



# TREC Advisor

The agency exists to safeguard the public interest and protect consumers of real estate services. In accord with state and federal laws the agency oversees real estate brokerage, appraisal, inspection, home warranty, right-of-way services and timeshare interest providers. Through education, licensing and regulation, the agency ensures the availability of qualified and ethical service providers, thereby facilitating economic growth and opportunity across Texas.

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## BROKER PRICE OPINIONS AND COMPARATIVE MARKET ANALYSES ARE NOT APPRAISALS

A real estate license holder is obligated to provide a broker price opinion (BPO) or a comparative market analysis (CMA) on a property when negotiating a listing. Rule §535.16(c). If negotiating a listing is an integral activity of your business, where do you start? If you follow Rule 535.17 (addressing BPOs and CMAs), you'll know what your document must include according to the rules.

### **Broker Price Opinion and a Comparative Market Analysis**

First, let's clarify that a BPO or CMA is not an appraisal. A real estate license holder may not perform an appraisal of, or provide an opinion of value for, real property unless the license holder is licensed or certified (as an appraiser) under the Texas Occupations Code. Rule 535.17(a). A BPO or CMA differs from an appraisal and is not intended to serve the same purpose as an appraisal. A BPO or CMA is prepared by a real estate agent using the agent's special knowledge and experience of the real estate market to provide a property owner with information to assist the property owner in determining a listing price.

A license holder must include required language in every BPO and CMA and it must be reproduced verbatim as it appears in Rules 535.17(b) and (c):

"THIS IS A BROKER PRICE OPINION OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL OR OPINION OF VALUE. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."

A salesperson may prepare, sign, and present a BPO or CMA for her sponsoring broker, however, the salesperson must submit the BPO or CMA in the broker's name and the broker is responsible for it. Rule 535.17(d).

**Tip --** Excuse the obvious, but even though you include the required disclaimer language, don't title your document "Appraisal."

There is one additional situation in which a license holder is required to provide a BPO or CMA. When a license holder offers to purchase a property for the license holder's own account as a result of contact made while acting as an agent. A license holder may prepare a BPO or CMA in other situations, but is only required to do so in the situations described above. Rule 535.16(c).

Finally, don't forget: a BPO or CMA is a document that needs to be retained for four years in your files like any other transaction document. Rule 535.2(h)(7).

Now that Spring is in full bloom, it's again time to take stock of our position and plan for the next steps. The 84<sup>th</sup> Legislature is considering our requested bill and we thank those license holders who took the time to come to Austin and visit with their Senators and Representatives to let them know you support our requests. We truly appreciate that extra effort. Not all agencies enjoy the cooperative relationship we have with the professional associations of our license holders. We work hard to clearly justify and explain the rationale for each provision of a law or rule that we administer or propose, and make every effort to limit our recommendations to those with direct impact on consumer protection of Texas residents. Rebuilding the public's confidence in the professionalism of our license holders is a primary and legitimate goal we all share.

Everyone understands that completing CE classes is a requirement of renewing your license. Our online access tool now warns you if you are trying to renew a license and our records do not show your required CE having been completed. That gives license holders a final reminder and the option to 1) take the missing CE before completing a renewal or 2) purchase the 60 day extension for \$200. If you have not completed your CE before you renew, purchasing the extension is the only other available alternative.

I recently received a comment to my last column that questioned my inclusion of the following statement: "...the Legislature is in session, and our attention turns to working cooperatively with our stakeholders groups to both advance and protect the interests of license holders." The commenter was concerned that the real estate license law is primarily about protecting the people of Texas, not protecting or advancing the interests of license holders...and he is right. The Commission works

closely with the Texas Association of Realtors to ensure that the measures we seek actually enhance consumer protections in a manner consistent with the legitimate expectations of the law and the marketplace. In other words, as our mission statement makes clear, we balance the requirements of Texans who expect

us to ensure competent and ethical real estate service providers with the need to ensure there is a sufficient supply of such providers available to serve the needs of that same public. In addition, as most professionals understand, what is best for their clients is ultimately also best for the service provider who is a fiduciary. In this way, what we seek advances the interests of consumers – the citizens of this great state – and also of the professionals who serve those clients.

Our next regularly scheduled meeting is on Monday May 4th. If you are in town, please stop by to see your Commission at work. We promise we'll continue do our part to assist you in serving Texans with the highest standards in the real estate profession. Our appreciation goes out for your continued support and thank you for your commitment to professionalism. Aim high!



Douglas E. Oldmixon

## IMPORTANT DATES TO REMEMBER

TREC Commission Meeting—May 4

Broker Lawyer Committee Meeting—May 22

ESAC Committee Meeting—June 17

*Check the TREC website regularly for postings of all of our upcoming meetings.*

## Proposed Rules

The following amendments or new rules were proposed at the February 9, 2015, meeting of the Commission and are up for adoption at the May 4, 2015 meeting. You can see the full text of these rules on the "Proposed Rules" section of the TREC Website. The time period to receive written comments on the proposed rules has passed. However, comments may be made in person at the meeting.

**§539.81, Funded Reserve.** These amendments are a re-proposal following receipt of input from a stakeholder which resulted in substantive changes to the original proposal. The proposed amendments specify certain minimum reserve criteria for captive insurance companies to make sure that Texas consumers continue to have the protection the legislature mandated when the statute requiring a funded reserve was put in place.

**§543.4, Forms.** The proposed amendments update and clarify the use and content of the forms necessary to register, amend or renew a timeshare plan.

**§535.401, Required Notices.** The proposed amendments update and clarify the form Easement and Right-of-Way Agents are required to give a consumer prior to the

consumer entering into a transaction concerning an easement or right-of-way.

**§535.223, Standard Inspection Report Form.** The proposed amendments are recommended by the Texas Real Estate Inspector Advisory Committee (TREIC) to notify consumers regarding potential hazards with improper bonding of corrugated stainless steel tubing (CSST) or other metal gas tubing by adding language to the "Consumer Notice Concerning Hazards or Deficiencies" section, and to adopt by reference changes to the standard inspection form, Property Inspection Report Form REI 7-5, approved by the Commission for use in reporting inspection results.

**§535.2, Broker Responsibility.** The proposed amendments insert the obligation to notify the Commission when a broker delegates responsibility to another license holder for more than six months. This provision was inadvertently dropped from another section during the reorganization and clarification of Chapter 535.

## **CE DEFERRAL FEE REMINDER**

The CE Deferral Fee is now due at the time of your renewal.

Effective January 1, 2015 the \$200 fee is charged at the time you renew if your TREC record does not show completion of all required CE. Payment of the fee gives you a 60 day extension from your expiration date to complete your CE.

To avoid paying this fee, take your CE well in advance of your expiration date to allow time for your education provider to submit your CE credits to TREC.

## TREC Enforcement Actions

The Texas Real Estate Commission has published enforcement actions taken in March. To read the full report and get access to all of the enforcement actions taken by the Commission, please go to the TREC website and click on, "Complaints, and Consumer Info" and then [click "Disciplinary Actions"](#).

## TREC Employee Updates



**Mike Sample-Diehl**

*Education and Licensing Services*

Mike joined TREC in April 2015 as an Education Specialist I in the Education and Licensing Services Division. Mike previously worked for the Texas Department of Public Safety and at Sul Ross State University. Mike has worked in retail, law enforcement and transportation, and is excited to now dive into the world of real estate. Mike spends most of his free time hiking and bike riding and working on model train layouts. He also enjoys people asking him about his west Texas accent.



**Melissa Waters**

*Education and Licensing Services*

Melissa was hired as an Education Specialist in the Education and Licensing Services Division in April 2015. Prior to joining TREC, Melissa worked for the 1st Cavalry Division as the Family Readiness Program Coordinator. She has over 10 years of experience working in various programs for the Department of Defense as a government service employee and government contractor. Melissa graduated with her MBA and BS in Interdisciplinary Studies from Liberty University. She enjoys being crafty and designing cakes in her spare time and most of all spending time with her family. Melissa lives in Temple with her active duty Army husband, Brent, and three kiddos, Lexy, Tori, and Ryan. She is excited to be a part of the TREC team!



**Carol Fichera**

*Education and Licensing Services*

Carol joined TREC on April 13, 2015, as a Licensing Specialist in the ELS Division. She has over 10 years of Administrative Assistance experience, the most recent being with the University of North Texas, with the Department of Mathematics. Carol is excited to be with TREC and being a member of the ELS team.