing sponsorships), please select "Update Profile" in the upper right hand corner and click "Add Licenses."**

**ALL FEES ARE NON REFUNDABLE AND NON TRANSFERABLE.**

### Change your license information and manage sponsorships

Broker #483490

Manage Sales Agent Sponsorships (Broker) ▼

Select

### Start a New Application

What are you applying for?

<Choose Board> ▼

<Choose a Function> ▼

Select

### Additional Activities

Notice next to each sales agent's name is a check box to delegate the sales agents as a delegated supervisor. To delegate a supervisor, click on the checkbox in the "Delg Spvsr" column. Be sure to click next to complete the transaction.

Introduction

Manage My Sales Agents

Application Summary

#### Manage Sales Agent Sponsorships (Broker) - Manage My Sales Agents

To sponsor a sales agent, you may click on the "Invite Sales Agent" button. You can obtain a list of current real estate sales agents by selecting the following criteria:

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

Once you have selected a sales agent(s) you may send a customized invitation request via Step 3. Once your invitation message is complete, click the "Invite" button to continue. To invite multiple sales agents on one request, repeat search and then click next to proceed to payment.

To delegate to a supervisor, click on the checkbox in the "Delg Spvsr" column. Then click next to complete the transaction.

To terminate a sales agent from the broker's sponsorship, the sales agent or the broker may click on the "Terminate" link in the Actions column and press the "Next" button.

\*Note: The "filter" button is meant for searching license holders that are already sponsored by the broker.

Filter List 🔍

Name	Delg Spvsr	License #	Effective Date <span style="font-size: small;">?</span>	Sales Agent Status	License Status	
<input style="width: 90%;" type="text"/>	<input type="checkbox"/>	<input style="width: 90%;" type="text"/>	From: <input style="width: 60%;" type="text"/> <span style="font-size: x-small;">clear X</span>	<input style="width: 60%;" type="text"/>	<input style="width: 60%;" type="text"/>	
			To: <input style="width: 60%;" type="text"/> <span style="font-size: x-small;">clear X</span>			

Apply Filter
Clear Filter

Filtered Records: 0  
 Sales Agents: 0  
 Showing: 0

Name ▼ ▲

Delg Spvsr ▼ ▲

License # ▼ ▲

Effective Date ▼ ▲

Sales Agent Status ▼ ▲

License Status ▼ ▲

Actions

As mentioned earlier, notifying TREC of the delegation of supervisor of a broker associate is different than notifying TREC of the delegation of a sponsored sales agent since the broker associate is not listed in the Relationship Management Tool as a sponsored agent. To notify TREC of this delegation the broker must send TREC a completed Notice of Delegation of Supervising License Holder. (TREC DL-2) See Appendix B.

## **Managing a Supervising Team Leader**

### How Does a Broker Manage and Train Team Leaders?

A broker who allows teams within their brokerage should create policies for the management of the team leaders and the license holders associated with a team. Compliance policies should be consistent across the brokerage, regardless of team affiliation.

As you know, this course is required by law, but the broker might consider other risk management classes and/or one-on-one time with team leaders to discuss compliance issues. Compliance management should include, at a minimum, required broker documents, and the process for reviewing advertising for the team to ensure compliance with advertising policies.

A broker may require more specific training or education for an agent to be a team leader. As a best practice, additional training required for team leads should be documented in a written policy.

## **Broker Associates**

### What is the difference between a broker and a broker associate?

There are only two types of real estate licenses issued in Texas, a broker license and a sales agent license. A broker may work independently, representing buyers, sellers, landlords and tenants in real estate transactions.

To be actively licensed and practice real estate in Texas, sales agents must be sponsored by a licensed broker. There is no limit to the number of sales agents a broker may sponsor, which is another reason this course and the requirements regarding broker responsibility are so important.

In a different scenario, a licensed broker may also work with another broker. While Texas does not issue a separate broker associate license, a broker may prefer to work with another licensed broker, and that is ok. Perhaps the broker likes the tools and systems that another broker has available. Or a broker may choose to associate with another broker because of brand recognition or lead opportunities. While the relationship between the primary broker and the broker associate may appear to mirror that of a sales agent and broker, the key distinction is that the concept of sponsorship is not applicable. The broker associate holds and is responsible for their own license.

Whatever the reason, the broker associate, who may also be a team lead, may not advertise in such a way to confuse the consumer as to who is ultimately responsible for the brokerage. To avoid confusion, the broker associate advertises as such and follows the policies and procedures of the primary broker just like any sponsored sales agent would do.



# Chapter 3

## Ensuring Competency and Training for Agents

### Learning Objectives

After this chapter you will be able to

- \* Explain three forms of competency: subject matter, geographic, and contract forms.
- \* Create policies and procedures that hold brokers, and delegated supervisors accountable for supporting competency of sponsored agents.
- \* Develop a training and coaching program for new and experienced sponsored agents.

### Introduction

Since the broker is responsible for ensuring competency of sponsored sales agents, the broker should have policies in place defining the characteristics and minimum competency standards for different specializations or types of real estate transactions the broker allows sales agents to perform. The broker should also have policies defining geographic competency and competency using contract forms.

The end of this chapter discusses the importance of the brokers' policy and procedure manual as an essential training tool as well as the topic of training and coaching.

### Best Practice Spotlight

To be successful, brokers who sponsor sales agents could develop and maintain a list of current topics that originate from recent transactions to create training or educational material. These topics could be incorporated into sales meetings, weekly and monthly newsletters, and even short video presentations. Each topic covered facilitates development of competency of agents in the brokerage.

### Subject-Matter Competency (Specializations)

#### It's Your Business to Know Your Business

Real estate is real estate, right? Wrong. Real estate brokerage activity can span many specialty areas,



especially in a state as large and diverse as Texas. For example, commercial leasing looks a lot different than representing a residential buyer. Farm and ranch transactions don't look anything like condominium sales, no matter how broad the condo's pet policy is.



TREC rule §531.4 (Competency) requires license holders be educated in the characteristics involved in the specified type of real estate being brokered. That means that all license holders must take extra

steps to truly learn the area(s) of brokerage activity in which they practice. There are many paths to subject-matter competency. Some examples include taking additional coursework with a focus in specific types of brokerage activity, working with a coach or member of the real estate community with expertise in the subject matter, or doing independent research in a particular area.

Special care must be taken on the part of the broker to ensure sponsored agents are only conducting brokerage activity in areas where they are competent. As discussed, brokers are required to maintain written policies and procedures under TREC rule §535.2(i) that advise their agents of the scope of their authorized activities under TRELA and ensure competency

to practice in those authorized activities. That means serving as a sponsoring broker comes with the responsibility of making sure agents are competent in the areas in which they practice!

Further, §535.2(i)(5) states every sponsored sales agent conducting a type of brokerage activity for the first time must receive, at a minimum, coaching and assistance from an experienced license holder competent in that activity. Remember, that requirement applies to the first time a sponsored agent conducts any type of brokerage activity for the first time and not just their first real estate transaction.

### **Scenario: Keisha Sells Lubbock — Developing Competency**

Keisha is a new agent at a small boutique brokerage who has dreamed of selling farm and ranch her whole life. She gets her chance with the listing of a lifetime outside of Lubbock. Keisha's broker made sure Keisha has taken a class on farm and ranch, researched the area concerning the transaction, and assigned his top farm and ranch agent to work with her step-by-step throughout the transaction. The sale was completed without a hiccup!

Keisha now decides to focus on residential sales within Lubbock city limits. Keisha is confident she will be able to serve as a buyer's agent for residential property without any additional guidance. After all, she nailed that farm and ranch transaction, completed her SAE requirements within months of receiving her license, and she's read the TREC One to Four Family Residential contract a dozen times. She tells her broker there's no need for extra coaching or supervision because she already successfully completed the farm and ranch transaction.

## **DISCUSSION**

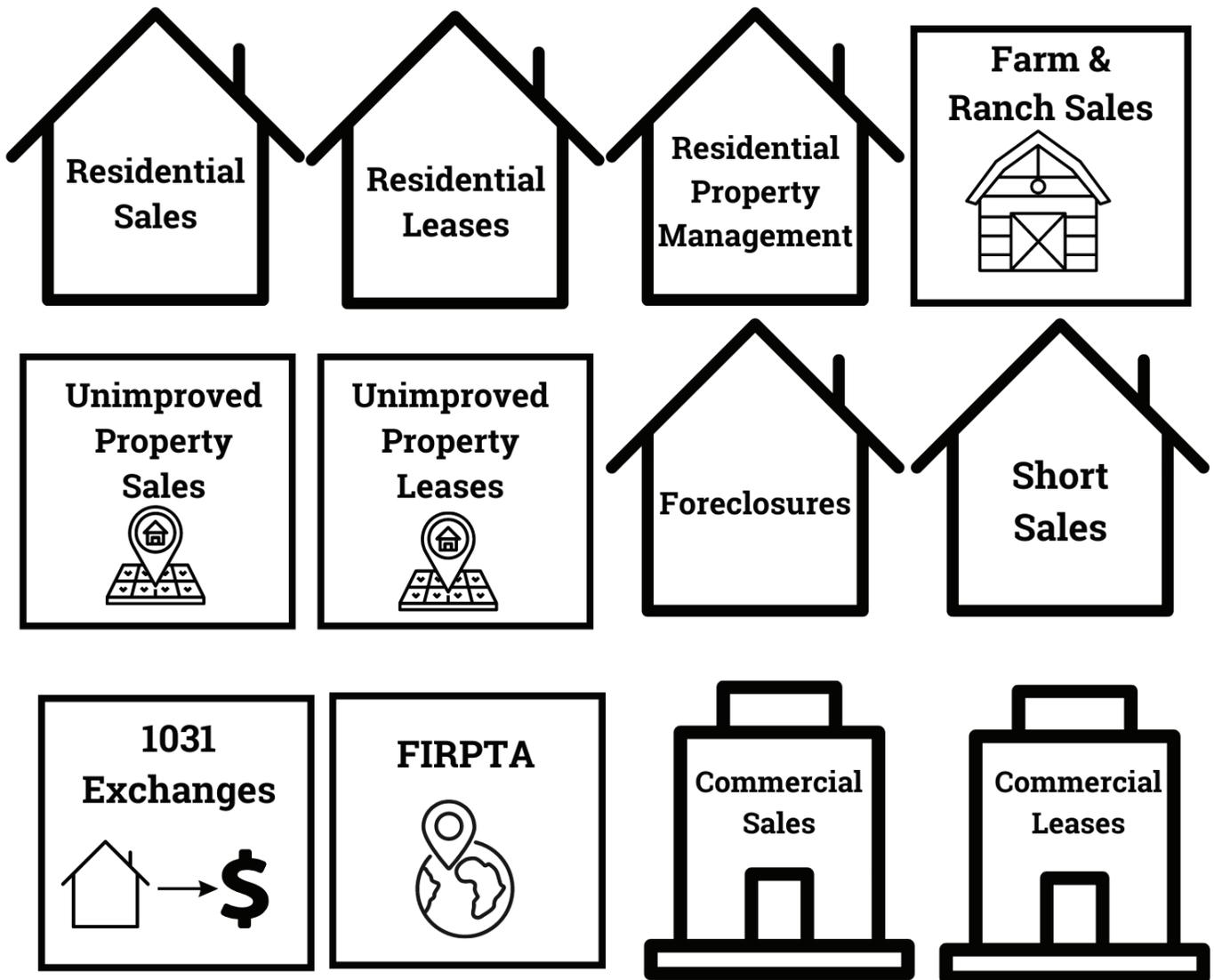
1. What tips do you have for Keisha's broker in this scenario?
2. How does this scenario change if Keisha works for a large brokerage with a delegated supervisor in place?

### **Subject Matter Competencies**

As required by TREC rule §535.2(i), a broker can choose what subject areas agents can practice in, but must have policies and procedures in place to ensure competency for each one. A broker or a designated supervisor should be competent in the subject matter they allow agents to practice. These are some (but not all) subject matter types:

# Real Estate Subject Matter Competencies

Which of these specialties require knowledge of buyer/seller or landlord/tenant representation?



## Notes on Commercial Subject Matter Competency

1. Within each commercial category there are many types of properties with different variables that each require unique skills and competency. For example: offices, office condos, doctor's offices, restaurants, industrial properties, warehouses, retail spaces, high rise buildings, convenience stores, and other special purpose properties like nurseries for children, nurseries for plants, car lots, etc.
2. Leasing in commercial real estate can sometimes be more challenging than sales in commercial real estate. Often in commercial transactions both consumers will have attorneys representing them. A clue to recognizing competency in commercial transactions might be if the license holder can explain triple net lease (NNN) or cap rates.

## Geographic Competency

The License Act and corresponding TREC rules require license holders be “geographically competent” in all brokerage activities. By statute, TREC is authorized to take disciplinary action if a license holder fails to consider market conditions for the specific geographic area in which the license holder is providing a service.

Further, TREC rule §531.4 requires license holders be knowledgeable about local market issues and conditions affecting real estate in the geographic area in which they work, and the characteristics involved in the specific type of property being sold or leased.

Penalties for violating the License Act provision or TREC rule §531.4 can range from \$500-\$3,000 per violation.

### What is geographic competency?

Geographic competency is addressed in two key places within TREC rules. TREC rule §531.4 addresses license holder competency in general with a focus on geographic competency. This rule states:

***It is the obligation of a license holder to be knowledgeable and competent as a real estate brokerage practitioner. The license holder must:***

- 1) **be informed on local market issues and conditions affecting real estate in the geographic area where a license holder provides services to a client;**
- 2) **be informed on national, state, and local issues and developments in the real estate industry;**
- 3) **exercise judgment and skill in the performance of brokerage activities; and**
- 4) **be educated in the characteristics involved in the specific type of real estate being brokered for others.**

The widely diverse geography of our state creates a varied real estate business culture, especially when you factor in the state's economy and diverse population. For example, real estate transactions in Beaumont by their very nature are different than those in El Paso; transactions in Amarillo differ from those in Brownsville. Close regions in Texas such as the Dallas-Fort Worth Metroplex may have diverse geographies. Time and economic changes can further alter those differences. For instance, think about the recent developments in oil and gas drilling technology, or how housing developments are beginning to pop up in once rural areas which are now becoming more desirable due to proximity to growing cities.

A license holder must be educated on the issues and conditions affecting their practice area. A license holder must be informed on national, state, and local issues and developments in the real estate industry. A license holder must be educated in the characteristics involved in the specific type of real estate being brokered. Without geographic competency, a license holder cannot adequately perform their duties to their clients, which puts consumers at risk.

Geographic competency is also mentioned in TREC rule §535.2(i)(1). This section states that a broker who sponsors agents or serves as a designated broker for an entity shall maintain written policies and procedures to ensure that each sponsored agent is competent. This section notes that such competency also includes geographic competency in the market area where the agent represents clients. This means that as a broker, you have a duty to ensure not only that your written policies and procedures address geographic competency, but also that your agents are *actually* geographically competent to practice real estate.

### How does a license holder become geographically competent?

Becoming geographically competent in any type of real estate brokerage activity requires not only traditional education but also real-world experience. To be geographically competent also means knowing the area and the unique features affecting that area. As such, becoming geographically competent looks different depending on where the license holder is and in what type of brokerage activity they are engaging.

It is safe to say that one cannot “sell Texas.” Texas is a large and incredibly diverse state. There is no set standard as it relates to issues relevant to brokerage activity within the state. A broker must ensure that reasonable boundaries are set for agents that allow for a productive and knowledgeable practice. Consumers rely on the knowledge and skills of their agent/broker.

## What if the sponsoring broker is not geographically competent in the type of brokerage activity in which the agent wishes to engage in?

The sponsoring broker must either gain the experience on their own or find another expert to teach the necessary skills and assess the agent's competency.

## What methods can the sponsoring broker employ to be sure the sponsored agent has the competency to work in the new field?

1. Pair the new agent with a broker or agent experienced in the specific brokerage activity; or
2. Find a qualified supervisor, team leader or coach that can not only teach the agent, but also assess the agent's competency in the specific brokerage activity.

If both the sponsoring broker and sponsored agent are not competent in a particular area of practice, the best practice is passing the lead to someone competent via a referral until both the sponsoring broker and agent gain the necessary competency.

### Scenario: From Big City to Rural West Texas — Where's the Competency?

Jazzmin is a broker in Dallas. Calvin is one of her best agents. He recently came to Jazzmin with an opportunity to represent someone looking to purchase a ranch in west Texas. He thinks he is up to the challenge, and it does appear as though it might be a lucrative deal for him if he can find the right property. Calvin has been a rockstar in all the transactions he has handled so far, both big and small.

### DISCUSSION

1. As a broker who has been in the big city all her life, how should Jazzmin approach Calvin's request?
2. What considerations are there for both Jazzmin and Calvin?

## Consider This...

A broker should consider their own expertise in a specific area of practice before determining whether a sponsored agent is competent. How can a broker with the appropriate subject matter expertise in a specific area of real estate brokerage assess their agent's competency?

- \* Ask questions to assess the agent's knowledge in the area;
- \* Evaluate the agent's previous experience working in the area; and
- \* Ensure agents keep current with the dynamics of specific areas of real estate brokerage.

## TREC Contract Form Competency

Brokers must ensure the sales agents they sponsor know how to correctly use and complete all contract forms. Contract forms can be tricky, even for seasoned agents. Brokers must be experts on contract forms. They must also know how to count days to establish deadlines for action, and know what dates go where. It is the responsibility of the broker and delegated supervisors to educate sponsored agents on how to complete forms so sponsored agents can become COMPETENT on their own.

# CONTRACT FORM COMPETENCY



## The Dirty Dozen — Questions Brokers Should be Able to Answer

Brokers are responsible for being the experts and must be ready to answer questions from their sponsored agents. Whether you are a broker, a delegated supervisor, or sales agent, can you answer these questions? After reviewing and discussing these questions, see Appendix C.

1. Why can't the Addendum Concerning Right to Terminate Due to Lender's Appraisal be used for a VA or FHA loan? Compare to paragraph 4 of the Third Party Financing Addendum.
2. How do I find information needed for the Addendum Containing Notice of Obligation to Pay Improvement District Assessment (PID notice) and why do I have to do this?
3. Who puts the effective date on the TREC sales contract and when?
4. How do you count days in the TREC sales contract?
5. What do I do if the Seller's Disclosure Notice is not fully and properly filled out?
6. Does the "back-up" contract really require earnest money and option money to be paid and, if so, when?
7. The property didn't meet the underwriter's requirements but it's outside of the buyer's number of days for buyer approval. What can the buyer do? (Hmmm...perhaps a "trick" scenario?)
8. In the Addendum for Property Subject to Mandatory Membership in a Property Owners Association, what do the choices for documents really mean? And why would anyone even need the subdivision information?
9. You've got gas? Where does it go? Is there a form for that?
10. What can the buyer object to in paragraph 6D?
11. What do you mean the seller has to fix it?! Wind from a hurricane rips off a section of the roof while a property is under contract. What does TREC's One to Four Family Residential Contract (Resale) say about a casualty loss?
12. The seller turned off the utilities 3 days before closing. The buyer wants to have an inspector verify required repairs have been done. What now?

## One Rule Fits All

The requirements of §535.2 apply to all sponsoring brokers, regardless of size of brokerage or business model. A sponsoring broker of over one-thousand sales agents has the same responsibilities to the consumer and their sponsored agents as a sponsoring broker of a two-person brokerage. A sponsoring broker should never act as “a broker in name only” or as someone whose role is only to “check the box” as it relates to required paperwork with TREC. The Licensing Act and TREC rules do not distinguish between business models, nor does the TREC Enforcement Division. At the end of the day, the broker is responsible for the actions of every single one of their agents. The broker must implement written policies and procedures that

address not only the requirements set out in §535.2, but also industry best practices and additional safeguards necessary. A broker must make certain those policies and procedures are also applicable to their business model and that they are followed. Every broker must examine their business model(s) and structure to ensure compliance. This requires a level of structure and engagement that cannot be dismissed.

## A Tale of Three Brokers

Real estate brokerages come in all shapes and sizes. As stated above, regardless of size or structure, brokers are required to follow the Licensing Act and TREC rules. Below are three scenarios about three different brokerages. Read each scenario and consider the answers to the discussion questions for each one.

### Broker Maria — No Rules Realty — Really?

Maria has a broker’s license, but primarily works in another field. “On the side,” she serves as the designated broker for No Rules Realty, LLC, which has about 100 agents across the state. Maria signed on with the understanding that her role would be minimal, and the delegated supervisor would handle the day-to-day business. One of the agents at No Rules Realty has a complaint filed against him for negligence regarding a recent transaction. Maria now finds herself the subject of a TREC enforcement action for something involving someone she has never even met. She is facing license suspension and some pretty high penalties. The delegated supervisor isn’t even mentioned in the complaint, which Maria thinks is unfair!

#### DISCUSSION

1. Why do you think the delegated supervisor isn’t mentioned in the complaint?
2. What should Maria do to prevent this scenario from happening again?

### Broker Jordan — Delegation and Documentation Saves the Day

Jordan is the broker for a brokerage sponsoring about 1,000 agents. Jordan takes his position very seriously and has made sure his policies and procedures are thorough and detail the scope of the agents’ authorized work. He implemented a mandatory training program for his agents and assigns a coach to each new agent in his brokerage, regardless of how long that agent may have been practicing with another broker. Jordan has a strict “no property management” policy for his agents because he doesn’t have the expertise nor supervisory capacity to oversee it. One of his agents engages in property management without telling Jordan and becomes the subject of a complaint. Jordan, unaware of the agent’s property management activities, is initially named in the complaint by TREC but is ultimately able to demonstrate through his policies and procedures and other documentation that this agent acted outside the scope of his authorized duties and never sought permission from Jordan. What a relief!

#### DISCUSSION

Why do you think Jordan was released from the TREC enforcement action?

## Broker Marisol — Size Doesn't Matter

Marisol opens her own brokerage and hires two agents. Because they are such a small shop and share the same office space, Marisol decides there's no need for formal policies and procedures. Marisol is always happy to answer questions and assist when her agents ask for help, but she expects them to step up as professionals and ask when they don't know how to handle something. One of her agents decides to try their hand at being a seller's agent for a condominium sale. The sale goes very wrong when Marisol's agent makes a rookie mistake regarding disclosure of an offer. Marisol finds herself the subject of a TREC complaint!

### DISCUSSION

What issues do you see with Marisol's management approach and TREC rules?

## Training & Coaching

A broker invested in developing competent agents should have a training and coaching program in place. Best practices for brokers include:

- a. inspecting and approving documents and contracts BEFORE they are sent; and
- b. having a training and coaching program in place that exceeds the requirement of the broker to only oversee the first transaction of an agent who lacks the competency to act on their own.

A broker's policy and procedure manual should be very clear on what competency, both by transaction type and geography, looks like to the broker. It should also include the steps necessary to become competent and who to contact for more instruction.

## The Broker's Policy and Procedure Manual — An Essential Training Tool

With a broker responsible for determining competency in both areas of specialization and geography, a broker should include in the brokerage's policy and procedure manual more than just definitions of what these competencies are. A broker who is adhering to the Broker Responsibility rule found in §535.2(i)(5), which is included below for reference, should have in the brokerage's policy and procedure manual an education plan beyond the minimum required by TREC for renewal of a license. This plan should include courses

the broker has determined are necessary to obtain and maintain competency in the scope of the sales agent's practice. Templates and model policy and procedure manuals are available through trade associations, education providers, and real estate attorneys.

**§535.2(i)(5) states:** *In addition to completing statutory minimum continuing education requirements, each sponsored sales agent 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 sales agent's practice subject to the Act. At a minimum, when a sales agent performs a real estate brokerage activity for the first time, the broker must require that the sales agent receive coaching and assistance from an experienced license holder competent for that activity.*

## Dear Broker, I've Got My License. Now What?

Consider what an educational plan for a new agent might look like. How would the plan change for agents who are already experienced in real estate and want to explore a new specialization or geographic area?

## Training for Success

The goal of an effective training and coaching program should be clear to everyone involved. One goal in setting agents up for success might be to provide new agents with a clear understanding of successfully generating leads. Yet, giving license holders the tools to lead generate is only one part of the success formula. Agents must have opportunities to practice using their lead generation systems so they may begin to use them effectively. When an agent is capable of effectively generating and following up with leads, positive habits can be developed.

For experienced license holders, training could be something like broadening their abilities to help build their business and develop a broader scope of brokerage services. Broadening of geographic competency or areas of specialization requires the agent to seek more training or coaching through professional development.

Though each broker may operate differently, the bottom line is that the needs of the client come before all else. Equipping agents with the tools to do that creates a better experience for everyone. The broker has a responsibility to lead the brokerage and enable sponsored sales agents to develop individual business plans that successfully address the fiduciary responsibilities and competency.

A newly licensed sales agent may interview multiple brokers to determine which one offers the training and tools that will lead to success. The interview process gives both the sales agent and broker the opportunity to communicate their goals and values. In essence, brokers and sales agents are like shoes, they have to fit.

### **Dear Broker, What's the Training Program Here?**

Consider the brokerage training program in your current office. What does it look like? Does it take into account the following considerations?

- \* What does the broker expect the agent to observe prior to engaging in a brokerage activity?
- \* How many transactions overseen by a coach or trainer are considered sufficient to establish competency?
- \* Is there an established path an agent can follow to obtain competency in different specialty areas?
- \* Is there a dedicated contract specialist available to assist agents with transactions and documentation?

### **Commission Above Competency & Fiduciary, Seriously?**

Unfortunately, it's not uncommon for a sales agent to prioritize their commission over their fiduciary duties to a client. This is a clear violation of TREL A and TREC rules. If an agent or broker is not competent to perform a particular brokerage activity, the right thing to do is refer the client to an agent who is competent. And bonus, you might even get a referral fee! It might not be as much money up front, but it might result in a return client based on the agent's honesty and trustworthiness.

### **Supervision Components & Compliance Issues for Teams**

Most compliance issues for teams are the same as compliance issues for individual agents. As a best practice, it is important for team leaders to understand their roles and responsibilities as delegated supervisors within the brokerage the same as any other delegated supervisor would. It is also important the broker be aware of what their teams are doing in terms of compliance with TREC advertising rules and brokerage activity so there is no chance the consumer could be misled into thinking the team is separate from the brokerage.

Team names have been added to the Broker Information page of the contracts in order to allow a team to be contacted for problems and in order for a consumer to know the name of the team (if there is one) in the transaction.



# Chapter 4

## Everyday Use of the Consumer Protection Notice (CPN) and Information About Brokerage Services (IABS)



### Learning Objectives

After this chapter you will be able to

- \* Summarize how license holders can post the Consumer Protection Notice (CPN) and IABS to potential clients.
- \* Describe the role that the IABS plays in consumer protection.
- \* Name two reasons an individual broker would not be in good standing with TREC.

### Consumer Protection Notice 101

As the name suggests, TREC's Consumer Protection Notice is intended to provide consumers with certain information so that they are better informed and protected when engaging with real estate practitioners.

### Who is Required to Provide the Consumer Protection Notice?

Real estate brokers and sales agents must provide the Consumer Protection Notice. There are two locations where this form is required.

- \* Physical office
- \* Business website, including social media

Always make sure you are using the most current version of the form. See Appendix D.

### Are Your Posts & Links Readily Noticeable?

Brokers and agents must ensure the Consumer Protection Notice is “readily noticeable” for anyone who might be coming to the office, visiting a website, or checking out social media pages. It should not require a magnifying glass or several clicks of a website to see it.

#### In the Office

The Consumer Protection Notice must be displayed in a readily noticeable location in each place of business the broker maintains.

#### On Your Business Website

The Consumer Protection Notice must be hyperlinked in a readily noticeable location on the homepage of your business website. The text for the link must be either:

- \* “Texas Real Estate Commission Consumer Protection Notice” in at least 10-point font; or
- \* “TREC Consumer Protection Notice” in at least 12-point font.

**Practice Tip:** TREC provides updates to all license holders in advance of changes to the Consumer Protection Notice. If hyperlinking to the TREC website, you will always link to the most current version of the Consumer Protection Notice. If you use an upload of the CPN on your website or social media, you will need to ensure you always have the most current version posted.

#### In Your Social Media

If you use social media in your real estate business, then it's possible your profile may qualify as a business website. According to TREC rule §531.18, a “business website” means a website on the internet (including social media) that is accessible to the public, contains information about a license holder's services, and the content is controlled by the license holder. If your social media profile meets this definition, you must also include a link to the Consumer Protection Notice in a readily noticeable location. However, the rule also provides some flexibility for social media platforms and

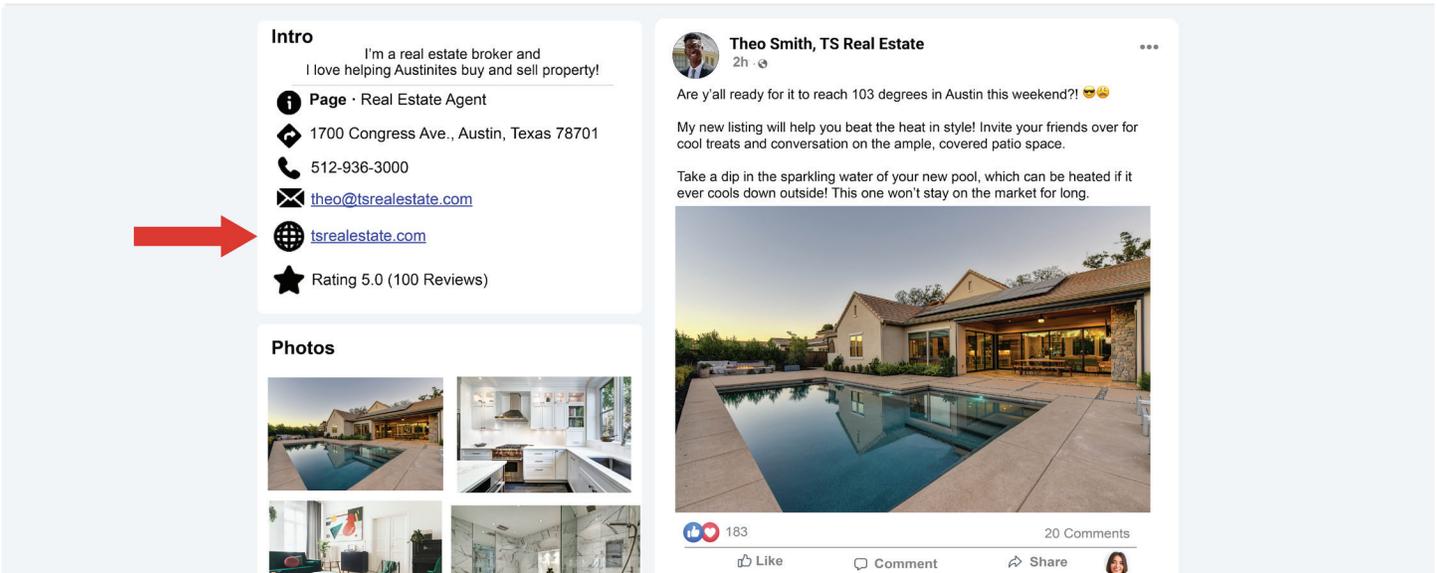
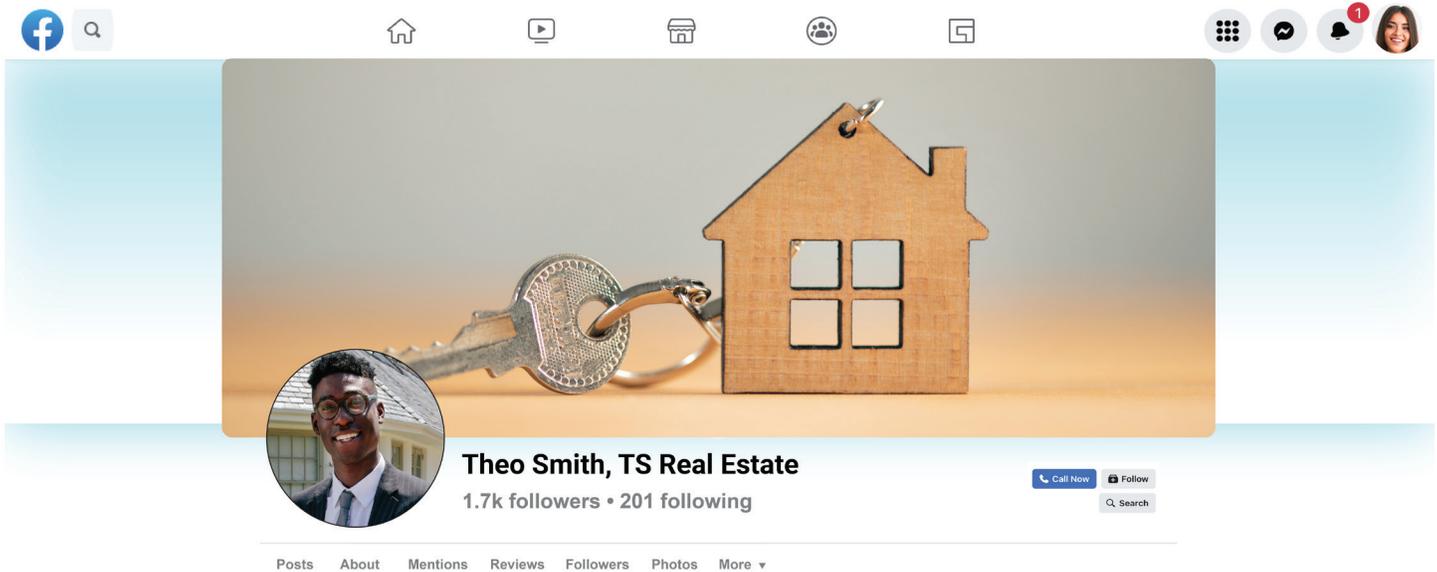
allows the required link to be either:

- \* Within your account holder profile or;
- \* A separate page or website through a direct link from the social media platform or account holder profile.

Here are examples of acceptable ways to provide the notice on social media.

## Use Your Website's URL

The easiest way to provide the notice is already part of the rules for compliance. Because your business website's homepage must have the hyperlinked notice, you can use that URL in the intro section on your Facebook business page or in the bio section on platforms like Twitter and Instagram.



← **Theo Smith, TS Real Estate**  
2,342 Tweets



**Theo Smith, TS Real Estate**  
@TheoSRealEstate

I'm a real estate broker and I love helping Austinites buy and sell property!

© Austin, Texas [tsrealestate.com](https://tsrealestate.com) Joined April 2016

223 Following 12,894 Followers

Tweets    Tweets & replies    Media    Likes

**Theo Smith, TS Real Estate** @TheoSRealEstate · 3h

Y'all ready for a HOT weekend in #ATX?! 🌞🥵  
My new listing has what you need to beat the 103-degree heat! #pool #txrealestate



7:35 PM • July 8, 2022

23    47    74    ↗

## Use Link-in-Bio Tools Strategically

Some platforms like Instagram do not render clickable hyperlinks in the copy of posts, and only provide the option for one clickable link in your profile's bio. There are a variety of "link-in-bio" tools to create a static link for the bio that leads to the collection of

URLs referenced in your posts. If you use a tool like this, pin a link to the Consumer Protection Notice to the top of your listed links so it is always readily noticeable, even as you add more posts.

The graphic below uses "Ink.bio" to create a "link in bio." As mentioned earlier, there are several tools that can be used for "link-in-bio" features.

## TheoSRealEstate



242  
Posts

1,240  
Followers

541  
Following

### Theo Smith, TS Real Estate

Real Estate Broker

I am a real estate broker and I love helping Austinites buy and sell property!

[lnk.bio/TheoSRealEstate](https://lnk.bio/TheoSRealEstate)



Follow back

Message

Contact



Design



FAQs



Habitat



<https://lnk.bio/TheoSRealEstate>



I'm a real estate broker and I love helping Austinites buy and sell property!



Theo Smith  
TheoSRealEstate



TREC CONSUMER PROTECTION NOTICE



TREC INFORMATION ABOUT BROKERAGE SERVICES



FAVE KITCHENS!



STAGING TIPS!



BATHROOM REMODEL IDEAS!



FOR SALE: COOL OFF IN STYLE!



BUYERS & SELLERS STUFF



USEFUL INFO

## IABS - Information About Brokerage Services Form & Representation Disclosure Under Occupations Code §1101.558 and TREC Rule §531.20

Texas law requires all brokers and sales agents to provide written notice regarding information about brokerage services at the first substantive communication with prospective buyers, tenants, sellers and landlords concerning specific real property. The Information About Brokerage Services (IABS) form is the required method to provide that information to those parties. A completed IABS must also be posted to the home page of the license holder's business website.

Why is this information, its location, and the timing of delivery so important? It's simple – the public has the

right to know and understand the different types of representation and how they will be represented. **Before the potential buyer, tenant, seller, or landlord enters into an agreement to sell, purchase, or lease, it is crucial that the potential client understands the role of the agent and broker.** Not only does the IABS provide information about representation, it also gives the consumer the information about who to contact if there is an issue with the sales agent. For this reason, it is important to correctly complete all required information in this form.

There are a few exceptions to the requirement to provide the IABS. These include when:

- \* The proposed transaction is for a residential lease for less than a year and a sale is not being considered;
- \* The license holder meets with a party who the

license holder knows is represented by another license holder; and

- \* The communication occurs at an open house for any prospective buyer or tenant and the communication concerns that specific property.

### Did you know...

Section 1101.558 of the Texas Occupations Code also requires a license holder representing a party in a real estate transaction to disclose that representation at first contact with another party to the transaction.

## Required Posting and Delivery of the IABS

The IABS must both be delivered at the first substantive communication and be posted on the homepage of the license holder's business website. A business website is a website accessible to the public, where the content is controlled by the license holder, and that contains information about a license holder's real estate brokerage services.

Below are some reminders regarding posting and delivery of the IABS to a website or social media.

- \* Make sure all fields in the IABS are completely and correctly filled out.
- \* Post a link to the IABS form labeled "Texas Real Estate Commission Information About Brokerage Service," in at least 10-point font or "TREC Information About Brokerage Service" in at least 12-point font on the homepage of the business website, in a readily noticeable place.
- \* Post a link to the IABS within your social media account profile or include as a direct link on the social media platform or social media account profile to another page that contains a link to the IABS. You also can refer to the previous section regarding social media and the Consumer Protection Notice as a guide to posting the IABS.

### Delivery in Requirements for the IABS (at the first substantive communication)

- \* Electronic Delivery:
  - » In the body of an email. The link to the IABS must be above the email signature block and specifically reference the IABS form.
  - » As an attachment to an email. The body of the email must specifically reference the attached IABS in the body of the email.
- \* Hard Copy Delivery:
  - » Give the completed IABS form directly to a client.
  - » Provide via first class mail or overnight common carrier delivery service.

**Practice Tip:** One of the most frequent comments TREC receives is that the consumer cannot get in touch with the agent and doesn't know where to go next. By ensuring that the broker provides the correct contact information in the IABS, the consumer can contact the broker in the event they do not receive a response from the broker's agent.

**Bonus Tip:** By ensuring the agent provides the correct broker contact information in the IABS, the broker is not only in compliance with TREC rules, but also has their information available for license holders representing other parties in a transaction should they need to contact the broker for any reason.

## Anatomy of the IABS

Here are several scenarios regarding the use of the IABS. How should the IABS form be completed? Who goes where on the form?

### Scenario 1 – Big Broker, Inc.

Sales Agent Bob Murphy	019739	281-555-4444	bob@bigbroker.com
Sales Manager Janice Day	066666	713-777-8888	janice@bigbroker.com
Broker Emiliana Estes	041414	713-999-0000	emiliana@bigbroker.com
Big Broker, Inc.	9000909	713-999-0000	emiliana@bigbroker.com

Big Broker, Inc. is a corporation set up by broker Emiliana Estes. She is the designated broker for the company. Emiliana has employed Janice Day to oversee the agent’s work and all the transactions for the company, and Janice has been delegated as a supervisor by Emiliana. Bob Murphy is a sales agent who is sponsored by Big Broker, Inc.

### Scenario 2 – Pearl District Real Estate, Ltd.

Sales Agent Jerry Dawes	077777	726-333-9999	jerryd@wesellsarealtyteam.com
Team Leader Edith Curl	022222	210-222-3333	edith@wesellsarealtyteam.com
Sales Manager Ann Kim	054545	210-444-4444	Ann.Kim@PDRealEstate.com
Pearl District Real Estate, LLC	9000888	210-777-9999	Dusty.Shoes@PDRealEstate.com
Broker Dustin “Dusty” Shoes	033333	210-777-9999	Dusty.Shoes@PDRealEstate.com

Sales Agent Jerry works on the We Sell San Antonio Realty Team at Pearl District Real Estate. The leader of the team is Edith Curl. Ann Kim manages the sales team at Pearl District Real Estate for the designated broker “Dusty” Shoes.

### Scenario 3 – Erin Cavanaugh

Broker Associate, Ahsen Abidi	044444	469-888-8888	Ahsen@AhsenAbidi.com
Broker Erin Cavanaugh	069999	972-222-2222	Erin@ErinCavanaugh.com

Erin is a sole proprietor broker. She has one person who she works with, Ahsen Abidi, who also is a broker. All listing, buyer representation, and property management agreements are taken in Erin’s name.

**LICENSE HOLDER CONTACT INFORMATION:** This notice is being provided for information purposes. It does not create an obligation for you to use the broker’s services. Please acknowledge receipt of this notice below and retain a copy for your records.

1.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Licensed Broker /Broker Firm Name or Primary Assumed Business Name	License No.	Email	Phone
2.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Designated Broker of Firm	License No.	Email	Phone
3.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Licensed Supervisor of Sales Agent/ Associate	License No.	Email	Phone
4.	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Sales Agent/Associate’s Name	License No.	Email	Phone

See Appendix E for the sections of the TREC rules and the Texas Occupations Code that outline the requirements for disclosure of representation provided by the IABS.

## Licensing Requirements for Business Entity Brokers

A licensed business entity broker is an organization that can act as a real estate broker in Texas. It must be authorized to transact business in Texas and must have an active Texas broker designated to act on behalf of the entity. A business entity may not act as a broker unless the entity's designated broker is a licensed and active individual broker in good standing with TREC.

An individual licensed broker is not in good standing with TREC if:

- \* the broker's license is revoked or suspended
- \* a business entity license was revoked or suspended within the last two years while the broker served as designated broker for the entity
- \* the broker has any unpaid or past due monetary obligations to TREC
- \* a business entity license has any unpaid or past due monetary obligations to TREC that were incurred while the broker served as designated broker for the entity

The designated broker for the business entity is the person responsible for the broker's responsibilities under TREC rule §535.2 and may be subject to a TREC enforcement action if they do not comply with these requirements.

This situation occurs more times than one would think. State law requires a business entity that receives compensation on behalf of a license holder be licensed. See Tex. Occ. Code 1101.355(c) and corresponding TREC rule §535.4(g). That means that a license holder must first have a business entity license issued by TREC prior to receiving any commission or compensation related to real estate brokerage services.

Receiving compensation on behalf of a license holder without a business entity license is considered unlicensed activity and TREC could take disciplinary action as a result.

**Tip:** If you find yourself in this situation, make sure you take action ASAP and get your business entity licensed. And be truthful on your application if compensation for real estate activity was previously received.

### Dear Broker, "I Need a License for That?!"

"My accountant advised me to set up a business entity to receive commissions. The business entity isn't used for anything other than receiving commissions. I had no idea I needed a TREC license for doing business this way!"



# Chapter 5

## Additional Broker Responsibilities

### Learning Objectives

After this chapter, you will be able to

- \* Design a policy and procedure manual that addresses the requirements in TREC rule §535.2(i).
- \* Identify a broker's minimum required response times for phone calls and correspondence.
- \* Distinguish between what can and cannot be in an advertisement according to TREC rule §535.155 and TREL §1101.652(b)(23).
- \* Describe 3 practices a broker can perform to support advertisement compliance of their sponsored agents.



### TREC Required Policies and Procedures for Brokers

This course has discussed many requirements brokers must fulfill to be in compliance with TREC requirements and run a successful brokerage. TREC wants brokers to be successful, while practicing ethically and training agents to perform brokerage services competently and fairly. The term “fiduciary” has been mentioned many times throughout this course.

#### Mission Possible #8!

You don't need to have seen the latest “Mission Impossible” movie to participate in this activity. The mission of this section (should you accept it) is to review each of the eight items in rule 535.2(i) and create a policy of best practices for each requirement including key elements to help brokers be successful.

Here we go, cue the theme music...

**§535.2(i): A broker who sponsors sales agents or is a designated broker for a business entity shall maintain, on a current basis, written policies and procedures to ensure that:**

1. Each sponsored sales agent is advised of the scope of the sales agent's authorized activities subject to the Act and is competent to conduct such

activities, including competence in the geographic market area where the sales agent represents clients.

2. Each sponsored sales agent 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 sales agent for acts or services subject to the Act is paid by, through, or with the written consent of the sponsoring broker.
4. Each sponsored sales agent 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 sales agent 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 sales agent's practice subject to the Act. At a minimum, when a sales agent performs a real estate brokerage activity for the first time, the broker must require that the sales agent receive coaching and assistance from an experienced license holder competent for that activity.
6. Each sponsored sales agent 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) of this section.

## Additional Requirements of TREC Rule §535.2 Related to Record Keeping and Timely Response

### Record Keeping

TREC Rule 535.2(h) states: 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. substantive communications with parties to the transaction;
4. offers, 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 sales agents.

The broker’s policy should define exactly what records are kept and how they are kept. A checklist for each type of transaction may be a useful tool to utilize in practice. That way, agents have a document they can reference to make sure they are following the brokerage’s required recordkeeping. Remember, a broker’s requirements may exceed those of TREC when it comes to recordkeeping.

### Timely Response

TREC rule §535.2(j) and §535.2(k) specify the required response times for brokers or delegated supervisors to respond to sponsored sales agents, clients, and license holders representing other parties in real estate transactions.

TREC rule §535.2(j) states:

*A broker or supervisor delegated under subsection (e) of this section must respond to sponsored sales agents, clients, and license holders representing other parties in real estate transactions within **two** calendar days.*

TREC rule §535.2(k) states:

*A sponsoring broker or supervisor delegated under subsection (e) of this section shall deliver mail and other correspondence from the Commission to their sponsored sales agents within **three** calendar days after receipt.*

However, in a fast-paced and competitive market, waiting two or three calendar days to respond to an offer or an inquiry might not be in the best interest of your client. What is your best practice?

## Advertisements

### What is considered an Advertisement?

The definition of advertisement per TREC rule is very broad and generally includes any form of communication used by a license holder to attract members of the public to use real estate brokerage services. The list includes, but is not limited to, all publications, brochures, radio or television broadcasts, all electronic media including email, text messages, social media, the internet, business stationery, business cards, displays, signs and billboards.

### What Do TREC Laws and Rules require for License Holder Advertisements?

According to TREC rule §535.155, every advertisement must contain the:

- \* Name of license holder or team placing ad; and
- \* Broker’s name in at least ½ the size of largest contact information

According to TRELA §1101.652(b)(23) an advertisement cannot:

- \* mislead or be likely to deceive the public;
- \* tend to create a misleading impression; or
- \* imply that a sales agent is responsible for the operation of the broker’s real estate brokerage business.

TREC rule §535.155(d) sets out **twenty examples of misleading advertisements** that fall under the statutory prohibitions. Review these in Appendix F.

## What is a Broker’s Responsibility Regarding an Agent’s Advertisements?

**Under TREC rules, a broker must:**

1. Ensure sales agent’s advertisements comply with TREC Rules §535.154 and §535.155;
2. Maintain current policies and procedures on advertisement compliance;
3. Register brokerage DBA, and team names of agents and associated brokers with TREC BEFORE use in advertisements; and
4. Notify TREC no later than 10 days after use of a team name has stopped.

## How can a broker fulfill this responsibility?

1. Review and understand TREC's advertisement rules, including naming criteria and registration.
2. Develop a comprehensive POLICY AND PROCEDURES on advertisement standards.
3. Train agents and supervisors on the advertisement policy.
4. Have a system for agent advertisement review before it goes public.
5. Have a system of follow-up for any advertisement that promises a rebate or donation.

**Risk Reduction BONUS Tip:** Be aware of the Digital Millennium Copyright Act (DMCA) and have a policy for copyright compliance including examples of what can and cannot be done.

## DISCUSSION

1. What ways would you as a broker with broker associates allow them to advertise? How would this appear on websites, business cards, or other forms of advertising?
2. Where would the broker associates be listed on an IABS form? How would they be shown on a TREC promulgated contract Broker Information page?

## Rebates

Rebates and donations that are promised but not actually delivered constitute misleading advertisement violations, if not just plain fraud.

What policies and procedures can a broker have in place to make sure agents actually pay the rebate or donation promised to a client?

Answer - Brokers need to have very specific policies and procedures for rebates and donations. A broker could even choose to have a policy to not allow agents to promise or pay rebates or donations. If the broker allows them, the broker needs a clear policy on how to comply with rebate rules (both TREC and RESPA) and have procedures in place to ensure the agent does what they have promised to do and issues the rebate or donation. Some ideas for broker verification procedures are: require delivery of receipts of such payments to the broker within 3 days of closing or require the agent to issue the payment to the client or charity and deliver receipt to the broker before commission is paid to the agent by the broker.

## Naming Criteria and Registration of DBAs and Team Names

Below is a list of common questions TREC receives about assumed business names (DBAs) and team names.

### What is the Broker's Assumed Business Name (DBA)?

The broker's assumed business name (also known as "doing business as" or DBA) is another name for the brokerage that can be used by all sponsored agents or broker associates. It is the name that the brokerage is generally known as. A business name that indicates a broker's line of business (e.g. property management or commercial) is also considered an assumed business name of the broker, even though it may not be available for use by all sponsored agents and broker associates.

Any broker (individual or entity) can have a DBA. The DBA must be registered with TREC by the broker before it can be used in advertisements. A broker must have legal authority to use a DBA in Texas before it can be registered with TREC. A broker needs to check for DBA availability for use before registering the name with TREC. TREC does not check for names submitted for availability.

### What is a Team Name?

A team name is a name used only by one or more license holders working together within a brokerage that is not the broker's licensed name or DBA. Before a team name can be used in any advertisement, it must be registered with TREC by the broker.

#### Team Name Requirements & Restrictions

1. The name must end with the word "team" or "group."
2. Using words in a team name that could mislead the public to mistake the team for the brokerage is not allowed.
3. Prohibited Words – "brokerage," "company," "associates," or other similar words.
4. Common Acceptable Words – "property," "real estate," "homes," "realty."

### How does a Broker Register a Team Name?

A broker must notify TREC before sales agents or associated brokers may advertise using a team name. The creation of a team name is in the broker's Relationship Management Tool when the broker logs onto "My License Services" on the TREC website.

**Name List** Sort Filter Add Name

**Instructions**  
Select an icon next to the name to move the name into the corresponding name category.

-  **DBA**  
**Broker Assumed Business Name (DBA):** is another name for the broker's business that can be used by all sponsored sales agents and brokers associated with this broker. Another name that indicates a broker's line of business, e.g. property management or commercial, is also a DBA.
-  **Team**  
**Team Name:** is a name used only by a team or group of one or more sponsored sales agents or brokers associated with this broker. Team names must end in "TEAM" or "GROUP" and cannot contain the words "BROKERAGE", "COMPANY", or "ASSOCIATES" or other similar terms.
-  **Alternate**  
**Alternate Name:** is a name used by an individual license holder other than the name on the individual's license, such as a middle name, married name, maiden name or nickname.
-  **Delete**  
Remove a name.
-  **Edit Name**  
Use the pencil icon to change the text of a name in the name list.

Confirm Changes Cancel Changes

**DBAs**

**Team Names**

**Alternate Names**

## What is an Alternate Name?

An alternate name is a name used by an individual license holder other than their licensed name. It is a nickname, maiden name, or married name that the individual wants to use in advertisements. Before this name can be used in an advertisement, it needs to be registered with TREC by the license holder. Common name derivatives such as "Bob" for "Robert" or "Kim" for "Kimberley" do not have to be registered as an Alternate Name.

### Group Discussion — Staying Ahead of Advertising

1. How do you (as a broker) handle social media advertising?
2. Regarding advertising with alternate names – what are the issues you experience?
3. What policies and procedures or education do you use that are effective for your brokerage?
4. How are advertised rebate or donation promises handled?

## Succession Planning - Have a Plan!

What happens when a broker dies? What happens when a broker decides after a long and successful career to pack it all up one night and sets their license to inactive? What happens if a broker decides there is no need to renew because they want to pursue their other lifelong dream of travelling the world?

Any agent sponsored by the broker in the above scenarios will be placed on inactive status. If that broker is the designated broker for an entity, that entity and

any agent under that entity will also go inactive. That means those agents can no longer lawfully engage in brokerage activity. Any and all transactions they are working on have the potential to come to a screeching halt. As a sponsoring broker, you have a responsibility to your clients and your agents to ensure no one is unexpectedly left without representation or without a broker because your license becomes inactive or expires. Succession planning has been covered in other non-elective courses. However, succession planning is especially important as a broker. Consider what would happen to your business and your sponsored agents if you didn't have a plan in place if an event occurred that prevented you from running the brokerage. Detailed information about succession planning can be found in Appendix G.

## Property Management and Trust Accounts

### What Type of Property Manager Is Regulated By The Commission?

Under Texas Occupations Code §1101.002(1)(A)(x), a person needs a license to perform property management for another if the person controls the acceptance or deposit of rent from a resident of a single-family residential real property unit. A person controls the acceptance or deposit of rent for a single-family residential property when the person has the authority to:

1. use the rent to pay for services related to managing the property;
2. determine where to deposit the rent; or
3. sign checks or withdraw money from a trust account.

Even if a person performs this type of property management, there are two exceptions provided under the Licensing Act:

- \* An owner or the owner's employee who leases the owner's improved or unimproved real estate; and
- \* An on-site manager of an apartment complex.

### Did you know...

Commercial property management is not regulated by the Commission; however commercial leasing is.

## What do Sponsoring Brokers Need to Know About Property Management (PM)?

1. Understand that the broker is responsible for all PM activity that requires a real estate license of their sponsored agents. [See TREC rule §535.2(d)]
2. Decide whether the brokerage will allow sponsored agents to perform PM. Either way, put that decision in your policy so all agents know it.
3. The broker must give written authorization to sponsored agents to perform PM. This can be spelled out in an independent contractor agreement, employment agreement, or separate written scope of authorization document. [See TREC rule §535.2(a)]
4. The broker must have written policies and procedures in place to ensure the agent is competent to perform PM. [See TREC rule §535.2(i)(1)]
5. The broker must ensure that the first time an agent performs PM for another, the agent is working with another license holder who is experienced in PM. [See TREC rule §535.2(i)(5)]

### DISCUSSION

What policies and procedures should a broker have in place to keep a leasing agent from crossing into PM (deliberately or accidentally)?

## What do Brokers Need to Know About Trust Accounts?

1. All funds received from or on behalf of another person that are not commission or fees earned and payable to the broker, must be held in a trust account that has appropriate controls to comply with TREC rule §535.146. [See TREC rule §535.2(i)(7)]
2. TREC rule §535.146 main requirements for trust accounts:
  - a. Trust money entrusted to the broker is held in a fiduciary capacity and must be deposited in a trust account in a banking institution authorized

to do business in Texas (or delivered to an escrow agent as agreed upon by the principals of the transaction).

- b. The trust account must be held in the broker's name and clearly identified as a trust account.
- c. The broker can allow another license holder access to the account, but a sales agent cannot maintain a trust account for brokerage clients.
- d. Any trust money received by a sales agent must be immediately delivered to the agent's sponsoring broker.
- e. Trust money cannot be commingled with personal or brokerage operating accounts.
- f. An accounting of trust money must be given to the client at least monthly if there is any activity in the account.
- g. The broker can only disburse trust money in accordance with the agreement under which the money was received. This could be a PM agreement, contract, or other agreement.
- h. The broker must pay trust money to the party or parties entitled no later than 30 days after receipt of a written demand for payment.

### DISCUSSION

A property manager broker assigned a licensed agent the task of receiving and receipting rent checks received monthly by the brokerage. A few months later the agent was let go and the broker discovered that while rent checks had been receipted each month by the agent, they were never deposited and were instead just stuffed into the agent's desk drawer.

**What procedures could the broker put in place to ensure that the rent checks were immediately turned over to the broker or deposited into the broker's trust account?**



# Chapter 6

## TREC Enforcement and Broker Responsibility



### Learning Objectives

After this chapter you will be able to

- \* Summarize the complaint process from complaint filing to resolution; and explain how a broker is affected when a complaint is filed against one of their sponsored agents.
- \* Distinguish between the forms of formal disciplinary action TREC can take against a license holder.
- \* Explain what brokers can do to identify and prevent enforcement issues for their sponsored agents.
- \* Describe how a broker can support professionalism in the real estate industry when they witness problematic conduct of fellow license holders.

### TREC Enforcement

#### What's the point?

TREC is the consumer protection agency responsible for ensuring real estate brokers and sales agents, easement right of way agents, and real estate inspector licensing rules and statutes are followed by their respective license holders.

Without this regulatory authority the agency could not properly protect consumers against license holders that harm consumers. The Enforcement Division is comprised of attorneys, legal assistants, investigators, and other staff that allows TREC to perform this important function. Additionally, the division handles the background checks for all applicants and license holders.

Enforcement opened 7,332 cases in 2021 and has seen a steady increase in case openings over the past five years. This number includes consumer complaint cases and background check related cases. Between 2017-2021, 30% of cases received either formal or informal disciplinary action.

### File a Complaint!

The Commission relies on receiving complaints from the public, consumers and license holders. In fact, TREC encourages a license holder to file a complaint if they see a violation of TRELA or TREC rules. A license holder is more knowledgeable about TREC rules and statutes than a consumer and is often in a better position to determine if there is something TREC needs to investigate. While TREC cannot accept anonymous complaints, it can initially protect a complainant's identity in some circumstances where a complainant's participation in the complaint process is not critical, as may be the case with an advertising issue.

#### **I had a complaint filed against my agent (and me!). What do I do next? What takes place during the complaint process?**

TREC can only investigate complaints that deal with a license holder performing brokerage activity as defined in the License Act. After the complaint passes this jurisdictional determination, the complaint is opened for investigation. When a complaint is filed against a sales agent, their sponsoring broker is automatically added as a party in the complaint. Remember, the broker is the one who is responsible for the actions of their agents when conducting brokerage activity. As such, a complaint against an agent is the same as a complaint against a broker (with some exceptions). Therefore, it is crucial for a broker to maintain agent supervision and ensure they provide their agents with training and well-developed policies and procedures.

#### **Step 1: Complaint is Investigated**

The investigation process is a fact/evidence collection process that allows TREC to determine what happened based upon the allegations made in the complaint. It is important to note, if other issues or potential violations are discovered as part of the investigation,

the Commission has jurisdiction to investigate those matters as well. Complaints are investigated by a combination of TREC attorneys, legal support staff and field investigators and often require those involved to play an active role in responding and providing requested documentation.

**Practice Tip:** Is your website compliant with the required Consumer Protection Notice and IABS form posting requirements? As part of every TREC investigation, TREC Enforcement checks and confirms for compliance on these posting requirements.

### Step 2: Complaint Review

Following the completion of the investigation, a TREC attorney assumes responsibility for the full review and resolution of the complaint.

At this point in the process, there may be some ongoing conversations between the TREC attorney assigned to the case and the respondent. It is crucial the respondent cooperate during this process and provide any relevant information within the deadline set by TREC. These discussions often have a real impact on how the complaint will ultimately be resolved in terms of discipline.

### Step 3: Complaint Resolution

A complaint can be resolved with either a finding that a violation has occurred, resulting in disciplinary action (see below for more detailed information) or issuance of an advisory letter. An advisory letter is not considered formal discipline. A complaint can also be resolved with a letter of no finding or insufficient evidence in the event TREC is unable to substantiate a complaint.

## How Does TREC Discipline a License Holder?

The Commission can administer either informal or formal disciplinary actions.

If a complaint is resolved informally, a license holder will receive an advisory letter. Important things to know about a TREC advisory letters:

- \* Advisory letters are kept in the license holder's record for ten years.
- \* An advisory letter is issued in situations when a warning is sufficient to deter future misconduct.
- \* If similar complaints are subsequently filed against the same license holder, TREC may take more substantial discipline against the license holder as a result.

TREC may take formal disciplinary action if the investigation reveals evidence that proves a violation occurred. Formal disciplinary action includes:

- \* reprimand of a license;
- \* suspension of a license; and
- \* revocation of a license.

The Commission can probate either a suspension or revocation. Often, in combination with a reprimand, suspension, or revocation, TREC will also impose an administrative penalty. TREC Rule §535.191 serves as the agency's penalty matrix with penalty ranges between \$100 and \$5,000 per day, depending on the violation and the factors listed below:

## What Does Formal Discipline Look like in Practice?

Formal disciplinary action can take the form of an Agreed Order or a Notice of Alleged Violation (NOAV).

### Agreed Order

An Agreed Order is entered when the respondent signs the order and agrees to the discipline. The Agreed Order avoids the necessity of a formal hearing on the matter.

The Agreed Order will contain compliance terms and conditions like additional education or requiring a sales agent disclose their discipline to their broker or a future sponsoring broker. Compliance terms like these are designed to heighten consumer protection and deter future violations. Failure to comply with certain terms and conditions could result in automatic suspension or even revocation of a license.

### Notice of Alleged Violation (NOAV)

TREC will send a Notice of Alleged Violation (NOAV) when a respondent does not agree to settle a matter or if the violations revealed during the investigation are egregious.

A respondent who receives an NOAV has 30 days to either accept the discipline recommended or request a hearing on the matter. If the respondent does neither within 30 days, a default Final Order may be entered against them. If the respondent accepts the discipline recommended in the NOAV, an agreed Final Order is entered.

If a respondent timely requests a hearing, the Enforcement Division will ask the State Office of Administrative Hearings (SOAH) to schedule the case on their docket.

After the hearing is held, a SOAH administrative law judge (ALJ) will issue a Proposal for Decision (PFD). The PFD outlines the evidence presented in the case, the ALJ's analysis of the respondent's alleged violation

of the TREL A or TREC rules, and a recommendation for discipline, if applicable.

The PFD goes before the TREC Commissioners who make a final decision in the case in an open meeting. This decision is adopted in a Final Order. After the Commission issues a Final Order in a case, a respondent can file a request for rehearing, which is the final step before an appeal can be made at the district court level.

### Did you know...

The Commission publishes all formal disciplinary actions on their website. Discipline will remain on the website for ten years and is searchable in various ways. Publication is intended to promote consumer protection and allows consumers to make informed decisions about those they select to represent them.

## What is a broker's involvement in the complaint process and how are they affected?

When a complaint is filed against a sales agent, their sponsoring broker is automatically added to the complaint file. If the sales agent is sponsored by a business entity broker, the designated broker of that business entity is joined into the complaint. Both the business entity broker and the designated broker of that business entity may be held responsible for the actions of that sales agent.

All brokers are required to have policies and procedures in place. When a complaint is filed, the investigator will often request a copy of the policies and procedures manual or the portion of the manual that would address the allegations in the complaint. TREC recommends all brokers have policies and procedures that are comprehensive enough to address issues that shape the permitted conduct of their sponsored sales agents. TREC recommends brokerage policies and procedures be reviewed at least annually.

### As a broker, what are some common violations to look for?

TREC Enforcement handles a wide variety of complaints. Here are the most common violations for which discipline is issued:

- \* failure to cooperate with an investigation;
- \* negligence or incompetence issues;
- \* bad faith/misrepresentation;
- \* inactive/expired license holder activity;
- \* unlicensed business entities;

- \* trust fund issues;
- \* failure to disclose criminal offenses; and
- \* advertising issues.

### What can a broker do to identify problems and proactively prevent issues?

- \* Offer regular training and rule review.
- \* Review and incorporate TREC disciplinary actions in coaching and training.
- \* Stay current with TREC communications like the TREC Advisor and TREC's social media outlets, which often provide insight and helpful tips related to consumer protection and updates to TREC rules and forms
- \* Attend (virtually or in-person) Commission meetings to know what consumer protection issues are being considered

## DISCUSSION

### One of your sponsored sales agents received a complaint filed against them.

1. How will you and your sales agent collaborate in response to receiving the complaint??
2. Do your current policies and procedures ensure that you are prepared to provide a response?
3. What are the required documents and information that will be requested by TREC as part of their investigation?
4. If you discovered your agent did do something wrong, how would you as the broker address this error with your agent?
5. Do you have coaching or training policies in place to show you are making proactive efforts to make sure this issue does not reoccur?

## Broker-to-Broker

As mentioned earlier in this chapter, anyone can file a complaint, including license holders. However, brokers may prefer to resolve issues that arise during a real estate transaction between themselves instead of filing a complaint. Clear communication is needed when dealing with tense situations. The goal to resolving issues that seem to stem from a lack of knowledge or competency must be approached with an attitude of improving the practice of real estate in Texas.

Here are some approaches brokers may use to interact with other brokers or agents when attempting to resolve issues that have arisen during a transaction.

- \* Direct communication—pick up the phone and call

- \* Objective listening---do not immediately be on the defense
- \* Stay calm and get both sides of the story
- \* Work towards a path to resolution and if none can be reached, file a complaint

There may be instances where working through an issue with the other broker is not the right path forward. Exercise your best judgment in how to resolve an issue, protect your client and improve professionalism within the industry.

**Shirley:** Hello! Thank you for calling RightBuyU Real Estate! How may I direct your call?

**Blistering Buster:** (In an upset tone of voice) My name is Blistering Buster. I own a house at 123 Main Street in Texastown. Your lousy and incompetent agent Felicia Finicky listed my house for sale. She was supposed to have an open house today, but I'm pretty sure she didn't. We spent all day yesterday getting ready! We cleaned everything, did the laundry, mowed the grass. This morning I piled little Tommy, the beagle, our pet cockatoo, and the missus into the car for a day of fun and adventure. After chasing our cockatoo and Beagly the beagle all over the park with little Tommy in tow, we came home only to find no evidence that anyone had been to our house. We did all that work for nothing, and we almost lost our beloved Beagly. We want you to fire Felicia and terminate our listing with your horrible company.

**Shirley:** (Calmly and sympathetically) Wow, Mr. Buster, it sounds like you had a really tough day. I can imagine how frustrating that would be. How's little Tommy? Is he ok too?

## An Open House Isn't Always a Trip to the Park

The techniques mentioned in this chapter and employed in this scenario can help diffuse broker, agent, and client angst when dealing with difficult situations that sometime arise between the parties of a real estate transaction. Below is an example of a situation between an agent on phone duty who receives a call from an upset consumer.

**Blistering Buster:** Yes, he's fine. What are you going to do about Felicia?

**Shirley:** Mr. Buster, I was taking notes while you were talking. I want to make sure I have documented everything you said. When I contact our sales manager, Tina Toughlady, I will fill her in on what you have described. Let me read back to you what I wrote.

*Shirley calmly reads back her notes to Blistering Buster.*

**Shirley:** Did I get everything?

**Blistering Buster:** (In a calmer tone) Yes, that sounds right?

**Shirley:** Is there anything you want to add to what you told me?

**Blistering Buster:** No, you got it all.

**Shirley:** Oh good, Mr. Buster. What I will do is forward this to Ms. Toughlady right away. I am sure she will want to talk to both you and our agent Felicia. It may take a day or so for her to get back to you, so your patience is appreciated. May I get your contact information, so Ms. Toughlady has a way to reach you? How would you prefer she contact you?

## DISCUSSION

1. What techniques were used to diffuse Blistering Buster's anger? What struck you as the most effective techniques?
2. How could these techniques be used in your office for difficult conversations with clients? What techniques do you use?

## Broker Responsibility: Raising the Bar

Broker supervision, specifically sales agents who are not properly supervised by their brokers, is the number one topic brought to the attention of TREC. This concern is often raised by a broker or agent on the other side of a real estate transaction. Sometimes the concern is raised by an agent who feels like they are in over their head and lack any substantive guidance. With so many new agents joining the profession, equipping them with resources and training is imperative. TREC can approach broker responsibility from a regulatory and educational standpoint, but the ultimate responsibility for what happens out in the field lies with the broker.

Brokers share in the responsibility to not only supervise their agents, but to raise the bar in the real estate industry, with their clients' interests at the forefront of every transaction. If a broker observes non-compliant actions performed by a fellow license holder, the broker should discuss the issue with the license holder, reach out to the license holder's broker or file a complaint with TREC. TREC enforcement actions are complaint driven. There are no investigators in the field looking for the bad actors.

"I can't file a complaint. I need to work with these people again!" "I'll never work in this town again if I file a complaint against that broker's agent." If this feels true for you, what can you do to provide assistance to those who need guidance? Call the broker. Find a path to resolution that maintains the integrity of the profession. Look for ways you can raise the bar!

Being a license holder in this industry is a privilege and a responsibility. While filing a complaint with TREC may not always feel comfortable, it triggers regulatory enforcement of the industry and sends a message to those brokers and agents out there who are not acting with their clients' best interests in mind. Complaints are TREC's window into what is going on in the industry and what consumer protection interests are at risk. TREC also uses the complaints filed to inform its rules, outreach, and education materials.

As this course comes to a conclusion, consider all the ways you can positively impact professionalism in real estate and what you can do to **RAISE THE BAR!**

# Appendix A

## TREC Rule §535.2 – Broker Responsibility

- (a) A broker is required to notify a sponsored sales agent in writing of the scope of the sales agent'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 sales agents, but the broker is not required to supervise the sales agents directly. If a broker permits a sponsored sales agent 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 which 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 by the broker's sponsored sales agent that requires a real estate license.
- (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 license holders sponsored by the broker. Any license holder who leads, supervises, directs, or manages a team must be delegated as a supervisor. Any such delegation must be in writing. A broker shall provide the name of each delegated supervisor to the Commission on a form or through the online process approved by the Commission within 30 days of any such delegation that has lasted or is anticipated to last more than three consecutive months. The broker shall notify the Commission in the same manner within 30 days after the delegation of a supervisor has ended. It is the responsibility of the broker associate or newly licensed broker to notify the Commission in writing when they are no longer associated with the broker or no longer act as a delegated supervisor.
- (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 sales agent's advertising complies with §535.154 and §535.155 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) substantive communications with parties to the transaction;
  - (4) offers, 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 sales agents.
- (i) A broker who sponsors sales agents or is a designated broker for a business entity shall maintain, on a current basis, written policies and procedures to ensure that:
  - (1) Each sponsored sales agent is advised of the scope of the sales agent's authorized activities subject to the Act and is competent to conduct such activities, including competence in the geographic market area where the sales agent represents clients.
  - (2) Each sponsored sales agent 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 sales agent for acts or services subject to the Act is paid by, through, or with the written consent of the sponsoring broker.

- (4) Each sponsored sales agent 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 sales agent 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 sales agent's practice subject to the Act. At a minimum, when a sales agent performs a real estate brokerage activity for the first time, the broker must require that the sales agent receive coaching and assistance from an experienced license holder competent for that activity.
- (6) Each sponsored sales agent 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) of this section.
  
- (j) A broker or supervisor delegated under subsection (e) of this section must respond to sponsored sales agents, clients, and license holders representing other parties in real estate transactions within two calendar days.
- (k) A sponsoring broker or supervisor delegated under subsection (e) of this section shall deliver mail and other correspondence from the Commission to their sponsored sales agents within three 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 sales agent.

# Appendix B

## Notice of Delegation of Supervising License Holder



Texas Real Estate Commission

P.O. Box 12188  
Austin, Texas 78711-2188  
www.trec.texas.gov (512) 936-3000

Print Form

### NOTICE OF DELEGATION OF SUPERVISING LICENSE HOLDER

This form must be used to notify the Commission of the delegation or termination of an associate broker as a supervising license holder. It may also be used to delegate a sales agent to supervise sponsored license holders or terminate same.

Submit this form to [documents@trec.texas.gov](mailto:documents@trec.texas.gov).

Sponsoring Broker's Name: Last			First	Middle	License Number
Mailing Address					License expiration date
City			State	Zip	
Telephone Number			E-mail address		

#### 1. DELEGATION OF SUPERVISING LICENSEE BY SPONSORING BROKER

The person named below is delegated as a supervising  broker  sales agent for one or more license holders sponsored under my broker's license for a period of three months or more.

Name: Last			First	Middle	License Number
Mailing Address					License expiration date
City			State	Zip	
Telephone Number			E-mail address		

#### 2. STATEMENT OF SPONSORING BROKER

I CERTIFY THAT I HOLD AN ACTIVE Texas real estate broker license and have delegated the person above to serve as a supervisor for one or more license holders sponsored under my license for a period of three months or more. I certify that I have notified the license holder in writing of the supervisory delegation. I understand that I must maintain this documentation and that TREC can request this documentation at any time and I must be able to provide it.

Sponsoring Broker's Name (Individual/Business Entity) as shown on license.					License Number
*Signature of Broker or Person with Authority to sign on behalf of Broker (Individual/Business Entity) as shown on license.					Date

#### 3. STATEMENT OF SPONSORING BROKER TERMINATING A DELEGATED SUPERVISOR LICENSE HOLDER

The person named below is terminated as a delegated supervisor under my broker's license.

Name: Last			First	Middle	License Number
Sponsoring Broker's Name (Individual/Business Entity) as shown on license.					License Number
*Signature of Broker or Person with Authority to sign on behalf of Broker (If Business entity, signature of Designated Broker is required) as shown on license.					Date

#### PRIVACY NOTICE

In accordance with Chapter 559, Government Code, the following notice about certain information laws and practices is given.

- (1) With few exceptions, an individual is entitled on request to be informed about the information that a state governmental body collects about the individual.
- (2) Under Sections 552.021 and 552.023 of the Government Code, the individual is entitled to receive and review the information.
- (3) Under Section 559.004 of the Government Code, the individual is entitled to have the governmental body correct information that is incorrect.

DL- 2 (01/12/2022)

# Appendix C

## Answers to The Dirty Dozen Questions a Broker Should be Able to Answer

- 1. Why can't the Addendum Concerning Right to Terminate Due to Lender's Appraisal be used for a VA or FHA loan? Compare to paragraph 4 of the Third Party Financing Addendum.** With VA or FHA loans, federal law has specific requirements and qualifications for the sales price to meet the appraised value. This is called the amendatory clause. This requirement was created to protect the interests of FHA and VA buyers. The FHA and VA buyer have the right not to close if the property does not appraise for the agreed upon sales price. A buyer can pay the difference between the appraised value and the contract price if they have funds and choose to. The Addendum Concerning Right to Terminate Due to Lender's Appraisal cannot be used for an FHA or VA buyer because using it would create a conflict with federal law.
- 2. How do I find information needed for the Addendum Containing Notice of Obligation to Pay Improvement District Assessment (PID notice) and why do I have to do this?** The information is found in many places. Hopefully, by the end of 2022, all the public improvement districts (PIDs) will have filed this information with their county clerk as required by the Texas Local Government Code. Until that time, you can check the county appraisal district and see if the PID is one of the taxing entities in the record for the subject property. Some tax assessors have created a link to a list of the PIDs in their county. In other counties, the PIDs are listed on the city's website. The form is required by section 5.014 of Texas Property Code.
- 3. Who puts the effective date on the TREC sales contract and when?** The broker (or if authorized by the broker, another license holder) holding the contract when the last signature and initial have been obtained and ONLY IF the license holder has given notice to the other party indicating that the contract is signed and executed, effective "date and time." To be safe, inform the other side via voicemail, text, email, messenger and/or carrier pigeon. Cover all your bases!
- 4. How do you count days in the TREC sales contract?** The effective date is day zero. All days are calendar days except for the exceptions spelled out in Paragraph 5 for the earnest money and option money. All deadlines are midnight except for the notice of buyer's termination pursuant the right to terminate created by the option fee and that deadline is 5 pm. If there is a time zone difference, the applicable time zone is that of the subject property.
- 5. What do I do if the Seller's Disclosure Notice is not fully and properly filled out?** If you are the seller's agent, request that the seller fill in all the information that they have and all that is known to the seller. If you are the buyer's agent inform your buyer that some items are not completed on the seller's disclosure. Ask the listing agent for a completed seller's disclosure.
- 6. Does the "back-up" contract really require earnest money and option money to be paid and, if so, when?** ABSOLUTELY! The earnest and option money must be paid when the back-up offer is accepted according to deadlines in paragraph 5.
- 7. The property didn't meet the underwriter's requirements but it's outside of the buyer's number of days for buyer approval. What can the buyer do?** The Third-Party Financing Addendum contains paragraph 2.B, Property Approval, which makes the property subject to the lender's underwriting requirements. The ability to terminate under the property approval paragraph is separate from the buyer approval paragraph.

Under the property approval paragraph, if the lender determines that the property does not satisfy the underwriting requirements, the buyer can terminate not later than three days before closing. In order to do so, the buyer needs to do two things: send a termination notice and a copy of a written statement from the lender giving the reason for the lender's determination.

8. **In the Addendum for Property Subject to Mandatory Membership in a Property Owners Association, what do the choices for documents really mean? And why would anyone even need the subdivision information?** The subdivision information is more than a copy of the deed restrictions. Subdivision information includes the resale certificate. The information contained in a resale certificate includes:

- \* Notice of existence of a right of first refusal
- \* The current assessment
- \* Any special assessments
- \* Total of any capital expenditures for the year
- \* Unsatisfied judgments against the property owners' association
- \* Reserves for capital expenditures
- \* Notification of any pending lawsuits
- \* Knowledge of any violations of the deed restrictions by the property
- \* Knowledge of any violations of health or building codes by the property
- \* The amount of any transfer fee charge when ownership is transferred

The Addendum for Property Subject to Mandatory Membership in a Property Owners Association provides four options for delivery of the subdivision information. The first option has the seller obtaining, paying for, and delivering the subdivision information. The second option has the buyer obtaining, paying for, and delivering the subdivision information. The third option has the buyer acknowledging receipt of the subdivision information before signing the contract and choosing to either request an updated resale certificate or decline one. The fourth option allows the buyer to decline delivery of the subdivision information.

Option one and two give the buyer three days to terminate the sales contract after receiving the subdivision information. There are separate termination rights if the subdivision information is not received.

9. **You've got gas? Where does it go? Is there a form for that?** The Addendum for Reservation of Oil, Gas, and Other Minerals

Oil, gas, and other minerals are part of the land. Unless previously severed from the ownership interest of the seller, the subsurface or mineral interest, which includes oil, gas, and other minerals, would convey to the buyer with the rest of the real property.

Sometimes sellers want to keep the mineral rights. If this is the case, the seller would use the Addendum for Reservation of Oil, Gas, and Other Minerals.

This form gives the seller the option of reserving all the subsurface rights the seller owns. It also gives the seller and buyer the option of dividing the seller's mineral rights between them.

Paragraph B contains two checkboxes related to seller's retention of the mineral estate. The seller can only retain an interest in what seller actually owns. If the seller owns only half of the mineral estate due to previous conveyances or reservations, the seller could only retain at most that half of the mineral estate. Further, if the seller who does own only half of the mineral rights, negotiates to transfer half of the seller's interest to the buyer and retain the other half of the seller's mineral interest, there would be at least three mineral right owners. The first owner (or owners) would have a 50% interest, while the buyer and seller would each have a 25% interest in the minerals.

Paragraph C addresses the right to access the property through rights of ingress and egress. This is a crucial issue to be addressed when discussing mineral estates in Texas.

10. **What can the buyer object to in paragraph 6D?**

The buyer may object to defects, exceptions, or encumbrances to title disclosed on the survey (other than items 6A(1) – (7) below) or in the title commitment (other than items 6A(1) – (9) below). Additionally, a buyer can object to defects or encumbrances specifically listed in the blank of paragraph 6D, which prohibit certain use of the property, like for a business or that a pool fit in the backyard.

Paragraph 6A of the contract lists the following exceptions:

- (1) Restrictive covenants common to the platted subdivision in which the property is located.
- (2) The standard printed exception for standby fees, taxes, and assessments.
- (3) Liens created as part of the financing described in Paragraph 3.
- (4) Utility easements created by the dedication deed or plat of the subdivision in which the property is located.
- (5) Reservations or exceptions otherwise permitted by this contract or as may be approved by buyer in writing.
- (6) The standard printed exception as to marital rights.

- (7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
  - (8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments, or protrusions, or overlapping improvements.
  - (9) The exception or exclusion regarding minerals approved by the Texas Department of Insurance.
11. **What do you mean the seller has to fix it?! Wind from a hurricane rips off a section of the roof while a property is under a contract. What does TREC's One to Four Family Residential Contract (Resale) say about a casualty loss?** Paragraph 14 of TREC's One to Four Family Residential Contract (Resale) creates an agreement between the buyer and the seller should any part of the property be damaged or destroyed by a casualty after the effective date of the contract. The seller agrees in this paragraph to restore the property to its previous condition as soon as reasonably possible, but by the closing date. Well, what if seller doesn't or can't perform by the closing date? The buyer may:
- a) terminate the contracts and receive a refund of the earnest money;
  - b) extend the time for performance up to 15 days, extending the closing date as necessary; or
  - c) accept the property in its damaged condition with an assignment of insurance proceeds and receive credit from seller at closing for the amount of the seller's deductible under the insurance policy. Of course, this could only happen with approval of seller's insurance company.
12. **The seller turned off the utilities 3 days before closing. The buyer wants to have an inspector verify required repairs have been done. What now?** Paragraph 7A of the contract provides that "Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect". The Seller needs to get the utilities turned back on for the duration of the contract.



# Appendix D

**The Consumer Protection Notice (CN 1-4) Effective April 1, 2022**

THE TEXAS REAL ESTATE COMMISSION (TREC) REGULATES  
REAL ESTATE BROKERS AND SALES AGENTS, REAL ESTATE INSPECTORS,  
EASEMENT AND RIGHT-OF-WAY AGENTS,  
AND TIMESHARE INTEREST PROVIDERS

YOU CAN FIND MORE INFORMATION AND  
CHECK THE STATUS OF A LICENSE HOLDER AT

**WWW.TREC.TEXAS.GOV**

YOU CAN SEND A COMPLAINT AGAINST A LICENSE HOLDER TO TREC  
A COMPLAINT FORM IS AVAILABLE ON THE TREC WEBSITE

TREC ADMINISTERS TWO RECOVERY FUNDS WHICH MAY BE USED TO SATISFY A CIVIL  
COURT JUDGMENT AGAINST A BROKER, SALES AGENT, REAL ESTATE INSPECTOR, OR  
EASEMENT OR RIGHT-OF-WAY AGENT, IF CERTAIN REQUIREMENTS ARE MET.

REAL ESTATE INSPECTORS ARE REQUIRED TO MAINTAIN ERRORS AND OMISSIONS  
INSURANCE TO COVER LOSSES ARISING FROM THE PERFORMANCE OF A REAL ESTATE  
INSPECTION IN A NEGLIGENT OR INCOMPETENT MANNER.

PLEASE NOTE: INSPECTORS MAY LIMIT LIABILITY THROUGH PROVISIONS IN THE CONTRACT  
OR INSPECTION AGREEMENT BETWEEN THE INSPECTOR AND THEIR CLIENTS. PLEASE BE  
SURE TO READ ANY CONTRACT OR AGREEMENT CAREFULLY. IF YOU DO NOT UNDERSTAND  
ANY TERMS OR PROVISIONS, CONSULT AN ATTORNEY.

IF YOU HAVE QUESTIONS OR ISSUES ABOUT THE ACTIVITIES OF  
A LICENSE HOLDER, THE COMPLAINT PROCESS, OR THE  
RECOVERY FUNDS, PLEASE VISIT THE WEBSITE OR CONTACT TREC AT



**TEXAS REAL ESTATE COMMISSION**

**P.O. BOX 12188**

**AUSTIN, TEXAS 78711-2188**

**(512) 936-3000**

CN 1-4



# Appendix E

## Information About Brokerage Services (IABS)



### Information About Brokerage Services

Texas law requires all real estate license holders to give the following information about brokerage services to prospective buyers, tenants, sellers and landlords.

11-2-2015



#### TYPES OF REAL ESTATE LICENSE HOLDERS:

- A **BROKER** is responsible for all brokerage activities, including acts performed by sales agents sponsored by the broker.
- A **SALES AGENT** must be sponsored by a broker and works with clients on behalf of the broker.

#### A BROKER'S MINIMUM DUTIES REQUIRED BY LAW (A client is the person or party that the broker represents):

- Put the interests of the client above all others, including the broker's own interests;
- Inform the client of any material information about the property or transaction received by the broker;
- Answer the client's questions and present any offer to or counter-offer from the client; and
- Treat all parties to a real estate transaction honestly and fairly.

#### A LICENSE HOLDER CAN REPRESENT A PARTY IN A REAL ESTATE TRANSACTION:

**AS AGENT FOR OWNER (SELLER/LANDLORD):** The broker becomes the property owner's agent through an agreement with the owner, usually in a written listing to sell or property management agreement. An owner's agent must perform the broker's minimum duties above and must inform the owner of any material information about the property or transaction known by the agent, including information disclosed to the agent or subagent by the buyer or buyer's agent.

**AS AGENT FOR BUYER/TENANT:** The broker becomes the buyer/tenant's agent by agreeing to represent the buyer, usually through a written representation agreement. A buyer's agent must perform the broker's minimum duties above and must inform the buyer of any material information about the property or transaction known by the agent, including information disclosed to the agent by the seller or seller's agent.

**AS AGENT FOR BOTH - INTERMEDIARY:** To act as an intermediary between the parties the broker must first obtain the written agreement of *each party* to the transaction. The written agreement must state who will pay the broker and, in conspicuous bold or underlined print, set forth the broker's obligations as an intermediary. A broker who acts as an intermediary:

- Must treat all parties to the transaction impartially and fairly;
- May, with the parties' written consent, appoint a different license holder associated with the broker to each party (owner and buyer) to communicate with, provide opinions and advice to, and carry out the instructions of each party to the transaction.
- Must not, unless specifically authorized in writing to do so by the party, disclose:
  - o that the owner will accept a price less than the written asking price;
  - o that the buyer/tenant will pay a price greater than the price submitted in a written offer; and
  - o any confidential information or any other information that a party specifically instructs the broker in writing not to disclose, unless required to do so by law.

**AS SUBAGENT:** A license holder acts as a subagent when aiding a buyer in a transaction without an agreement to represent the buyer. A subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first.

#### TO AVOID DISPUTES, ALL AGREEMENTS BETWEEN YOU AND A BROKER SHOULD BE IN WRITING AND CLEARLY ESTABLISH:

- The broker's duties and responsibilities to you, and your obligations under the representation agreement.
- Who will pay the broker for services provided to you, when payment will be made and how the payment will be calculated.

**LICENSE HOLDER CONTACT INFORMATION:** This notice is being provided for information purposes. It does not create an obligation for you to use the broker's services. Please acknowledge receipt of this notice below and retain a copy for your records.

_____ Licensed Broker /Broker Firm Name or Primary Assumed Business Name	_____ License No.	_____ Email	_____ Phone
_____ Designated Broker of Firm	_____ License No.	_____ Email	_____ Phone
_____ Licensed Supervisor of Sales Agent/ Associate	_____ License No.	_____ Email	_____ Phone
_____ Sales Agent/Associate's Name	_____ License No.	_____ Email	_____ Phone

\_\_\_\_\_  
Buyer/Tenant/Seller/Landlord Initials

\_\_\_\_\_  
Date

## TREC Rule §531.20 - Information About Brokerage Services

- (a) The Commission adopts by reference the Information About Brokerage Services Notice, TREC No. IABS 1-0 (IABS Notice). The IABS Notice is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, [www.trec.texas.gov](http://www.trec.texas.gov).
- (b) Each license holder shall provide:
  - (1) a link to a completed IABS Notice in a readily noticeable place on the homepage of each business website, labeled:
    - (A) "Texas Real Estate Commission Information About Brokerage Services", in at least 10 point font; or
    - (B) "TREC Information About Brokerage Services", in at least 12 point font; and
  - (2) the completed IABS Notice at the first substantive communication as required under §1101.558, Texas Occupations Code.
- (c) For purposes of §1101.558, Texas Occupations Code, the completed IABS Notice can be provided:
  - (1) by personal delivery by the license holder;
  - (2) by first class mail or overnight common carrier delivery service;
  - (3) in the body of an email; or
  - (4) as an attachment to an email, or a link within the body of an email, with a specific reference to the IABS Notice in the body of the email.
- (d) The link to a completed IABS Notice may not be in a footnote or signature block in an email.
- (e) For purposes of this section, business website means a website on the internet that:
  - (1) is accessible to the public;
  - (2) contains information about a license holder's real estate brokerage services; and
  - (3) the content of the website is controlled by the license holder.
- (f) For purposes of providing the link required under subsection (b)(1) on a social media platform, the link may be located on:
  - (1) the account holder profile; or
  - (2) a separate page or website through a direct link from the social media platform or account holder profile.
- (g) License holders may reproduce the IABS Notice published by the Commission, provided that the text of the IABS Notice is copied verbatim and the spacing, borders and placement of text on the page must appear to be identical to that in the published version of the IABS Notice, except that the Broker Contact Information section may be prefilled.

## Texas Occupations Code §1101.558 - Requirements for Disclosure of Representation Provided by the IABS

- (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158 , Sec. 92, eff. January 1, 2016.
- (b) A license holder who represents a party in a proposed real estate transaction shall disclose, orally or in writing, that representation at the time of the license holder's first contact with:
  - (1) another party to the transaction; or
  - (2) another license holder who represents another party to the transaction.
- (b-1) At the time of a license holder's first substantive communication with a party relating to a proposed transaction regarding specific real property, the license holder shall provide to the party written notice in at least a 10-point font that:
  - (1) describes the ways in which a broker can represent a party to a real estate transaction, including as an intermediary;
  - (2) describes the basic duties and obligations a broker has to a party to a real estate transaction that the broker represents; and
  - (3) provides the name, license number, and contact information for the license holder and the license holder's supervisor and broker, if applicable.
- (b-2) The commission by rule shall prescribe the text of the notice required under Subsections (b-1)(1) and (2) and establish the methods by which a license holder shall provide the notice.
- (c) A license holder is not required to provide the notice required by Subsection (b-1) if:
  - (1) the proposed transaction is for a residential lease for less than one year and a sale is not being considered;
  - (2) the license holder meets with a party who the license holder knows is represented by another license holder; or
  - (3) the communication occurs at a property that is held open for any prospective buyer or tenant and the communication concerns that property.
- (d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158 , Sec. 92, eff. January 1, 2016.
- (e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158 , Sec. 92, eff. January 1, 2016.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 15, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 58, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 92, eff. January 1, 2016.

# Appendix F

## TREC Advertising Rules §535.154 and §535.155

### TREC Rule §535.154 - Registration and Use of Alternate, Team and Assumed Business Names Used in Advertisements

- (a) Definitions. For the purposes of this section:
  - (1) “Advertisement” has the meaning assigned by §535.155.
  - (2) “Alternate name” (commonly known as an alias) means a name used by an individual license holder other than the name shown on the license issued by the Commission, such as a middle name, maiden name, or nickname. It does not include a common derivative of a name, such as Kim for Kimberly or Bill for William, which is considered the same as the name shown on the license.
  - (3) “Associated broker” means a broker who associates with and gets paid through another broker under a relationship that is intended to be a continuous relationship, including but not limited to, an employment or ongoing independent contractor relationship.
  - (4) “Assumed business name” (commonly known as a DBA or trade name) means any name used in business by a broker that meets the requirements of subsection (d), other than the name shown on the broker’s license issued by the Commission, a team name, or an alternate name.
  - (5) “Team name” means a name used by a group of one or more license holders sponsored by or associated with the same broker that performs real estate activities under an exclusive collective name other than the broker’s licensed name or assumed business name.
- (b) Alternate names.
  - (1) Before a license holder starts using an alternate name in an advertisement, the license holder must register the name with the Commission on a form approved by the Commission.
  - (2) The Commission may request supporting documentation evidencing the legal authority to use the alternate name if the last name submitted is different from the last name shown on the license issued by the Commission.
- (3) A license holder must notify the Commission, and their sponsoring broker, not later than the 10th day after the date the license holder stops using an alternate name.
- (c) Team names:
  - (1) A team name may not include any terms that could mislead the public to believe that the team is offering brokerage services independent from its sponsoring broker.
  - (2) A team name must end with the word “team” or “group”.
  - (3) Before an associated broker or a sales agent sponsored by a broker starts using a team name in an advertisement, the broker must register the name with the Commission on a form approved by the Commission.
  - (4) A broker must notify the Commission in writing not later than the 10th day after the date the associated broker or a sales agent sponsored by the broker stops using a team name.
- (d) Assumed business names.
  - (1) Before a broker, associated broker or a sales agent sponsored by a broker starts using an assumed business name of the broker in an advertisement, the broker must:
    - (A) register the name with the Commission on a form approved by the Commission; and
    - (B) provide written evidence of legal authority to use the assumed business name in Texas, such as registration of the name with the Secretary of State or county clerk’s office.
  - (2) A broker must notify the Commission in writing not later than the 10th day after the date the broker stops using an assumed business name.

### TREC Rule §535.155 - Advertisements

- (a) Each advertisement must include the following in a readily noticeable location in the advertisement:
  - (1) the name of the license holder or team placing the advertisement; and
  - (2) the broker’s name in at least half the size of the largest contact information for any sales agent, associated broker, or team name contained in the advertisement.

(b) For the purposes of this section:

- (1) "Advertisement" is any form of communication by or on behalf of a license holder designed to attract the public to use real estate brokerage services and includes, but is not limited to, all publications, brochures, radio or television broadcasts, all electronic media including email, text messages, social media, the Internet, business stationery, business cards, displays, signs and billboards. Advertisement does not include:
  - (A) a communication from a license holder to the license holder's current client; and
  - (B) a directional sign that may also contain only the broker's name or logo.
- (2) Associated broker has the meaning assigned by §535.154.
- (3) "Broker's name" means:
  - (A) the broker's name as shown on a license issued by the Commission;
  - (B) if an individual, an alternate name registered with the Commission; or
  - (C) any assumed business name that meets the requirements of §535.154.
- (4) "Contact Information" means any information that can be used to contact a license holder featured in the advertisement, including a name, phone number, email address, website address, social media handle, scan code or other similar information.
- (5) "Party" means a prospective buyer, seller, landlord, or tenant, or an authorized legal representative of a buyer, seller, landlord, or tenant, including a trustee, guardian, executor, administrator, receiver, or attorney-in-fact. The term does not include a license holder who represents a party.
- (6) "Team name" has the meaning assigned by §535.154.
- (c) For an advertisement on social media or by text, the information required by this section may be located on a separate page or on the account user profile page of the license holder, if the separate page or account user profile is:
  - (1) readily accessible by a direct link from the social media or text; and
  - (2) readily noticeable on the separate page or in the account user profile.
- (d) For purposes of this section and §1101.652(b)(23) of the Act, an advertisement that misleads or is likely to deceive the public, tends to create a misleading impression, or implies that a sales agent is responsible for the operation of the broker's real estate brokerage business includes, but is not limited to, any advertisement:
  - (1) that is inaccurate in any material fact or representation;
  - (2) that does not comply with this section;
  - (3) that identifies a sales agent as a broker;
  - (4) that uses a title, such as owner, president, CEO, COO, or other similar title, email or website address that implies a sales agent is responsible for the operations of a brokerage;
  - (5) that contains a team name with terms that imply that the team is offering brokerage services independent from its sponsoring broker, including, but not limited to, "brokerage", "company", and "associates";
  - (6) that contains the name of a sales agent that is not the name as shown on the sales agent's license issued by the Commission or an alternate name registered with the Commission;
  - (7) that contains the name of a sales agent whose name is, in whole or in part, used in a broker's name and that implies that the sales agent is responsible for the operation of the brokerage;
  - (8) that causes a member of the public to believe that a person not licensed to conduct real estate brokerage is engaged in real estate brokerage;
  - (9) that contains the name or likeness of an unlicensed person that does not clearly disclose that the person does not hold a license;
  - (10) that creates confusion regarding the permitted use of a property;
  - (11) about the value of a property, unless it is based on an appraisal that is disclosed and readily available upon request by a party or it is given in compliance with §535.17;
  - (12) that implies the person making the advertisement was involved in a transaction regarding a property when the person had no such role;
  - (13) about 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 in writing to waive disclosure;
  - (14) offering a listed property that is not discontinued within 10 days after the listing agreement is no longer in effect;
  - (15) about a property 10 days or more after the closing of a transaction unless the current status of the property is included in the advertisement;
  - (16) that offers to rebate a portion of a license holder's compensation to a party if the

advertisement does not disclose that payment of the rebate is subject to the consent of the party the license holder represents in the transaction;

- (17) that offers to rebate a portion of a license holder's commission contingent upon a party's use of a specified service provider, or subject to approval by a third party such as a lender, unless the advertisement also contains a disclosure that payment of the rebate is subject to restrictions;
- (18) that offers or promotes the use 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, if the advertisement does not contain a disclosure that the license holder may receive compensation from the service provider;
- (19) that ranks the license holder or another service provider unless the ranking is based on objective criteria disclosed in the advertisement; or
- (20) that states or implies that the license holder teaches or offers Commission approved courses in conjunction with an approved school or other approved organization unless the license holder is approved by the Commission to teach or offer the courses.



# Appendix G

## Succession Planning

### What happens to your license when your broker dies?

03-29-2021 by: TREC Staff



If there is one thing the COVID-19 pandemic has taught us is to expect the unexpected and that planning is essential for you and your business. While succession planning in the event of a broker's death is largely outside of TREC's jurisdiction and is primarily a private business decision, it may be helpful to keep a few things in mind.

Regardless of how, if you suddenly find yourself without a broker, your license will become inactive and you will be unable to perform real estate services that require a license. To resume your work, you need to find a new broker immediately. TREC has the easy and free "Relationship Management Tool" available through the agency's online services. This tool allows you to confirm a new sponsoring broker at any time with no wait. Without an active sponsoring broker, your license will remain inactive, so taking action quickly will help you and your business.

If the designated broker of a licensed business entity dies, the entity and all agents sponsored by that entity can no longer perform real estate brokerage services until a new designated broker is established with TREC. First, the entity must submit the Change of Designated Broker form. Once TREC approves the change of designated broker and the business entity receives an active license reflecting the change, the entity can manage sales agent sponsorship through the agency's online services. Remember, all agents sponsored by the entity will need to confirm sponsorship by the entity before they are returned to active status with TREC.

For additional resources on succession planning, see the following:

- \* Pointers related to succession planning in the 2021 Broker Responsibility Course
- \* The Texas Real Estate Research Center article "Who's on Deck" written by former TREC General Counsel Kerri Lewis
- \* Texas REALTORS has also published an article on "Real Estate Brokerage Succession Planning"



# Appendix H

## Helpful Links

TREC website

[www.trec.texas.gov](http://www.trec.texas.gov)

TREC Rules (Secretary of State's Website)

[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=3&ti=22&pt=23](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=3&ti=22&pt=23)

Texas Occupations Code Chapter 1101

<https://statutes.capitol.texas.gov/Docs/OC/htm/OC.1101.htm>

TREC Advisor (News & Articles)

<https://www.trec.texas.gov/news-articles>

TREC FAQ's

<https://www.trec.texas.gov/public/frequently-asked-questions>

TREC Commission & Committee Meeting Schedules

<https://www.trec.texas.gov/apps/meetings>

TREC Disciplinary Actions

<https://www.trec.texas.gov/apps/disciplinary-actions>

Consumer Protection Notice Form

<https://www.trec.texas.gov/forms/consumer-protection-notice>

Information About Brokerage Services Form

<https://www.trec.texas.gov/forms/information-about-brokerage-services>

Landlords and Tenants Guide from Texas A&M Real Estate Center

<https://assets.recenter.tamu.edu/documents/articles/866.pdf>



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