

TREC Advisor

Our agency protects consumers of real estate services in Texas by ensuring qualified and ethical service providers through education, licensing, and regulation. We oversee the providers of real estate brokerage, appraisal, inspection, home warranty, right-of-way services, and timeshares, thereby safeguarding the public interest while facilitating economic growth and opportunity across Texas.



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Using An App to Hire a Temporary “Showing” Agent? *Beware!*

You can land you in hot water with TREC if you don’t know what you are doing. Mobile apps used to “hire” another license holder to show your buyer a property are popping up everywhere. But will you be violating TREC’s rules if you use the app?

Compensation Issues

Since showing a property is an activity that requires a license, an agent may not receive or pay valuable consideration for that activity except through their sponsoring broker or with written consent from their sponsoring broker. Do you have written consent from your broker to pay and/or receive money through the app?

Representation and Disclosure Issues

Keep in mind that in Texas there is no recognized license classification of “showing” agent. An agent either represents the buyer or the seller (or both as intermediary with clients’ consent).

So who do you represent when you are a temporarily hired “showing” agent?

If you work for the same brokerage as the agent who “hired” you, it might not be an issue since the buyer is represented by the broker and both agents are sponsored by the same broker. Still, when hired as a “showing” agent you must make it clear to the client who you represent.

But what if the showing agent is not from the same brokerage as the hiring agent?

Under current Texas law, if an agent aids a buyer in a transaction without an agreement to represent the buyer, that agent is a sub-agent of the seller and

Practice Tip: Limit use of a “showing” app to agents within the same brokerage when the broker has a written policy and consents to payments.

must put the interests of the seller first. Has this been disclosed to the buyer prior to their consent to another agent showing them the property? Has the seller consented to this arrangement?

What about other disclosures?

An IABS notice is required to be given at the first substantive communication about a specific property UNLESS the “showing” agent knows for certain that the buyer is already represented by the “hiring” agent - but how do you know the buyer is actually represented by the “hiring” agent? Another complication - what if the agent showing the house is from the same brokerage firm as the listing agent? Do intermediary disclosures have to be given? Whose responsibility is that - the “hiring” agent or the “showing” agent? Figuring out who the “showing” agent represents and giving all appropriate disclosures to the buyer is a paramount duty for the “showing” agent in this temporary situation.

More Questions than Answers

Other questions arise about the temporary showing agent’s function and duties in regards to the buyer. Are you going to answer any questions about the property? If not, has the “hiring” agent made it clear to the buyer that they are going to be shown a property but no questions will be answered at that time? Has the buyer consented to being merely escorted with no information available to them during the showing? Is the “hiring” agent or the “showing” agent violating the agent’s minimum duty to answer the buyer’s questions? If you do answer questions, how does that affect your role and liability for the transaction? Is the “showing” agent obligated to disclose known defects with the property when showing it?

What if the buyer decides they like the “showing” agent better and want to work with the “showing” agent going forward? What if the buyer does not like the house after the showing and the temporary “showing” agent knows of another house nearby the buyer might really like? Can the “showing” agent take them to see it? Who is representing the buyer then? Who earns the commission if the buyer buys that second house?



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Be Careful!

Keep in mind that license holders have a special fiduciary duty to their clients and a duty to treat all parties to a transaction fairly. Representation is not a “service” that can just be parceled out at will by one agent to another.

If all appropriate consents and disclosures are not given and received from all necessary parties, this “time-saving” showing app may end up costing the agent and their broker both time and money dealing with an administrative action or a civil lawsuit.

Strategic Planning Survey Closing

We have just completed our 2016 Strategic Planning Listening Tour. We were so pleased with the amazing turn out we had at all 9 of our tour stops! If you were not able to attend one of our sessions or have not had a chance to give us your thoughts, be sure to take advantage of our online survey before it closes April 15th! Check out our [online survey here](#).

From the Executive Director...

I just returned from a whirlwind tour of nine locations across Texas in March as part of our agency's Strategic Planning Listening Tour. First let me say thank you to the local boards in Austin, Lubbock, Waco, Collin County, Houston, McAllen, Harlingen and Brownsville that each hosted one of our two-hour information exchange sessions. We very much appreciate the extra effort that you took in making us welcome. And I was so impressed with the number of stakeholders that showed up at every location to offer input on the path forward for professional real estate regulation in this great state.

Know that if you were not able to make it to one of these sessions, we are still accepting input until early April via the survey link on our website. Although there are 20 questions suggested, you need only answer those for which you have some interest in offering input. All ideas are welcome; really!

Three topics got the largest share of attention during the tour – consumer information and education; how to make our advertising rules simpler; and how to enhance the competence of our license holders when providing professional representation services to the people of Texas. Three important topics!

The updated Consumer Protection Notice and the Information About Brokerage Services (IABS) forms have been very well received and their ease of explanation and understanding is greatly appreciated. We are pleased to hear that these common sense notices are providing the transparency that Texas consumers deserve. A few technical issues were raised on how best to post the forms on a license holder's business website, and recommendations were offered. Please make sure you get these forms posted on your main business website to make your company's transparency more robust.

Lots of good ideas were offered on how to best achieve the two major requirements found in the law – disclose your status as a license holder and not mislead the receiver of any advertising effort

you make. While these may sound simple, they quickly become more complex as you apply them to each type of advertising medium you choose to use – and that may be used in the future as technology continuously takes potential client solicitation into new

areas not yet foreseen. One message came through clearly – make it as simple as possible but still effective and offer several options to meet these two goals – avoid “one size fits all” type solutions! Know that we are committed to work to satisfy that important request.

“Competence” is a unique mix of both education/training and experience. It is not accomplished once and for all time, but rather is a life-long commitment to learning the lessons taught by facilitators and sages in classrooms, by self-study, and in the school of experience gained from mentors, on the street, and in each transaction your clients ask you to guide them through. We discovered a consensus on the simple principle that competence requires at least this – no one should provide any professional service for the very first time without an experienced mentor overseeing the effort. This points to the incredible importance of the initial and ongoing training provided by a broker for the agents the broker sponsors.

I really appreciate the level of genuine engagement we received during this first step in the Strategic Plan process. We will continue to solicit your inputs as the Commissioners consider all of the ideas you have offered and translate them into policy proposals - to advance the mission of the agency to protect the consumers of real estate services in Texas through effective education, licensing and regulation.



Douglas E. Oldmixon

COMPLIANCE TIP: Posting Your IABS and Consumer Notice

Have you posted a completed IABS form in a readily noticeable location on the homepage of your business website? We have provided some helpful [tools on our website](#) to help you meet this new requirement.

Deadline for Revision of the Qualifying Real Estate Brokerage Course

New curriculum requirements were approved for the Real Estate Brokerage course in November of 2015. TREC rule (535.64) requires previously approved Real Estate Brokerage courses to be revised to meet the new curriculum requirements.

<u>Deadline for Revision of Classroom Delivery Courses</u>	<u>Deadline for Revision of Distance Education Courses</u>
November 2, 2016	February 2, 2017

Qualifying course providers should revise and submit the new course to the Commission in advance of the above deadlines to allow time for review and approval and to ensure continued availability of courses to students.

The Qualifying Real Estate Course Application (QE CA-0) and Real Estate Brokerage (REB-0) course approval form is located at the TREC website.

Proposed Rules from the February Meeting of the Commission

Proposed:

The following amendments or new rules were proposed at the February 8, 2016, meeting of the Commission and are up for adoption at the May 2, 2016, meeting. You can see the full text of these rules on the "Proposed Rules" section of the TREC website.

§535.63, Approval of Instructors of Qualifying Courses. The proposed amendments clarify qualifications needed to become an approved instructor of a TREC approved adult instructor training course. This amendment was recommended by the Commission's Education Standards Advisory Committee.

§535.64, Content Requirements for Qualifying Real Estate Courses. The proposed amendments provide consistency and better quality in Property Management qualifying courses and are recommended by the Commission's Education Standards Advisory Committee.

§535.73, Approval of Elective Continuing Education Courses. The proposed amendments correct the language so that it will not be misinterpreted. The statute and the intention of the Commission was to limit the daily presentation to 10 hours, not limit the length of the entire course.

Who Can File a Complaint? How?

The Standards & Enforcement Services (SES) Division has opened 1,133 new complaints so far this fiscal year (September 2015 – February 2016). For the Commission to have jurisdiction over a complaint it must show reasonable cause for investigation or that an investigation is necessary to enforce Commission laws and rules.

Any person can file a complaint including, for example, a party to the transaction, the child of a party to the transaction, or an agent involved in the transaction. Unless the complaint is filed by the Commission, however, we must have a signed, written complaint to investigate the complaint.

Oftentimes an SES attorney receives a call from a real estate agent concerned about the actions of another agent. In order for the Commission to investigate and address your concerns, we must

(as mentioned above) have the complaint in writing and signed. The SES Division cannot open a complaint based on a phone call or an anonymous complaint. Nor can SES conduct a covert investigation unless expressly authorized by the Commission.

If you feel there has been a violation of The Real Estate License Act or Commission Rules, you have a right to file a complaint. Please note that if you feel the National Association of Realtors® Code of Ethics has been violated you would need to file a complaint with your local board, not the Commission.

For information about complaints, including how to file them, please visit [our website](#).

IMPORTANT DATES TO REMEMBER

ESAC Committee Meeting—April 18

TREC Executive Committee Meeting—April 19

TREC Commission Meeting—May 2

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

TREC Enforcement Actions

The Texas Real Estate Commission has published enforcement actions. 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, Consumer Info” and then [click “Disciplinary Actions”](#).

TREC Employee Update



Thomas Hopes

Reception and Communication Services

Prior to joining the team Thomas recently held a sales agent license. He has now recognized his true passion, helping prepare people for life changing decisions. Educating and informing has become his focus. TREC is a great fit and is a place he can use his experience of 5 plus years of customer service, combined with his education, and desire to help others reach their goals. In his spare time, Thomas enjoys reading spiritual growth books and creating colorful food dishes! Glad to be part of the team!