

Broker Responsibility

Edition 4.0.1

January 2019



Texas Real Estate Commission

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Foreword

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Contents

1	Chapter 1: Introduction
1	Purpose
1	Who Must Take This Course?
1	Standard Test for Course Now Required
1	Regulations for Brokers
1	TREC RULES §535.2 - Broker Responsibility (underlined text new as of 1/1/19)
5	Chapter 2: Scope of Activity and Competency
5	Authority and Competency - Definitions
5	Authorizing Scope of Brokerage Acts an Agent Can Perform
6	Competency
7	Proper Training and Mentoring
11	Chapter 3: Fiduciary Responsibility/Agency
11	Listing and Other Brokerage Services Agreements in Broker's Name
12	Sharing Commissions with Attorneys
12	Attorneys as Brokers
13	What is the Broker-Lawyer Committee?
13	Use of Standard Contract Forms - (TREC Rules §537.11)
14	A Real Estate License Not a Law License
15	Chapter 4: Trust Accounts
15	Commingling Funds
17	Chapter 5: Property Management
17	Property Management Responsibilities - TREC Rules §535.2(d)
18	Authority and Duties Under the Property Management Agreement
19	Federal, State, and Local Laws and Regulations for Property Management
21	Chapter 6: Delegated Supervisors and Teams
21	Delegated Supervisor Responsibilities and Broker Liability
21	New Requirements for Heads of Teams
21	Best Practices for Managing Teams
23	Chapter 7: Advertising and Registration of Names
23	New Advertising Rules
23	What's In a Name? Advertising Name Types
23	Which Type of Name Is It?
24	Advertisements - TREC Rules §535.154 and §535.155
26	Advertising About the Value of a Property
26	Broker Price Opinion, Comparative Market Analysis or Sales Price Estimate - TREC Rules §535.17

27	Chapter 8: Written Policies
27	Review of Required Policies and Procedures
31	Chapter 9: Additional Broker Duties
31	Record Keeping - TREC Rules §535.2(h)
31	Responding to Agents, Clients and Other License Holders - TREC Rules §535.2(i)
31	Forwarding Commission Correspondence to Sponsored Agents - TREC Rules §535.2(k)
33	Chapter 10: Application and Background History Processing and Complaints
33	Overview of TREC Application Processing
33	Background History for Sales Agents or Brokers
34	Complaints
35	Complaint Investigation and Disposition (TRELA §1101.204)
37	Appendix A: Use of Standard Contract Forms (TREC Rules §537.11)
39	Appendix B: Elective Qualifying Real Estate Courses to Meet SAE License Requirements
41	Appendix C: Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
43	Appendix D: Lead-Safe Certification
45	Appendix E: Use of Unlicensed Assistants in Real Estate Transactions
49	Appendix F: §535.154 Registration and Use of Alternate, Team and Assumed Business Names Used in Advertisements
53	Appendix G: Advertising FAQs - as of 9/1/18
55	Appendix H: Complaint Investigation and Disposition (Texas Occupations Code)

Chapter 1

Introduction

Purpose

The purpose of this course is to address the regulatory aspects of the management, operation and supervision of a real estate brokerage firm in Texas. The course provides an understanding and working knowledge of a broker's responsibilities and obligations under 22 TAC §535.2, which sets out specific requirements and best practices for brokers.

Who Must Take This Course?

Section 535.92 of the Texas Real Estate Commission (TREC, the Commission) Rules requires a broker or a designated broker of a business entity who sponsors sales agents, and a license holder who is a delegated supervisor of one or more license holders, to complete this six-hour broker responsibility course to renew a license. Any license holder may take this course for six hours of elective CE credit. Additionally, a sponsoring broker may, by policy, require certain license holders and employees to take this course. Beginning January 1, 2019, any license holder who leads, supervises, directs, or manages a team must be delegated as a supervisor by the broker and will then be required to complete this course prior to license renewal.

Standard Test for Course Now Required

TREC rules require a standard test, developed by TREC, be given to all instructors and students of this course. Instructors must pass the test with a grade of 80 percent or higher to be able to teach the course [TREC Rules §535.74 (b)(2)(C)]. Students who take the course through a distance education delivery method must pass the test with a grade of 70 percent or higher to receive credit for the course. A student may retake the test one time before being required to repeat the course. Students in a classroom setting will be given the test as part of class instruction with the correct answers being reviewed by the instructor. Students in a classroom setting will not be graded [TREC Rules §535.72(i)(1)].



Regulations for Brokers

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

- * Chapter 1101 of the Texas Occupations Code (TRELA, Act)
- * Title 22 Texas Administrative Code, Chapters 531–543 (TREC Rules, Rules)
- * Texas Property Code, Chapters 91 & 92 (Landlord and Tenant)
- * 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 Telemarketing Sales Rules (Do Not Call-Email-Fax)
- * National Association of Realtors® (NAR) Code of Ethics (Voluntary Standard)

TREC RULES §535.2 – Broker Responsibility **(underlined text new as of 1/1/19)**

- (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 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.

Chapter 2

Scope of Activity and Competency

Authority and Competency - Definitions

TRELA §1101.002 defines the following:

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

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

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

Sales Agent: A person who is associated with a licensed broker for the purpose of performing real estate brokerage

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

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



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

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

Authorizing Scope of Brokerage Acts an Agent Can Perform

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

What is an authorized act of brokerage activity? Almost any act related to buying, selling, or leasing real estate by a license holder, when performed for another, and for, or in expectation of receiving, valuable consideration [Tx. Occ. Code §1101.002]. TREC may discipline brokers who fail to define the scope of authorized acts or fail to properly train their sales agents before authorizing them to conduct such acts.

If an act is performed for the license holder's own account, that action does not fall under the definition of brokerage. However, TREC may discipline license

holders who buy, sell or lease property for their own account under certain circumstances [Tx. Occ. Code §1101.652(a-1)(1) and TREC Rules §535.144]. Specifically, a license holder may not engage in fraud, deceit, or misrepresentation when buying, selling, or leasing property on his or her own account.

DISCUSSION

Keep in mind that the broker is still responsible for unauthorized acts of a sponsored agent if a broker “permits a sponsored sales agent to conduct activities beyond the scope explicitly authorized.” Suppose a broker has a “rogue agent.”

What documents will help a broker defend a claim against a sales agent going outside his or her authorized scope?

TREC Case Study 1

The Two-Broker Tango

Broker Maggie sponsored Rufus, a sales agent who was experienced in representing buyers and sellers. Another sales agent, also sponsored by Maggie, passed away, so Rufus took over that agent’s property management duties despite not having any experience in property management. While sponsored by Maggie, Rufus failed to remit trust money to the owners within a reasonable time (30 days after receipt).

Rufus changed brokers, and Claudius became his sponsoring broker. Rufus’ property management clients ended their relationships with Maggie and enlisted Claudius as their broker. While sponsored by Claudius, Rufus maintained his own trust account instead of delivering the trust money to Claudius. As a result of this complaint, Rufus stopped performing property management.

Competency

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 procedure 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 competency in the geographic market area where the sales agent represents clients.

Competency is much more than simply knowing how to fill out the contract forms. Competency, or the lack

thereof, creates many problems in the real estate industry. Some of those problems have resulted in litigation or regulatory action or trade association ethics actions. A broker should spend time determining which activities he or she will authorize sales agents to perform, and for that brokerage which training or support would be required to obtain competency in authorized activities. It would seem imprudent to authorize a newly licensed sales agent to perform any real estate activities without some form of training or mentoring or coaching by the broker or some other person(s) who is competent to perform those activities. An example might be that a sales agent who wishes to learn the commercial real estate business would be required to complete specific commercial classes and have a commercial specialist as a mentor for a period of time or a quantity of transactions.

DISCUSSION

1. How can sponsoring brokers assure that sales agents and broker associates in their brokerages have the proper training or mentoring?
2. How can sponsoring brokers assure that documents given and prepared for clients and customers are accurate and enforceable, and that the agents and brokers are competent to work in the geographic area where the property is located?
3. How can sponsoring brokers assure that agents and brokers have proper oversight and have career path training?

Limits of Expertise

It is wise to remember that while brokers and agents are licensed in the State of Texas, their competency usually is limited by geographic market area, types of real estate, or price range.

Geographic Market Area

A local MLS might cover multiple counties. Who would know the benefits of each community, schools, commute times? In giving an opinion, what risk does the sales agent set up for the broker? It seems illogical that a broker in Beaumont would be knowledgeable about the El Paso market’s specific details, such as utilities, pitfalls, foundation issues, stucco issues, border issues, etc. The client’s interest should dictate in this situation that a referral to a competent El Paso license holder would be the prudent course of action.



The broker must decide how large an area he or she is willing to cover and how best to keep sales agents informed about issues in the area. What might that mean other than not selling out of the broker's area of expertise? Consider the following:

- * Licensure: Are you licensed to sell all over the State of Texas?
- * Client fiduciary duty: What is your fiduciary duty to your client?
- * Zoning: Do you know the zoning of every property that you sell or what that zoning may become in the near future? How near is the future? If the zoning changed from Residential to Parking, would the taxes increase? Is that what the client wants?
- * Planning Changes: Does the City or TXDOT have any change of plans on the horizon? This information, especially if it has been published in the local newspaper or neighborhood flyers, is the information that brokers and sales agents are supposed to know and to share in order to be competent.
- * Deed restrictions: Every area has different geographical requirements. Do these expire?
- * HOAs: unique set of rules and regulations.
- * Historic District rules: Ordinances that might influence the client's decisions.
- * Topography: Escarpments, or lakes, or beaches.
- * EPA regulations: Water, rivers, lakes or oceans.
- * Flood zones: How near is the flood zone? Will the buyer need flood insurance?
- * Water Districts: is client aware of regulations?

Types of Real Estate

Clients often believe that brokers and agents know everything about real estate. While it is not their job to know all the facts, brokers and sales agents are required to do the best possible job. If the license holder is not an expert, he or she should gain the necessary

knowledge or find the experts in that specific real estate field to share fiduciary responsibility. The license holder must realize and admit lack of knowledge about a type of property. For example, if a sales agent does not ordinarily handle ranch transactions and is asked to

handle such a transaction, the sales agent should probably refer the client to someone with more expertise.

In smaller cities and towns, local brokers often handle many types of transactions. To maintain competency and protect clients, they must seek more education courses in commercial and farm and ranch transactions and stay more involved in the overall community.

Price Range

It is tempting to welcome a \$3 million homebuyer and attempt to handle the transaction. Where does the license holder find \$3 million homes if he or she has not been handling that price range? Can the license holder determine whether a home's estimated sales price is in that price range? Is the price a matter of home size, luxury items added, land worth? What is the estimated sales price per square foot? Where does a new agent find this information? MLS does not have all of the information the license holder will need. Mentoring with a more experienced agent or the sponsoring broker, who is ultimately responsible, is the best way to handle such a transaction.

Proper Training and Mentoring

In addition to completing statutory minimum continuing education requirements, each sponsored sales agent must receive such additional educational instruction the broker may deem necessary to obtain and maintain competency in the scope of the sponsored sales agent's practice subject to the Act.

How does a sponsoring broker ensure that sales agents and broker associates in their brokerage have the proper training or mentoring? How does the broker ensure that the documents given and prepared for clients and customers are accurate and enforceable? How does the broker ensure that the agents and brokers are competent to work in the geographic area where the property is located?



20th Century Broker

“There’s the desk, there’s the phone, there’s the phone book. See ya later!”



21st Century Broker

“You have social media, sell and list something Don’t bother me. See ya later!”

It is likely neither broker’s directions would result in professional treatment of customers or the clients whom the broker represents. Prudent sponsoring brokers will have a training or mentoring plan for new agents and ongoing training for all sponsored agents (both by geographic area and by discipline that the broker allows agents to practice).

DISCUSSION

Break into three groups. Each group discuss one of the following questions:

1. How do you train someone for their first listing presentation?
2. How do you train someone for their first showing?
3. What does day one in the life of a license holder look like?

TREC Case Study 2

Short Sale, Tall Problem

A complaint was filed against sales agent Bobbi for her involvement in a short sale transaction. Bobbi had no training in short sale transactions. At the time the transaction took place, Janice was the designated broker for Quick and Easy Realty LLC. Janice stated to TREC that all sales agents were required to take a short sale class before representing a party in a short sale transaction. By not enforcing this policy for Bobbi, Janice failed to ensure that her sales agent received additional education that the broker considered necessary to ensure competency in performing a short sale for their client.

Contract Review and Compliance

A prudent broker should review all documents personally or have a qualified compliance person review all documents prior to approving the payment of any commission to an agent or associated broker. All documents would include items 1 through 7 in TREC Rules §535.2(h) and any other documents the broker deems necessary to complete a file. Some brokers may choose to review contracts and listing agreements before they are presented to a consumer for signature and others may choose to review after all have been signed and executed. A sponsoring broker should create a policy that establishes which documents will be reviewed by the broker and when they will be reviewed. Some sponsoring brokers require the transaction file to be complete before the commission disbursement agreement is signed (before the agent can be paid). Brokers may choose to create checklists of documents required for various types of transactions and allow the voluntary use of the checklist. Because forms, deadlines, and people change, compliance in maintaining records is a never-ending process.

Absentee Broker

One of a broker’s specific fiduciary duties is to keep informed about his or her practice, the market and developments in the industry. The broker also must be available to sales agents, clients and license holders representing other parties. An absentee broker will not be able to do some, or all, of the items discussed above to ensure sponsored agents are competent. Some brokers may have obligations outside their brokerage duties, such as membership in professional associations or family commitments. A competent broker will make sure to have a delegated supervisor provide coverage in these instances.

Who loses with an absentee broker? The sales agent sponsored by the absentee broker does not receive proper training and does not have a resource to turn for advice. The client working with that sales agent may be at a disadvantage. The sales agent and broker representing the other party may end up coaching or doing the work for the agent of the absentee broker in order to get the transaction closed for their own client.

DISCUSSION

1. What can a license holder do when he or she come across a sales agent with an absentee broker?
2. What can a license holder do when dealing with a solo broker who becomes unresponsive?

Career Path Training

A sponsoring broker should have a training plan that considers the various experience levels of sponsored agents. Training should cover any skill training, rules and statutes changes, contracts and addenda, etc. Some courses that might be considered are:

- ✓ Farm & Ranch
- ✓ Commercial
- ✓ Condos
- ✓ CMA/Appraisal
- ✓ Buyer Representation
- ✓ Seller Representation
- ✓ Negotiation
- ✓ Seniors
- ✓ Diversity
- ✓ New Home Construction
- ✓ Green
- ✓ Property Management
- ✓ Risk Management
- ✓ Luxury Home
- ✓ Military Relocation
- ✓ Elective qualifying courses approved for SAE credit are listed in Appendix B and are a good training resource for any license holder.

Chapter 3

Fiduciary Responsibility/Agency

What Does Being a Fiduciary Mean? In the simplest terms, being a fiduciary means putting your client's interest above your own.

Big Valley Deceiver

Victoria Barkley, a sales agent with Big Valley Realty, has an appointment with her buyers at 4 pm today to look at properties in an area Victoria is very familiar with. There are three properties that meet the buyer's requirements. Two properties have sellers offering to pay the cooperating broker a commission of \$7500 for a ready, willing and able buyer. The third property has a seller offering to pay the cooperating broker \$2500 for a ready, willing and able buyer. Victoria decides to show only the properties where the cooperating commission is higher. When her buyer arrives, Victoria shows the two properties with the higher commission and is careful to not drive by the third property so she can avoid explaining why she did not show it.

1. What do you see wrong with this situation?
2. What other choices does Victoria have?

Race for the Cash

Magic Morris, an associated broker with Speed Demon Real Estate, is showing property this afternoon to a buyer he picked up in an open house over the weekend. The buyer decided to hire Magic and signed a buyer representation agreement. The buyer has decided he wants a new home. In preparation for showing today, Magic is researching which builders are paying the highest bonus because Magic wants to go to the next Formula 1 race in Austin and needs to have some extra cash.

What is wrong with this situation?



Listing and Other Brokerage Services Agreements in Broker's Name

Agents Speaking (and Deciding) for Their Clients

A broker owes the highest fiduciary obligation to the principal and is obligated to convey to the principal all information known to the agent which may affect the principal's decision, unless prohibited by law (TREC Rules §535.2).

A Tale of Two Lenders

Louie, recently widowed, chose an agent to market his house for sale. Antoinette with We Sell It All was excited to have the listing and began to market it. A conventional offer arrived from Valentino with We Find Homes; Louie accepted the offer. The offer included a pre-approval letter from a lender. Several weeks into the transaction, Valentino called Antoinette and disclosed that the buyer could not qualify for a conventional loan but not to worry because the buyer was switching to a VA loan. Antoinette and Valentino decided to execute the amendment at closing. Louie moved out of state to be close to his children, and the closing paperwork was mailed to him. Needless to say, the "net dollars" were approximately \$2,000 less than he expected due to the change in loan type.

1. What was the Antoinette's obligation to Louie?
2. When should the amendment have been presented?
3. What violation was committed?
4. By whom?

I Know More Than You, So Do What I Say

Sales agent Marty represented the seller in a multiple offer situation. The seller entered into a contract with Biff, who also happened to be a broker, because Biff submitted a strong offer. Biff's offer was for \$385,000, which was over the list price and included TREC's new Addendum Concerning Right to Terminate Due to Lender's Appraisal. The Addendum had box 2 checked with the amount of \$375,000 inserted as the appraised value that had to be met.

The appraisal came in at \$375,000 and also noted that there was a discrepancy in the square footage. Biff insisted that the addendum was void because of the square foot discrepancy and the seller was required to come down to the appraised value of \$375,000. He even attached an amendment reflecting the price change for the seller to sign immediately.

Marty explained to Biff that the discrepancy of square footage is not relevant under the terms of the addendum, and the seller is due the contract price of \$385,000. Biff told Marty that he was misinformed and needed to be educated. Biff made numerous calls with a very condescending, demanding attitude, which made Marty doubt whether his interpretation was correct. After all, Biff was a broker. Marty contacted his delegated supervisor, George, who confirmed that Marty was correct.

Biff then contacted George with the same demand and tone, insisting that George have the amendment reducing the price signed by the seller, since Marty could not do his job properly. When George explained that Marty was indeed right, Biff stated that TREC did not mean for the addendum to "read that way." George decided to double check with his designated broker, Emmett. Emmett confirmed that Marty was correct and that \$385,000 was the amount due under the contract terms. George relayed this information to Biff, who finally relented.

1. What is the moral of this story?
2. What other instances of license holder "bullying" have you experienced?

Sharing Commissions with Attorneys

"An attorney wants half my fee!" What can a broker do when an attorney tries to claim a part of the broker's commission? TREC Rules changed in 2011 to

clarify this issue. TREC Rules §535.147(a) prohibits a license holder from sharing a commission or fees with any person who engages in acts for which a license is required and is not actively licensed as a broker or sales agent (except as otherwise provided by the Act or by TREC Rules).

Attorneys as Brokers

Attorneys are exempt from the provisions of the Texas Real Estate License Act under §1101.005(1) of the Act. As a result, an attorney may act as a broker in a real estate transaction and receive a commission directly from the principals without having to be licensed by TREC. However, the fact that an attorney may receive a commission directly from a principal does not also mean that a licensed broker must split a commission with the attorney. TREC Rules §535.147(a) says the exact opposite. It prohibits a broker from sharing a commission with any person who is not actively licensed as a broker or sales agent. The fact that an attorney is exempt from the provisions of the Act is not the same thing as being licensed under the Act. Thus a broker is prohibited by TREC Rules §535.147 from splitting a commission or other fee with an attorney.

There are two exceptions to the above.

Exception #1: If the attorney is also a licensed broker or sales agent, then it is not a violation to share a commission or fees with the attorney.

Exception #2: If the attorney is a principal party to the transaction, the license holder may split the commission with the attorney who is a principal party. TREC Rules §535.147(d) allows a license holder to rebate or pay a portion of the license holder's fee or commission to a party in the transaction (when the party represented by the license holder gives written consent). Thus, a license holder who intends to pay a portion of the license holder's fee or commission to a principal party that the license holder does not represent must first obtain the written consent of the party who is represented by the license holder. This exception allows the license holder to split a commission with an attorney or anyone else who is a principal party to the transaction.

If a listing broker desires to reduce the commission so that the seller may have additional funds with which to pay an attorney directly, such an arrangement would not violate the Act. However, any attempt by an attorney to force a listing broker to reduce his or her fees in such a manner could be construed as interference with the listing broker's listing agreement.

Because an attorney is exempt from the provisions of the Act and can represent clients in real estate transactions, how can they get paid without interfering with

a broker's listing agreement? An attorney representing a buyer may receive compensation for those services directly from any of the principals in a transaction. There are several ways that this can be accomplished without running afoul of the law. In this situation, the buyer could pay the attorney fees directly and submit an offer that reduces the contract price by the amount that would have been paid to a cooperating broker. Alternatively, the buyer could ask the seller to pay the attorney fees at closing because there is no cooperating broker. In either case, the attorney cannot insist that the listing broker reduce his or her negotiated fee with the seller. However, the seller can ask the listing agent to reduce the fees by the amount that would have been paid to a cooperating broker. This is a renegotiation of compensation under the listing agreement for this particular transaction. Keep in mind that although the listing agent is not required to renegotiate any part of the compensation under a previously signed listing agreement, the listing agent is a fiduciary and must balance his or her right to the full negotiated fee against the best interest of her client.

DISCUSSION

1. What is appropriate in this situation?
2. Should the parties take into consideration how much brokerage-type work was done by the attorney?
3. Would it also be possible for the listing agent to agree to rebate half of his or her commission to the buyer (with the seller's permission of course) and have the buyer pay the attorney directly out of that rebate?

What is the Broker-Lawyer Committee?

The Texas Real Estate Broker-Lawyer Committee was created by the Texas legislature in the TREL.A. The committee is an advisory body to TREC. The committee drafts and revises contract forms that are presented to the TREC commissioners for adoption. TREC promulgates the forms by adopting them and referencing the forms in the TREC Rules. The Broker-Lawyer Committee consists of 13 members: 6 attorneys appointed by the president of the State Bar of Texas, 6 brokers appointed by TREC, and 1 public member appointed by the governor. The Broker-Lawyer Committee is authorized to prepare forms that can be used by real estate license holders without such use being considered to be the unauthorized practice of law.

Use of Standard Contract Forms - (TREC Rules §537.11)

TRELA §1101.155 allows TREC to adopt rules requiring license holders to use contract forms created by the TREC Broker-Lawyer Committee. Section 1101.155 also allows license holders to use contract forms that are prepared by the property owner or prepared by an attorney and required by the property owner. TREC Rules §537.11, amended May 15, 2018 (Appendix A), interprets TREL.A's contract form use requirements.

The following is a summary addressing which forms a license holder can bring to a transaction between a buyer and a seller (or between a landlord and a tenant):

License holders may only bring contract or lease forms to the transaction if they are forms approved by TREC and are appropriate for the type of transaction. If TREC has not approved a form appropriate for the type of transaction, then a form may be prepared by

- * a lawyer licensed in Texas; or
- * a trade association in consultation with one or more licensed lawyers.

If the form is prepared by an attorney or trade association, the form must include

- * the name of the lawyer or trade association that prepared the form;
- * the name of the broker or trade association for whom the form was prepared;
- * the type of transaction for which the lawyer or trade association has approved the use of the form, and
- * any restrictions on the use of the form.

If the form is an addendum to a TREC contract or lease, the form must also include

- * a statement about how the addendum changes the TREC form, with a reference to the relevant paragraph number in the TREC form;
- * a statement that the form is not a mandatory TREC form; and
- * a statement that TREC rules prohibit real estate license holders from giving legal advice.

TREC Rules §537.11 limits only the forms that a license holder may bring to a transaction. Section 537.11 does not limit the forms used if the forms are brought to a transaction by a principal in the transaction (and if the blanks in the form are not completed by the license holder).

DISCUSSION

1. Betty Broker has a form lease agreement that she uses when representing landlords. Betty created the form two years ago by using a lease that was prepared by the attorney for one of her clients. Betty replaced the landlord name, tenant name, property description and other business points in the original lease with blank lines. Can Betty use the form she created with the blanks, to save her clients the legal fees in preparing a lease agreement?
2. Which of the following contract forms may a license holder bring to a transaction? Why or why not?
 - * The TREC one-to-four family residential contract (TREC 20-14).
 - * The Texas Association of Realtors Residential Condominium Contract (Incomplete Construction) (TAR-1609).
 - * The Texas Apartment Association Apartment Lease Contract.
3. A vacant residential lot contract prepared by an attorney that includes the name of the attorney, the name of the broker for whom the form was prepared, and a statement of the type of transaction for which the form is approved.
4. A new residential condominium contract for incomplete construction that was prepared by an attorney that includes the name of the attorney, the name of the broker for whom the form was prepared, and a statement of the type of transaction for which the form is approved.
5. Angie Agent listed Sam Seller's house for sale. Sam sold a house 10 years ago using a contract form that was prepared by his sister-in-law, who was an attorney. Sam wants to use the same contract form for the sale of his current house. Can Angie represent Sam if he insists on using the 10-year-old form?
6. TREC has not promulgated any listing agreements. As a result, do the provisions of TREC Rules §537.11 require that listing agreements be prepared by an attorney or trade association?
7. When a form has been replaced by a new one, why is it important to use the most current form?

A Real Estate License Not a Law License

Although license holders take courses in real estate law and promulgated contracts, that is not enough training or information to provide legal advice to parties in a transaction. Even if an experienced license holder has “seen it all” and believes he or she is a legal expert on real estate transactions, it is against the law and against the best interest of the client to give advice on a legal matter. So what is and what is not legal advice? TREC Rules §537.11 (b)-(e) provides some guidance. See Appendix A for the full rule.

What license holders cannot do:

- * directly or indirectly offer, give or attempt to give legal advice;
- * give advice or opinions as to the legal effect of any contracts or other such instruments which may affect the title to real estate;
- * give opinions concerning the status or validity of title to real estate;
- * draft language defining or affecting the rights, obligations or remedies of the principals of a real estate transaction, including escalation, appraisal or other contingency clauses;
- * add factual statements or business details to a contract form approved by the Commission if the Commission has approved an addendum for mandatory use for that purpose.

What license holders can do:

- * disclose all pertinent facts that are within your knowledge, including such facts which might affect the status of or title to real estate;
- * fill in the blanks in a contract form authorized for use by license holders under TREC Rules §537.11;
- * add factual statements and business details or shall strike text as directed in writing by the principals on a contract form approved by the Commission;
- * explain to the principals the meaning of the alternative choices, factual statements and business details contained in an instrument so long as the license holder does not offer or give legal advice.

Keep in mind that when a transaction involves unusual matters, or if the instrument must be acknowledged and filed of record, the license holder must advise the principals to consult a lawyer of the principal's choice before executing the instrument. Finally, a license holder must advise the principals that the instrument they are about to execute is binding on them. That applies to every contract, every time.

DISCUSSION

What are some examples of a license holder engaging in the unauthorized practice of law?

Chapter 4

Trust Accounts



Commingling Funds

A broker may not commingle the broker's own funds with trust funds belonging to others. TREC may suspend or revoke a license or take other disciplinary action if a license holder, while engaged in real estate brokerage, commingles money that belongs to another person with the license holder's money (TRELA §1101.652(b)(10); TREC Rules §535.146). TREC Rules §535.146(b)(4) states that the broker shall not:

- (A) commingle trust money with the broker's personal money or other non-trust money; or
- (B) deposit or maintain trust money in a personal account or any kind of business account.

Brokers need to take care that only money they have earned is deposited into the broker's personal or business account. If the money is not earned and payable to the broker, the money should be deposited into the broker's trust account.

TREC Case Study 3

It's Not Your Money!

Mavis was the designated broker and owner for her own business entity broker. She conducted property management through the business entity broker and was the signatory on the trust account. Mavis stated that she suffered a serious sudden medical issue. The bills associated with this medical issue were very high, and she could

DISCUSSION

1. The listing broker receives a check from the seller for the purpose of paying a landscape company to cut the grass. May the broker deposit the money in the broker's business account?
2. The seller gives the broker a check to pay a cleaning crew to clean the house. The broker has a favorite cleaning crew and refers a lot of business to the cleaning crew. The cleaning crew bills the broker on a monthly basis for all of the jobs that the broker refers. May the broker pay the cleaning crew invoice from the broker's operating account?
3. Will the answer change if the cleaning crew cleaned the broker's office and included that charge on the bill?
4. Will the answer change if the clients have not given any money to the broker, but instead have asked the broker to pay for the cleaning with a promise to reimburse the broker later?
5. The seller gives the listing broker a check to pay for the planting of some flowers into a front flower bed. The broker enjoys gardening and tells the seller that the broker will plant the flowers the following week. This arrangement is acceptable to the seller. May the broker deposit the check into the broker's operating account?

not pay immediately to settle the medical bills. Mavis transferred money out of her trust account to her personal account to settle the medical bills. A sponsored sales agent (Mavis' daughter) discovered this and notified TREC regarding Mavis' actions. Mavis admitted the actions alleged were true, but the amount transferred had been restored, and she was remorseful for her actions. Is it okay to commingle trust money with your personal account if you later restore it? No!

Chapter 5

Property Management

Property Management Responsibilities – TREC Rules §535.2(d)

A broker is responsible for any property management activity by the broker's sponsored sales agents that requires a real estate license. A broker's responsibilities when managing property are different than the broker's responsibilities when brokering a sales transaction. This is also the case when a broker is sponsoring sales agents who perform property management activities. Property managers owe duties to owners and other third parties in connection with leasing, service contracts for services to be performed on a particular property, and properly maintaining the property.

TREC receives a large number of property management complaints every year. Most of these cases involve:

- * misappropriation;
- * commingling;
- * failure to properly account for rents or security of deposits received; or
- * negligence in the performance of property management duties.

The following pointers will assist brokers and sales agents when engaging in property management.

Get Educated

Brokers and sales agents who perform property management need to understand and keep up to date with federal, state and local laws in many different areas. Brokers must have policies in place that ensure that sales agents who perform property management are competent to do so [TREC Rules §535.2(i)]. Some of the laws that a property manager must understand are:

- * TREC trust account rules, fiduciary duty and advertising (TREC Rules §§535.146, 535.155 and 531.1);
- * Texas Property Code on landlord responsibilities, such as smoke alarms, deadbolt locks, rekeying, return of security deposits, evictions (TPC Chapter 92 – Residential, Chapter 91 – Commercial);
- * Texas Fair Debt Collection Practices Act;
- * Americans with Disabilities Act;
- * Fair Housing Act (and any additional local fair housing requirements);



- * Equal Credit Opportunity Act;
- * Fair Credit Reporting Act;
- * Megan's Law;
- * Sexual Harassment/Domestic Violence laws;
- * Lead-Based Paint Hazard Reduction Act;
- * Service Member Civil Relief Act;
- * Uniform Residential Landlord and Tenant Act;
- * Uniform Electronic Transmission Act/SPAM;
- * Antitrust laws;
- * Local code ordinances
 - » safety;
 - » habitability;
 - » fair housing; and
 - » property use restrictions.

Some of the processes a property manager must understand are:

- * Preparing and explaining a property management agreement;
- * Preparing and maintaining a property prior to leasing;
- * Assessing risk and preventative maintenance practices;
- * Securing and preserving vacant properties;
- * Finding and screening applicants to be tenants;
- * Preparing a lease;
- * Collecting rent;
- * Maintaining a trust account;
- * Enforcing the terms of a lease;
- * Renewing a lease;
- * Terminating a lease; and
- * Returning security deposits.

Clarify Authority of Sales Agent

A sales agent may not perform property management activity that requires a license except through the sales agent's sponsoring broker [TRELA §1101.351(c)]. Even if a sales agent owns a property management firm, the business must be conducted through the sales agent's sponsoring broker. A broker is responsible for any property management activity that requires a real estate license and that is conducted by the broker's sponsored sales agents [TREC Rules §535.2(d)]. If a broker does not authorize sales agents to manage property, the broker must make that limitation clear in the written scope of authorized activities given to sales agents [TREC Rules §535.2(a)]. Sales agents may, of course, manage the properties that they own themselves. The broker will not be responsible for property management activities conducted by the sales agent on her own property.

Authority and Duties Under the Property Management Agreement

The property management agreement sets out what a broker is authorized to do for the owner and what the broker is expected to do. Although TREC does not have jurisdiction over disputes regarding contract terms, if the broker exceeds the authorization or fails to fulfill the broker's duties, TREC could consider that to be negligence and the broker could be subject to discipline. Some examples might be:

- * Did the property management agreement allow the broker to execute the lease on behalf of the landlord?
- * Were written accountings provided as required by property management agreement?
- * Did the broker obtain permission to pay for a repair that was over the stated limit in the agreement?

Landlord Requirements Under the Property Code

Under most property management agreements, the duties of and requirements placed on the landlord under the Property Code become the responsibility of the property manager as the landlord's agent. TREC can look at the property manager's conduct to see whether the manager did or did not hurt the property owner's interest. For example, once a tenant vacates a leased property, failure to provide a written accounting within 30 days could subject the property owner to a number of monetary penalties. The manager should also keep documentation to prove that any deductions taken from the security deposit are reasonable (see Property Code §92.109). Brokers engaged in property management or leasing residential properties should become familiar with Texas Property Code Chapters 91 and 92.

Use a Broker's Trust Account

Any money received on behalf of a landlord must always be deposited into a broker's trust account. A sales agent may not operate a trust account. A broker is prohibited from commingling trust account funds with the broker's own funds [TRELA §1101.652(b)(10)]. Paying operating expenses or making withdrawals from a broker's trust account for any purpose other than proper disbursement of money held in trust is evidence of commingling [TREC Rules §535.146(b)(5)]. If there is activity in a client's trust account, the broker must provide an accounting to the client at least monthly [TREC Rules §535.146(c)(5)].

Respond and Remit Timely

A broker must now provide a written account at least monthly if there is any activity in the trust account [TREC Rules §535.146(c)(6)].

Keep Good Records

Keeping accurate records is required [TREC Rules §535.2(h)], and it just makes good business sense. In many cases, good documentation helps prove that the broker did not violate the Act or TREC Rules. Documents that should be kept include

- * property management agreements,
- * lease application forms,
- * executed leases,
- * move-in property condition forms,
- * written move-out notice from tenants,
- * tenants' written notice to manager of forwarding addresses,
- * written accounting of security deposit provided by property managers, and
- * copies of checks.

TREC Case Study 4

The Insufficient Manager

Tommy, a sales agent, managed a property for several years. The owners of the property expected Tommy to obtain leases before allowing anyone to take possession of the property, and Tommy normally did so. Recently, Tommy allowed tenants to move into the property without an executed lease. After the tenants moved in, Tommy discovered the tenants' checks for security deposit and first month's rent were both returned for insufficient funds. Four months later, the owners of the property were awarded possession of the property in an eviction lawsuit.

TREC's investigation of the case revealed Tommy was depositing trust money into a bank account owned by a business entity with an expired broker license.

Federal, State, and Local Laws and Regulations for Property Management

Lead Based Paint Requirements

Under federal law, property managers/landlords must provide prospective tenants of buildings that were built before 1978 an EPA-approved information pamphlet entitled *Protect Your Family from Lead in Your Home* (www.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure), which contains information on identifying and controlling lead-based paint hazards. For multi-unit buildings, this requirement includes records and reports concerning common areas and other units when such information was obtained as a result of a building-wide evaluation. The disclosure must be attached to the lease, or language inserted into the lease, that includes a “Lead Warning Statement” and confirms that that broker has complied with all notification requirements. See Appendix C for a sample disclosure statement.

In addition, EPA’s Lead Renovation, Repair and Painting (RRP) Rule requires property managers to take certain actions to protect tenants and their visitors. If a property manager performs renovations, repairs or painting activities in a pre-1978 residential building, the property manager must become a lead-safe certified firm. If the property manager has a third party perform that work, the property manager must hire only a lead-safe certified firm to perform that work (Appendix D).

Regulators Watch HGTV Too!

The EPA recently fined the stars of a popular HGTV’s remodeling show \$40,000 for violations of the Toxic Substances Controls Act. An EPA investigator was watching old episodes of the show on TV when he noticed that proper lead removal procedures during demolition were not being followed. After further investigation, the EPA found “evidence of non-compliance” from 33 televised renovations. Specifically the EPA found:

- * Failure to obtain firm certification from the EPA before performing renovations covered by the RRP Rule
- * Failure to assign a certified renovator to such renovations
- * Failure to provide homeowners or occupants with an approved pamphlet about lead-based paint hazards prior to renovation
- * Failure to post signs to clearly define the work area, warning people to remain outside that area
- * Failure to cover floor surfaces, ducts and other openings to work area to capture falling paint chips

As part of their settlement with the EPA, the stars and their company also pledged to become EPA renovator certified and use proper techniques going forward. In addition, they will provide additional “injunctive relief” of \$160,000 to supplement efforts to provide remediation for older homes in their market area where lead paint is more prevalent. In the agreement with the EPA, the HGTV stars and their company did not admit guilt to any EPA violations.

Protecting Tenants at Foreclosure Act Now Permanent

The “Protecting Tenants at Foreclosure Act” (PTFA), which expired at the end of 2014, was permanently extended in May of 2018. The PTFA enables renters whose homes were in foreclosure to remain in their homes for at least 90 days or for the term of their lease, whichever is greater.

The PTFA applies to all foreclosures on all residential properties, single family homes and multi-unit properties. It also applies to both judicial and non-judicial foreclosures. Tenants with any lease rights, including month-to-month and at-will leases, are protected as long as the tenancy is in effect as of the date of transfer of title at foreclosure. The PTFA is a federal law and applies in all states. However, it does not override more protective state laws.

Chapter 6

Delegated Supervisors and Teams



Delegated Supervisor Responsibilities and Broker Liability - TREC Rules §535.2(e)

A broker may delegate to another license holder the responsibility to assist in administering compliance with the Act and Rules, but the broker may not relinquish overall responsibility for the supervision of 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 TREC 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 TREC in writing when they are no longer associated with the broker or no longer act as a delegated supervisor.

New Requirements for Heads of Teams

Effective January 2019

Any license holder who leads, supervises, directs, or manages a team will be required to be a delegated supervisor and take the Broker Responsibility course prior to each renewal. Brokers will make this designation through the relationship management tool for sales agents. Brokers will complete and submit a paper form to TREC to make this designation for associated brokers.

Best Practices for Managing Teams

Assistants

When creating a team, the manager should consider the following:

- * Is there a need for an assistant to set appointments, prepare for listing presentations, or manage pending contracts?
- * Which activities can a team member perform to free up the team manager's time?
- * Does the manager have a list of items that team members can fulfill?
- * Do the proposed team member's duties require a license?
- * How will the assistant be paid?

If hiring an assistant as part of a team, the team manager should use a written agreement to detail the duties to be performed and whether the assistant will be considered an employee or a contractor. The team manager should be sure the assistant understands the working arrangement, especially with regard to payroll taxes, reporting requirements, or possible license requirements. Details should be reviewed in the written agreement. In some cases, the team manager might need an EIN. The agreement should be written to satisfy all members of the team. The written agreement also needs to address what happens in the event of a break up:

- * Whose clients belong to which member?
- * How is this decided?
- * What does the broker need to do?

The broker needs to have a written agreement with both the team leader and with each one of the team members.

A sponsoring broker should consider all the ramifications of allowing agents or associated brokers to form teams or groups inside the brokerage firm. In addition to the policies required in TREC Rules §535.2, policies on how teams and groups will operate should be considered. Just as a broker should ensure that stand "alone" sales agents and associated brokers are aware, understand and agree to abide by the policies, there should be no exceptions for teams and groups. Keep in mind that a sponsoring broker is responsible for the authorized acts of ALL agents in the brokerage.

DISCUSSION

Break into small groups and brainstorm what might be some policy considerations for teams and groups. Consider the following:

1. Should a sales agent have a certain level of production or years of experience before they are allowed to create a team or group?
2. Should a broker allow more than one sales agent in the office to form a team?
3. Should a broker allow new sales agents to join a team within the brokerage?
4. Who will train team members?
5. Who will mentor team members?
6. Should the broker allow intermediary transactions within the team?
7. Should the broker allow a team to have a marketing agreement with a vendor?

Chapter 7

Advertising and Registration of Names



New Advertising Rules

Two new advertisement rules went into effect May 15, 2018:

- * §535.154. Registration and Use of Alternate, Team and Assumed Business Names Used in Advertisements
- * §535.155. Advertisements

What's In a Name? Advertising Name Types

TREC Rules §535.154 Definitions:

Assumed Business Name (DBA) is another name for the broker's business. It can be used by all sponsored sales agents and brokers associated with this broker.

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," "associates," or other similar terms.

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.

Fun Facts to Know

You must have the legal authority to use an assumed business name in the State of Texas before you can register the name with TREC.

- * An individual broker can have an assumed business name.

- * A name cannot be both an assumed business name and a team name.
- * There is no provision under TREC Rules for a sales agent to have an individual assumed business name or "brand name." Any such name falls under the definition of team name and must meet those requirements. For example: Peppermint Patty, a sales agent, wants to advertise under the name "Sweet Real Estate." She cannot register or use that name as an assumed business name. BUT a team is for one or more license holders, so Patty could have her broker register a team name of "Sweet Real Estate Team."
- * A name used by an associated broker working under another broker that is not the associated broker's licensed name must be a team name or alternate name.
- * Each Assumed Business Name, Team Name, or Alternate Name must be registered with TREC before it can be used in advertisements.

Team Name Requirements and Restrictions

The name must end with team or group. One cannot use words that could mislead the public to mistake a team for a brokerage.

Prohibited Words

Brokerage
Company
Associates

Words similar to the above

Acceptable Words

Property
Real Estate
Homes

Realty

Which Type of Name Is It?

- Do you have legal authority to use the assumed business name in the State of Texas?**
 - NO – You cannot register it as an assumed business name.
 - YES – You can register it as an assumed business name as long as you can answer "yes" to B or C below.
- Is the name available for use by any sponsored sales agent or associated broker?**
 - YES – You can register it as an assumed name.
 - NO – It is likely a team name and must meet all requirements for team names.

C. Is this name used to identify a different line of business under the broker that is available for use by any sales agent or associated broker that the broker deems qualified to engage in that line of business (e.g., property management)?

YES – You can register it as an assumed business name.

NO – It is likely a team name and must meet all requirements for team names.

Team Names

Is this name for use only by a small group of license holders within the brokerage?

YES – It is a team name and must meet the team name requirements.

NO – It cannot be used unless it is an assumed name (check questions above).

Is this name for use only by one person, and it is not their licensed name or an alternate name?

YES – It is a team name and must meet the team name requirements.

NO – It cannot be used unless it is an alternate name (check question below).

Alternate Names

Is this name for use for just you but is not the first or last name on your license?

YES – This is an Alternate Name.

NO – This is likely a team name (check questions above).

Is this a common name for your licensed name, such as Kim for Kimberly or Bill for William?

YES – You do not need to register this name with TREC.

NO – You need to register this name with TREC.

Is the last name that will be used the same as the last name on your license?

YES – Simply fill out the TREC Alternate Name form, sign it and send to TREC.

NO – In addition to the TREC Alternate Name form, you must submit supporting legal documentation to TREC to be able to use this alternate name in advertising.

Registering Names with TREC

In May 2018, TREC launched an online Name Management tool to allow a broker to easily manage all assumed business names and team names online and remain in compliance with the updated name registration requirements (TREC Rules §535.154). Using the tool ensures that TREC has an accurate record of all the names associated with each broker. It updates the TREC database immediately and the website data within 24 hours. To register a name, go to www.trec.texas.gov.

- * Log in (upper right-hand corner of the homepage);
- * Click the license to be updated;
- * Choose “Name Management Tool”;
- * Manage the name(s), and click “Confirm”;
- * Print the receipt.

TREC has a short video on the Name Management process. <https://www.trec.texas.gov/name-management-tool>

Advertisements - TREC Rules §535.154 and §535.155

Each advertisement must include two items in a readily noticeable location: the name of the license holder or team placing the advertisement; and 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 [TREC Rules §535.155(a)].

Advertisement Definition

An *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 communication from a license holder to the license holder’s current client; and
- * a directional sign that may also contain only the broker’s name or logo [TREC Rules §535.155(b)(1)].

Contact Information Definition

Contact information is 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 [TREC Rules §535.155(b)(4)].

TREC Case Study 5

The Neglected Report

Andy's broker license was inactive for one day, causing Amos' sales agent license to become inactive. Andy placed advertisements on his website representing to the public that Amos, who was not authorized to conduct real estate brokerage activity, was personally engaged in real estate brokerage activity. Even though TREC notified each sales agent of the issue and the need to re-issue sponsorship invitations, Amos failed to respond to the notice. Andy acknowledged that he ran reports with this information, but he failed to use the reports or act on the information. This was the third complaint that TREC had received about Andy and this violation.

Does it matter that the broker ran reports with the relevant information? No!

Advertising Don'ts:

An advertisement cannot contain any information 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 [TREC Rules §535.155(d), TRELA §1101.652(b)(23)].

Section 535.155(d) lists some examples of what is considered a violation of the statutory provision. A few examples are any advertisement that

- * is inaccurate in any material fact or representation [§535.155(d)(1)];
- * 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 [§535.155(d)(4)];
- * 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" [§535.155(d)(5)];
- * 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 [§535.155(d)(7)];
- * contains the name or likeness of an unlicensed person that does not clearly disclose that the person does not hold a license [§535.155(d)(9)];
- * 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 [§535.155(d)(16)]; or

- * offers to rebate a portion of a license holder's commission contingent upon a party's use of a specific 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 [§535.155(d)(17)].

Associated Brokers

DISCUSSION

1. What is an associated broker?
2. Can an associated broker refer to himself or herself as a "broker" in an advertisement?
3. Can an associated broker use his or her own assumed business name in advertising?
4. Can the team name used by an associated broker be the same as the assumed name used by the associated broker when he or she is not associating with another broker? Is it wise for the other broker to allow this?

Exclusive Name Use

TREC does not, and is not required to check an assumed business name or team name submitted for registration for exclusivity. A broker should check names before submitting them to TREC to make sure using a particular name will not subject the broker to any liability.

DISCUSSION

What are pros and cons of registering a team name that is also used by an associated broker for his or her separate licensed business entity?

TREC Case Study 6

Trouble in Troy

Paris, a sales agent, advertised using the name “Trojan Horse Group.” Troy City Realty LLC, Paris’ broker, did not timely notify TREC of the name. Additionally, Paris’ advertisements only included the name “Trojan Horse Group” and did not include the name Troy City Realty LLC. Troy City Realty had been formally disciplined two previous times for failing to ensure sponsored sales agents’ advertising complies with TREC advertising rules. Helen, the designated broker, had also been formally disciplined.

Advertising About the Value of a Property

Under TREC Rules §535.155(d)(11), an advertisement is misleading if it promises to give or actually gives the value of a property, unless

- * the value is based on an appraisal that is disclosed and readily available upon request by a party; or
- * it is given in compliance with TREC Rules §535.17.

Broker Price Opinion, Comparative Market Analysis or Sales Price Estimate - TREC Rules §535.17

Effective December 6, 2017

This section now includes estimated worth or sales price in the types of price statements that require a broker to provide a written statement to consumers. Brokers and agents should use this disclosure on all BPOs, CMAs, and sales price estimates. The required written statement for all BPOs, CMAs and Sales Price Estimates was shortened to read: This represents an estimated sale price for this property. It is not the same as the opinion of value in an appraisal developed by a licensed appraiser under the Uniform Standards of Professional Appraisal Practice.

Chapter 8

Written Policies

Review of Required Policies and Procedures - TREC Rules §535.2(i)

- (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.



TREC Case Study 7

No Policy, No Procedure

A client, J.D., filed a complaint against Thelma, a licensed sales agent. TREC's investigation revealed that the agent made false promises as well as multiple errors regarding property management and the handling of her client's trust money. Thelma's sponsoring broker, Flying Thunderbird Realty LLC, failed to maintain written policies and procedures regarding property management or trust money. In fact, the broker had no written policies whatsoever regarding sponsored sales agents. Louise was the designated broker for Flying Thunderbird Realty LLC. How might written policies and procedures have helped in this case?

Succession Plan

When a broker becomes incapacitated or dies, (either individually or as the broker for an entity), all of the sponsored license holders are without a broker and not able to practice brokerage services. For example, an entity's designated broker is the entity's only partner or managing member and becomes incapacitated. This situation leaves the entity's sponsored agents with no one empowered to act and puts everyone in the brokerage out of business. A best practice is to have a policy for how the remaining decision makers could select a replacement broker.

Disaster Plan

The purpose of a disaster (contingency) plan is to prepare the brokerage for a natural disaster or other reasons it might experience an extended outage of all utility services. The first consideration might be a plan for determining whether all agents and staff are safe. Planning the recovery of all data is also a crucial part of a disaster plan. Backing up files into more than one place (redundancy) is an excellent practice. The redundancies should be located in different geographic locations. A broker should consider helping sales agents and clients develop their own disaster plans. There are a number of online resources for disaster planning, such as

- * www.fema.gov/media-library/collections/357; and
- * www.disaster.salvationarmyusa.org/aboutus/?ourservices

Conflict of Interest Policy

In any transaction in which a family member or close friend of a sales associate or associated broker is acting as a vendor for a client, the broker should consider a disclosure of this relationship. If the broker or any associates own a part of a company offering services other than brokerage to clients of the brokerage, this relationship should be disclosed, also. The broker or brokerage's attorney should be able to assist in the creation of a conflict of interest policy and disclosure form. The broker needs to decide what his or her policies will be regarding possible conflicts of interest and broadcast those policies to his or her sales agents.

Unlicensed Assistants

Real estate license holders often use unlicensed personnel for assistance in conducting their real estate brokerage activities. A prudent broker will have a written policy regarding the use of unlicensed assistants. Care must be taken to ensure that the unlicensed person does not conduct any of the activities for which real estate licensure is required. TRELA §1101.351(a) and §1101.758 establish that it is a crime for an unlicensed person to engage in activity for which a real estate license is required. In addition, TREC may take disciplinary action against a license holder who pays or associates with an unlicensed person who engages in activities that require a real estate license. Authority for this disciplinary action is set out in TRELA §1101.652(b) (11) and (26). For these reasons, it is important to distinguish between those activities that require a real estate license and those that do not. TRELA §1101.002 (1)(A) lists activities requiring licensure. The real estate brokerage activities must be for another person or entity. The activities must also be for a fee or something of value, or with the intention of collecting a fee or something of value. Note TREC Rules §535.4&5. Effective December

7, 2016, TREC revoked the rule authorizing unlicensed assistants to host open houses. Therefore, an unlicensed assistant can no longer host an open house.

TREC Case Study 8

Where's the Broker?

Broker Ignacio employed June, an unlicensed person, who negotiated a lease. Ignacio stated that he learned of the unlicensed activity several months after the lease was negotiated. Is lack of knowledge of what an unlicensed assistant was doing a mitigating factor in a complaint received by TREC? No!

What Can I Do at a Sales Meeting?

Here are a few examples from experienced brokers:

Set a catchy start time like 9:09 a.m.

Start the weekly meeting with

- * Agenda (handed out at meeting)
- * Welcome to new sales agents
- * Drinks and Snacks (if appropriate)
- * Silence phones

Possible Agenda Items

- * Read testimonials, if any
- * Review Mission statement
- * Announce new listings (preview on video or go on tour to preview)
- * Review goals – on track/not on track
- * Announce any TREC information (new or to make a point...use TREC rules)
- * Break into groups and brainstorm:
 - » How do we provide quality service to our clients?
 - » How do we gain more market share?
- * Happy story (with small prizes)
- * Wants/Needs/Looking for specific property
- * Games
 - » Roll the Dice: 2 large rubber dice and each agent rolls for number if they have a new listing that week. Sales agent paid \$1.00 for total number when they roll
 - » Place scratch off under chairs to win a prize (mostly upfront)
 - » Trivia questions (with small prizes)
- * Guest speaker or broker/manager/sales agent to provide needed information for training/learning
- * Safety discussion
- * Inspectors & their process
- * Insurance Agent speaker to discuss C.L.U.E. report, etc.
- * Instructor to present updates on contracts & addenda

- * Appraiser to provide information for preparing CMA
- * Lender to provide creative financing information
- * Showing & Selling New Construction versus Resale
- * Role play overcoming objections (groups/partner)
- * Phones on silent/off (whichever)

Be sure to preview invited speakers' presentations to ensure compliance with TREC rules and brokerage policies.

Loki the Liar

Broker Odin has invited a special speaker for today's sales meeting. Sales agents Thor and Saga are listening with interest.

Broker Odin: It's good to have Loki Longtalker with us today. He's gonna help us keep those listings coming. Handouts are on the back table by the coffee machine.

Loki: Thanks, Odin. Good to see y'all. Thanks for having me. How many of you want to increase your profitability?

Thor: I do, for sure.

Freya: Me, too.

Loki: Today I'm gonna show you how to increase your profitability by working FSBOs. Now, where do you find FSBO's? Turn to a partner and come up with some ideas.

Thor and Saga discuss for a moment.

Freya: Websites, driving around town, word of mouth from friends.

Loki: All good ways. Now let's talk seriously about an easier, faster way to contact a FSBO, and that is get their phone number and just call.

Thor: What about the "don't call" laws?

Freya: Yeah, what about those laws? I don't want to pay any fines. It's not worth it.

Loki: Not a problem, just play like it was a mistake and say, "I'm sorry," and go on to the next call.

Do not call regulations are real, and fines are serious. Pretending you made a call by mistake will not play well with authorities if you are caught.

Risk Management

In managing risk, the broker should take advantage of opportunities to minimize risk, such as

- * review the brokerage policy & procedures manual regularly, updating as necessary;
- * inspect and remediate each contract, advising sales agent of errors;

- * conduct a final walk-through on all transactions;
- * manage administrative functions (or designate a colleague) including
 - » assigning an individual to assure that all sales agents have signed off on any updates to the policy & procedures manual;
 - » answering questions for the brokerage;
 - » overseeing and editing advertising; and
 - » monitoring license expirations;
- * develop a policy regarding sales agents' attendance at and involvement in inspections;
- * advise sales agents about helpful tools, such as TAR hotline, TAR's websites Q&As, and how the brokerage prefers that sales agents use the hotline;
- * create and review periodically safety policies for sales agents and clients;
- * review items included in listing packet; and
- * review items included in buyer packet.

TREC Case Study 9

The Case of the Missing Policy

Broker Filbert sponsored a sales agent, Wilhelmina, who engaged in property management. Filbert did not maintain a trust account, and he allowed Wilhelmina to keep trust money in her own account. Filbert also did not maintain policies and procedures regarding trust money. Filbert had received previous discipline from TREC.

Chapter 9

Additional Broker Duties

Record Keeping - TREC Rules §535.2(h)

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

- * disclosures;
- * commission agreements, such as listing agreements;
- * buyer representation agreements, or other written agreements relied upon to claim compensation;
- * substantive communications with parties to the transaction;
- * offers, contracts and related addenda;
- * receipts and disbursements of compensation for services subject to the Act;
- * property management contracts;
- * appraisals, broker price opinions, and comparative market analyses; and
- * sponsorship agreements between the broker and sponsored salespersons.

What to Keep and How Long to Keep It

TREC requires that the items listed in the above rule be kept for four years. However, there are other laws and purposes that suggest or require a broker to have a more comprehensive records retention and destruction policy.

DISCUSSION

1. Can you name what those other laws or purposes might be?
2. How can brokers ensure that sales agents turn in all documents required by TREC and the broker’s own records retention policy?
3. How should a broker maintain personal information collected during the transaction and what procedures should be in place to keep that information secure?



Responding to Agents, Clients and Other License Holders - TREC Rules §535.2(i)

(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.

Forwarding Commission Correspondence to Sponsored Agents - TREC Rules §535.2(k)

(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.

DISCUSSION

What types of problems can occur when a broker does not timely respond to questions from sponsored agents or license holders representing other parties in real estate transactions?

Chapter 10

Application and Background History Processing and Complaints



TREC's primary mission is to protect the consumer. For this purpose, TREC licenses and regulates real estate brokers, sales agents, real estate inspectors, real estate appraisers, easement or right-of-way agents as well as several other license types. To apply for or renew a license, an applicant may submit an application and filing fee online, by mail or in person.

Overview of TREC Application Processing

While there are peak times during the year when the volume of applications and renewals are very high, TREC's goal is to process original and renewal applications and supporting documents within 7-10 business days, respond to emails within 24 hours, and answer telephone inquiries as calls come in. To expedite processing, an applicant or license holder should send supporting documents for online application (course completion documents, experience documents, proof of ownership documents for broker entities, etc.) to the agency email address at documents@trec.texas.gov. An applicant or license holder who has submitted an application or other document can access the TREC Processing Dates page at www.trec.texas.gov/trec-processing-times to find out the dates of the documents currently being processed.

TREC processes an average of 90,000 new and renewal applications each year. Peak periods for receiving new applications are during the pre-summer

months, and peak periods for processing renewal applications are the last two weeks of every month. The following tips help expedite an applicant or license holder's request.

- ✓ After completing an application, review and proof the information provided before submitting it to the agency.
- ✓ Partial payments delay processing. Submit the entire fee that is due.
- ✓ Send all supporting documents at one time and together, if possible.
- ✓ Do not send multiple copies of the same documents unless requested.
- ✓ Find out the status of a document that was submitted by first going to the TREC website and accessing the TREC Processing Dates page. www.trec.texas.gov/trec-processing-times
- ✓ An initial or renewal application referred to TREC's Standards & Enforcement Services division for additional review due to background check results will take longer than 7-10 business days.
- ✓ Provide a response as soon as possible when TREC requests additional information or documents.
- ✓ Complete required CE several months in advance of the license expiration date.
- ✓ TREC customer service representatives are available Monday thru Friday from 7:00 a.m. to 6:00 p.m. The best time to call is from 7:00 a.m. to 8:00 a.m. or from 5:00 p.m. to 6:00 p.m.

In addition to the above, all license holders should subscribe to TREC publications to keep current with TREC processes and rules applicable to the license held.

Background History for Sales Agents or Brokers

Brokers occasionally ask TREC, "Why hasn't my future license holder received his or her license yet? I'm ready to sponsor them now." Often in such a situation, the applicant has a background history that TREC must investigate. A person applying for a broker's

license must also go through a background check. And upon renewal, a sales agent or broker is also checked for criminal history (typically felonies, but this can also be a misdemeanor if the misdemeanor involves fraud). For an applicant for a sales agent or broker license, the background history includes many areas, such as criminal history, an outstanding judgment, other license discipline, and even certain unpaid student loans.

Mostly, though, criminal history is the issue. Depending on the number and age of the crimes, a background check involving criminal history is often very labor-intensive because it involves the review of many and specific legal documents. When a broker wants to help someone obtain a sales agent or broker's license, he or she should advise the following:

- * completely fill out the Background History Form;
- * disclose everything, even if you think it has been dismissed, sealed, or expunged, unless you have expungement documents or documentation showing the case is sealed (failure to disclose everything violates TREC rules and laws and also delays the process);
- * attach a separate form for each additional license, judgment, or crime;
- * provide a license history for all other occupations or professional licenses, including out-of-state real estate licenses, signed by the appropriate agency; and
- * provide, if applicant has a criminal history (even if the agent thinks it has been dismissed or expunged unless the agent has expungement documents),
 - » indictments,
 - » information,
 - » charges,
 - » judgments,
 - » orders,
 - » motions to revoke, and
 - » parole/probation/community supervision release for each criminal offense.

Complaints

How does the Texas Real Estate Commission handle complaints against a broker or sales agent? TREC adds the sponsoring broker when a real estate brokerage-related complaint comes in against an active (or formerly active) sales agent. If the broker is an entity, the designated broker is added, as well. In some complaints, there could be multiple brokers added.

When Can an Investigation be Initiated?

The process is complaint-driven, so in general, TREC investigates when there is a signed, written complaint and reasonable cause for investigation (TRELA §1101.204). In addition to receiving complaints, TREC may, on its own initiative, file a complaint and conduct

an investigation as necessary to enforce TRELA. TRELA is Chapter 1101, Texas Occupations Code, and all real estate brokers and agents should be familiar with that law. With very few exceptions, TREC may not conduct an undercover or covert investigation. When a complaint is anonymous or unsigned, TREC lacks authority to open the complaint.

What About the Broker?

When a broker is added to a complaint, the broker must respond. A failure to respond is a separate violation and may lead to a default final order against a license holder, which generally includes an administrative penalty, and a suspension or revocation.

When a complaint is received, it is not a defense to broker supervision (TREC Rules §535.2) for a sponsoring or designated broker to say that it doesn't supervise a sales agent whom the broker sponsors.

Resolution of a Complaint

After an investigation is completed, the respondent to the complaint (or applicant for a license) has the right to a hearing when an application is denied or formal discipline is sought. There are several methods to resolve a complaint.

- * No jurisdiction - Where there is no jurisdiction, the complaint is dismissed. For example, when someone complains to TREC about a plumber or builder, TREC generally has no authority to investigate those allegations.
- * No violation - TREC might determine there is no violation.
- * Insufficient Evidence - TREC might determine there is insufficient evidence to proceed. This means that staff do not believe that they could meet their burden to prove a violation.

Advisory Letter

- * TREC might issue an advisory letter explaining areas of concerns. This letter is saved in the license holder's master file and could be used as evidence if a similar situation arises again. In some ways, it is like a warning.
- * Violation - TREC might recommend formal discipline such as a reprimand, an administrative penalty, suspension, or even revocation.

Administrative Penalties

By law, an administrative penalty, collected by TREC for a violation of The Real Estate License Act, goes to the Real Estate Recovery Fund. An administrative penalty is not revenue for TREC. Instead, the money goes to a trust account that is used to pay consumers for judgments against a license holder (Appendix H).

I Dunno

Tracy Trec, a TREC investigator, interviews Cathy Cashchek, a supervising broker, regarding complaints received involving one of Cathy's sponsored sales agents.

Tracy Trec: *We have a complaint against your sales agent, and we have some questions.*

Cathy Cashchek: *I didn't do anything. I don't know anything.*

Tracy Trec: *Have you reviewed the complaint issues with your sales agent?*

Cathy Cashchek: *Stop harassing me.*

Tracy Trec: *What is your opinion about the actions of the sales agent related to the allegations in the complaint?*

Cathy Cashchek: *I dunno. What's his name?*

Tracy Trec: *Did you try to resolve issues with the complainant?*

Cathy Cashchek: *Wait a minute. Let's get something straight. This was HIS client, not mine.*

Tracy Trec: *How long have you sponsored the sales agent?*

Cathy Cashchek: *I dunno. What's his name again?*

Tracy Trec: *What kind of supervision do you provide to your sales agents?*

Cathy Cashchek: *I guess that depends on what you mean by "supervision." Is there a definition somewhere?*

Tracy Trec: *Are you aware of Section 535.2 of the Rules, related to broker responsibilities? Do you feel that you are in compliance?*

Cathy Cashchek: *I'm unaware of that section, but I'm 100 percent positive we're in compliance.*

Tracy Trec: *How do you ensure that a sales agent complies with your policies and procedures?*

Cathy Cashchek: *I dunno.*

Tracy Trec: *What are your policies for reviewing contracts and maintaining files for real estate transactions?*

Cathy Cashchek: *I dunno.*

Tracy Trec: *What is the process or procedure for reviewing a sales agent's advertising?*

Cathy Cashchek: *I don't review "advertising," as you call it.*

Tracy Trec: *Do you periodically review your policies and procedures with sales agents?*

Cathy Cashchek: *I don't recall at this point in time. Does the 5th Amendment apply here?*

Tracy Trec: *Do you provide training? Is training required?*

When we are talking about broker responsibility, "I dunno," is more of an admission than a defense!

Complaint Investigation and Disposition (TRELA §1101.204)

- (a) The Commission or Commission staff may file a complaint and conduct an investigation as necessary to enforce this chapter, Chapter 1102, or a rule adopted under those chapters.
- (b) The Commission shall investigate the actions and records of a license holder if:
 - (1) a person submits a signed, written complaint; and
 - (2) the complaint and any evidence presented with the complaint provide reasonable cause for an investigation.
- (c) The Commission may not conduct an investigation of a person licensed under this chapter or Chapter 1102 in connection with a complaint submitted later than the fourth anniversary of the date of the

- incident that is the subject of the complaint.
- (d) The Commission shall promptly provide a written notice to a person licensed under this chapter or Chapter 1102 who is the subject of an investigation unless after deliberation the Commission decides against notification.
 - (e) Notwithstanding any other provision of this chapter, an undercover or covert investigation may not be conducted unless the Commission expressly authorizes the investigation after considering the circumstances and determining that the investigation is necessary to implement this chapter.
 - (f) An investigation or other action against a person licensed under this chapter or Chapter 1102 may not be initiated on the basis of an anonymous complaint.
 - (g) (The Legislature repealed former Subsection (g) in 2007.)
 - (h) The Commission shall ensure that the Commission

gives priority to the investigation of a complaint filed by a consumer and an enforcement case resulting from the consumer complaint. The Commission shall assign priorities and investigate complaints using a risk-based approach based on the:

- (1) degree of potential harm to a consumer;
- (2) potential for immediate harm to a consumer;
- (3) overall severity of the allegations in the complaint;
- (4) number of license holders potentially involved in the complaint;
- (5) previous complaint history of the license holder; and
- (6) number of potential violations in the complaint.

Appendix A

Use of Standard Contract Forms (TREC Rules §537.11)

- (a) When negotiating contracts binding the sale, exchange, option, lease or rental of any interest in real property, a real estate license holder shall use only those contract forms approved for mandatory use by the Texas Real Estate Commission (the Commission) for that type of transaction with the following exceptions:
- (1) transactions in which the license holder is functioning solely as a principal, not as an agent;
 - (2) transactions in which an agency of the United States government requires a different form to be used;
 - (3) transactions for which a contract form, or addendum to a contract form, has been prepared by a property owner or prepared by a lawyer and required by a property owner; or
 - (4) transactions for which no mandatory contract form or addendum has been approved by the Commission, and the license holder uses a form:
 - (A) prepared by a lawyer licensed by this state, or a trade association in consultation with one or more lawyers licensed by this state, for the particular type of transactions involved that contains:
 - (i) the name of the lawyer or trade association who prepared the form;
 - (ii) the name of the broker or trade association for whom the form was prepared;
 - (iii) the type of transaction for which the lawyer or trade association has approved the use of the form;
 - (iv) any restrictions on the use of the form; and
 - (v) if it is an addendum that changes the rights, obligations or remedies of a party under a contract or addendum form approved by the Commission for mandatory use, the form must also include:
 - (I) a statement about how the addendum changes the rights, obligations or remedies of a party, with a reference to the relevant paragraph number in the mandatory use form;
 - (II) a statement that the form is not a mandatory Texas Real Estate Commission form; and
 - (III) a statement that Commission rules prohibit real estate license holders from giving legal advice; or
 - (B) prepared by the Texas Real Estate Broker-Lawyer Committee (the committee) and approved by the Commission for voluntary use by license holders.
- (b) A license holder may not:
- (1) practice law;
 - (2) directly or indirectly offer, give or attempt to give legal advice;
 - (3) give advice or opinions as to the legal effect of any contracts or other such instruments which may affect the title to real estate;
 - (4) give opinions concerning the status or validity of title to real estate;
 - (5) draft language defining or affecting the rights, obligations or remedies of the principals of a real estate transaction, including escalation, appraisal or other contingency clauses;
 - (6) add factual statements or business details to a form approved by the Commission if the Commission has approved a form or addendum for mandatory use for that purpose;
 - (7) attempt to prevent or in any manner whatsoever discourage any principal to a real estate transaction from employing a lawyer; or
 - (8) employ or pay for the services of a lawyer, directly or indirectly, to represent a principal to a real estate transaction in which the license holder is acting as an agent.
- (c) This section does not limit a license holder's fiduciary obligation to disclose to the license holder's principals all pertinent facts that are within the knowledge of the license holder, including such facts which might affect the status of or title to real estate.
- (d) It is not the practice of law for a license holder to fill in the blanks in a contract form authorized for use by this section. A license holder shall only add factual statements and business details or shall strike text as directed in writing by the principals.

- (e) This section does not prevent the license holder from explaining to the principals the meaning of the alternative choices, factual statements and business details contained in an instrument so long as the license holder does not offer or give legal advice.
- (f) When a transaction involves unusual matters that should be reviewed by a lawyer before an instrument is executed, or if the instrument must be acknowledged and filed of record, the license holder shall advise the principals that each should consult a lawyer of the principal's choice before executing the instrument.
- (g) A license holder may employ and pay for the services of a lawyer to represent only the license holder in a real estate transaction.
- (h) A license holder shall advise the principals that the instrument they are about to execute is binding on them.
- (i) Forms approved by the Commission may be reproduced only from the following sources:
 - (1) electronically reproduced from the files available on the Commission's website;
 - (2) printed copies made from copies obtained from the Commission;
 - (3) legible photocopies made from such copies; or
 - (4) computer-driven printers following these guidelines:
 - (A) The computer file or program containing the form text must not allow the end user direct access to the text of the form and may only permit the user to insert language in blanks in the forms. Blanks may be scalable to accommodate the inserted language. The Commission may approve the use of a computer file or program that permits a principal of a license holder to strike through language of the form text. The program must be:
 - (i) limited to use only by a principal of a transaction; and
 - (ii) in a format and authenticated in manner acceptable to the Commission.
 - (B) Typefaces or fonts must appear to be identical to those used by the Commission in printed copies of the particular form.
 - (C) The text and order of the text must be identical to that used by the Commission in printed copies of the particular form.
 - (D) The name and address of the person or firm responsible for developing the software program must be legibly printed below the border at the bottom of each page in no less than six point type and in no larger than 10 point type.
- (j) Forms approved or promulgated by the Commission must be reproduced on the same size of paper used by the Commission with the following changes or additions only:
 - (1) The business name or logo of a broker, organization or printer may appear at the top of a form outside the border.
 - (2) The broker's name may be inserted in any blank provided for that purpose.
- (k) **Standard Contract Forms adopted by the Commission are published by and available from the Commission at P.O. Box 12188, Austin, Texas 78711-2188 or www.trec.texas.gov**

Appendix B

Elective Qualifying Real Estate Courses to Meet SAE License Requirements

- * Real Estate Law
- * Real Estate Marketing
- * Real Estate Mathematics
- * Property Management
- * Real Estate Investments
- * Real Estate Inspection for Real Estate Agents
- * Advanced courses on the required qualifying courses' subjects

Appendix C

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) _____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) _____ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*.

Agent's Acknowledgment (initial)

(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

_____ Lessor	_____ Date	_____ Lessor	_____ Date
_____ Lessee	_____ Date	_____ Lessee	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date

Appendix D

Lead-Safe Certification

LEAD PAINT: BAD IN SCHOOLS, HOSPITALS, APARTMENTS OR ANYWHERE CHILDREN MAY BE PRESENT.

Many contractors and maintenance workers who have been on the job for years believe they know all about the dangers of and the precautions necessary for working with lead paint. Others think lead paint poisoning simply went away years ago. It didn't.

That's why you need to know the facts about lead paint and how disturbing it poses serious health risks to the people in your building, especially children.

If your pre-1978 hospital, child-care facility, school or extended-stay hotel suite is being renovated, repaired or painted, this pamphlet is for you. In it, you'll learn about the dangers of lead paint, how to hire a Lead-Safe Certified contractor, and how to make sure your own maintenance staff is doing the right thing.



THE TRUTH ABOUT LEAD PAINT POISONING.

Lead paint is an invisible danger. Here are some facts about lead paint poisoning that everyone should know:

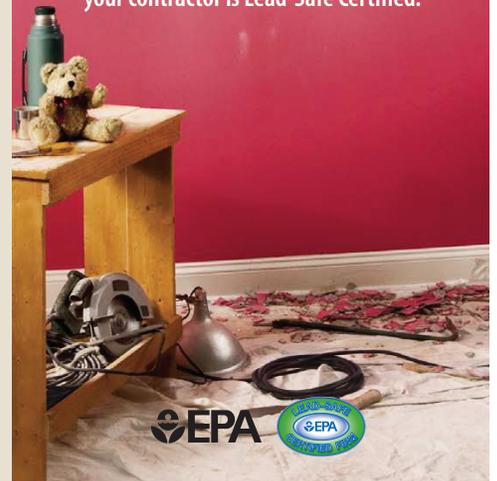
- A million kids are affected by lead paint poisoning with some level of irreversible damage, such as lower intelligence, learning disabilities and behavioral issues.
- New cases of childhood lead paint poisoning are diagnosed every year. Many more could go unreported.
- Recent research shows that new cases can be directly linked to renovations where the work environment was inadequately contained.
- Adults exposed to lead paint can suffer from high blood pressure, headaches, dizziness, diminished motor skills, fatigue and memory loss. Even small levels of exposure to lead paint can harm adults.
- It's not just lead paint chips that poison. Contamination can be caused by only a little bit of lead dust that is easily absorbed by anyone who inhales or ingests it.
- Once poisoned, it's for life and can never be reversed.



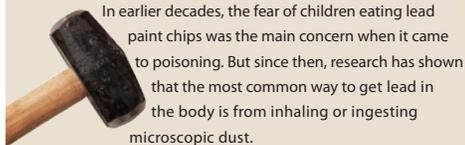
To learn more,
visit epa.gov/getleadsafe
or call 800-424-LEAD.



Building Managers: Make sure you or your contractor is Lead-Safe Certified.



WHERE DOES THE LEAD DANGER COME FROM TODAY?



In earlier decades, the fear of children eating lead paint chips was the main concern when it came to poisoning. But since then, research has shown that the most common way to get lead in the body is from inhaling or ingesting microscopic dust.

Renovation creates this dust. Common renovation activities, like sanding, cutting and demolition, can create hazardous lead dust and chips. Proper work practices can protect the people in your building, especially children, from this dust.

Even for small jobs, the key is to use lead-safe work practices such as containing dust inside the work area, using dust-minimizing work methods and conducting a careful cleanup. It also means keeping people out of the work area. Most important, it means making sure that anyone who does work in your building is Lead-Safe Certified.



EPA regulations now mandate that any contractor or maintenance staff, from plumbers to electricians to painters, who disturbs more than six square feet of lead paint, replaces windows or does any demolition while working in a pre-1978 home, school or day-care center, must now be Lead-Safe Certified and trained in lead-safe work practices. If not, you could face tens of thousands of dollars in fines. These regulations are now the standard of care for the industry and complying with them will reduce your chance of being involved in potentially expensive lawsuits.

HOW DO I CHOOSE THE RIGHT CONTRACTOR?

As a property manager or person in the position of authority to choose who renovates your hospital, child-care facility, school, or apartment, it is your responsibility to choose a contractor who is Lead-Safe Certified.

Here are a few helpful tips:

- Ask if the contractor is trained to perform lead-safe work practices and ask to see a copy of their EPA training certificate.
- Make sure your contractor can explain clearly the details of the job and how the firm will minimize lead hazards during the work process.
- Ask what lead-safe methods will be used to set up and perform the job in your hospital, child-care facility, school or apartment.
- Ask for references from at least three recent jobs involving buildings built before 1978, and speak to each personally.
- Always make sure the contract is clear about how the work will be set up, performed and cleaned.

You can verify that a contractor is certified by checking the EPA website at www.epa.gov/getleadsafe or by calling the National Lead Information Center at 1-800-424-LEAD (5323). You can also ask to see a copy of the contractor's firm certification.

DOES MY STAFF HAVE TO BE LEAD-SAFE CERTIFIED?

Federal law requires that if you or someone on your staff is performing the work your firm must be Lead-Safe Certified and your staff trained in lead-safe work practices. If not, you could face tens of thousands of dollars in fines. Plus, you put the health of yourself, your workers, and your customers at risk, which could result in lawsuits.

These work practices include:

- Containing the work area.
- Avoiding renovation methods that generate large amounts of lead-contaminated dust.
- Cleaning up thoroughly.



GETTING YOUR LEAD-SAFE CERTIFICATION.

- To become certified, individuals must attend a full-day Renovation, Repair and Painting Rule Course. The price for this course is set by private trainers accredited by the EPA. To find an accredited trainer near you, visit www.epa.gov/getleadsafe or call 1-800-424-LEAD.
- Your firm also needs to register with the EPA and pay \$300 to receive official certification.
- To help you through this new regulation, there is a wealth of downloadable support information on our website, www.epa.gov/getleadsafe.



Appendix E

Use of Unlicensed Assistants in Real Estate Transactions

www.trec.texas.gov/article/use-unlicensed-assistants-real-estate-transactions

Brokers and sales agents often use unlicensed personnel for assistance in conducting their real estate brokerage activities. Such unlicensed persons, sometimes referred to as administrative assistants, can be of great help to a busy agent. However, care must be taken to ensure that the unlicensed person does not conduct any of the activities for which a real estate license is required. This article defines some of those activities which may and may not be legally conducted by unlicensed persons.

Sections 1101.351(a) and 1101.758 of The Real Estate License Act establish that it is a crime for an unlicensed person to engage in activity for which a real estate license is required. The broker or sales agent that employs an unlicensed person might be criminally charged for the crime as well. In addition, TREC may take disciplinary action against a broker or sales agent that pays or associates with an unlicensed person who engages in activities that require a real estate license. Authority for this disciplinary action is set out in Sections 1101.652(b)(11) and (26) of the License Act. For these reasons, it is important to distinguish between those activities that do and those that do not require a real estate license. Section 1101.002(1)(A) of the License Act sets forth a list of activities that require a license and are worthy of a close reading.

Preliminarily, the real estate brokerage activities must be “for another” person or entity. This means that persons who are buying, selling or leasing their own property do not need a license; they are acting for themselves and not for another person. The activities must also be for a fee or something of value, or with the intention of collecting a fee or something of value. This means, for example, that an unlicensed person whose neighbor has been transferred out of state may solicit tenants and negotiate a lease on behalf of the neighbor so long as the person does not receive or expect to receive anything of value for helping.

The list of activities requiring a license may be summarized and placed in two categories (but remember, this is a summary only and not all inclusive). First are those activities in which a person directly helps another

buy, sell, or lease real property. These activities, such as negotiating a listing agreement with a property owner, spending the afternoon with a couple showing houses for sale or rent, or negotiating a contract to buy or lease real property, obviously require a license. These “direct” activities are seldom the subject of debate or controversy.

The second category of activities might be referred to as “indirect” activities and are more troublesome. Section 1101.002(1)(A)(viii) of the License Act requires a license for anyone who procures or assists in procuring prospects to buy, sell, or lease property. Section 1101.002(1)(A)(ix) of the License Act requires a license for anyone who procures or assists in procuring properties to be bought, sold, or leased. If the words “assist in” were read broadly enough, virtually everyone working in a real estate office would need a license. Common sense dictates, however, that many activities can be legally conducted in a real estate brokerage office that do not require a license. There may sometimes exist only a thin line between those activities that require a license and those that do not. The following Q & A discussions may help license holders accurately draw this line.

Q: May an unlicensed person, identified as such, make calls to determine whether a person is interested in buying or selling property, or has property they wish to sell, and if so, make an appointment for a licensed agent to talk to them?

A: *No. Often referred to as “telemarketing,” any such activities conducted in Texas must be conducted by a license holder. In Tex. Atty. Gen. Op. H-1271 (1978), the attorney general concluded that a license was required. Also, Commission Rule 535.4(e) makes it clear that all solicitation work must be conducted by license holders.*

Q: May an unlicensed person open doors for prospective buyers or tenants?

A: *No. Rule 535.4(c) states that a person must be licensed as a broker or sales agent to show a broker’s listings. An unlicensed assistant cannot perform any activities for a license holder*

that requires a license, and therefore, cannot “show” a property. This rule was amended last year to clarify that to “show” includes opening doors, allowing access to a property or hosting an open house. Bottom line, an unlicensed assistant cannot show property for a license holder; this includes providing access to homes for sale and for lease.

This is a change from a previous interpretation that was contained in an old article regarding unlicensed assistants. After the criminal background check requirement became law, that interpretation became outdated and was no longer correct. Also, most license holders agree that many unlicensed assistants that did open properties for prospective buyers in the past offered information or answered questions about the property or neighborhood that clearly crossed the line into brokerage activity.

Bottom line, an unlicensed assistant cannot show property for a license holder; this includes providing access to homes for sale and for lease.

Q: May unlicensed assistants set appointments to show a listing?

A: Yes. Under the general rules stated above, it is permissible for an assistant to call a homeowner and schedule an appointment for the broker to bring a potential buyer to see the home.

Q: May the unlicensed assistant host an open house?

A: No, effective December 20, 2016, the Commission changed the rules so that an unlicensed assistant can no longer host an open house.

Q: May the unlicensed assistant place “for sale” signs; open a property or accompany inspectors; place newspaper advertisements as directed by the broker?

A: Yes, subject to the following guidelines. Commission Rule 535.5(g) provides that answering the telephone and acts of a clerical or secretarial nature do not require a license. Clerical or secretarial employees need not be licensed so long as they do not engage in solicitation and do not hold themselves out as licensed agents. Further, Commission Rule 535.5(g) also states that an unlicensed clerical or secretarial employee, identified to callers as such, may confirm information concerning the size, price and terms of property advertised. Taken together, this means that an unlicensed person may, after identifying himself or herself as an

unlicensed person, confirm information previously advertised to callers or persons dropping by. The unlicensed person should not give information about properties other than that inquired about, and should refer any requests for information regarding other properties to a licensed agent. For example, the assistant might confirm that a particular property called about has three bedrooms and one bath, as previously advertised; however, the assistant may not attempt to identify properties which instead have two baths and bring these to the attention of the caller. Such questions must be referred to a license holder. The assistant should not attempt to “qualify” the caller in any respect. Many other duties that are administrative in nature can be safely performed, such as inputting data into a computer or typing contracts, but, only as specifically directed by a license holder. Support personnel can order supplies, schedule maintenance, and all the other things that are involved in keeping the office open. Bookkeeping and office management functions may be performed by an unlicensed assistant, as discussed immediately below.

Q: What functions may an unlicensed office manager perform?

A: Unlicensed persons may perform administrative tasks such as training or motivating personnel, and those tasks dealing with office administration and personnel matters. An unlicensed person may serve as bookkeeper for the company. However, only a license holder may be a signatory on brokerage trust accounts under Commission Rule 535.146(c) (7). An office manager may also serve as a trainer. However, Commission Rule 535.4(d) states that an unlicensed person may not direct or supervise agents in their work as license holders. Therefore, an unlicensed person may not direct or advise agents in their attempts to help others buy, sell, or lease property. They may not review contracts, or help make “deals” work. These tasks are properly conducted only by licensed persons.

Q: May unlicensed persons assist in arranging financing?

A: Yes; however, great care must be taken that the person acts solely in an administrative capacity. An unlicensed assistant may be directed by a broker or sales agent to assist a particular buyer in obtaining information and forms to apply for and qualify for a loan. However, these acts should be at the direction of a license holder.

Mortgage brokers and loan originators are licensed by the Texas Department of Savings and Mortgage Lending, and any questions regarding the requirements for licensure for persons dealing with financing issues should be directed to that agency.

Q: May unlicensed persons serve as property managers for rental properties?

A: *Those who hold themselves out as “property managers” for others and for compensation must be licensed, provided the person also rent or leases the property for the property owner. In addition, Section 1101.002(1)(A) (x) of the License Act requires a license for a person who controls the acceptance or deposit of rent from a resident of a single-family residential real property unit. Section 535.4(g) of the Commission Rules provides that a person controls the acceptance or deposit of rent if the person has the authority to use the rent to pay for services related to management of the property or has the authority to deposit the rent into a trust account and sign checks or withdraw money from the account. Many property management activities, such as book-keeping and arranging for repairs, do not generally require a license. However, only a license holder may be a signatory on brokerage trust accounts under Commission Rule 535.146(c) (7). So long as an unlicensed person carefully limits his or her property management activities to those which do not require a license, neither criminal charges nor Commission disciplinary action would be warranted. Note that persons acting as on-site managers at apartment complexes are exempt from licensure under Section 1101.005(7) of the License Act.*

Q: What can a license holder do to avoid criminal or disciplinary actions?

A: *First, a broker should NOT let his or her license or any of sponsored sales agents’ licenses lapse. The lapse of a license, often inadvertent, is a common basis for disciplinary action on the grounds of improper unlicensed activity. Second, analyze any new factual situation according to the rules above to determine the extent to which the unlicensed person is being allowed to act with discretion, and how close the unlicensed person is “directly” assisting others in buying, selling, or leasing property. If still troubled, contact your attorney. You may also contact the Commission for an informal opinion based on a particular fact situation. Managing brokers might gain some*

protection from disciplinary action by establishing written guidelines and training dictating to both their agents and unlicensed personnel what is allowed and not allowed of non-license holders.

As always, you should contact your attorney regarding matters raised by this article. You may also wish to ask your attorney for advice regarding potential civil or criminal liability for acts performed by unlicensed persons.

Appendix F

§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 think 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.
- §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

Advertising FAQs - as of 9/1/18

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

1. May a name used in advertising be both an assumed business name and a team name?

No. It will be one or the other. See question regarding the difference between the types of names to figure out which one is appropriate for your situation.

2. Can a broker use the words “team” or “group” in the broker’s licensed name or assumed business name?

Yes. TREC Rules do not prohibit a broker from using the word “team” or “group” anywhere in a broker’s licensed or assumed business name.

3. Can an individual broker use an assumed business name in advertising?

Yes, as long as the broker has the legal authority to use that name in the State of Texas and it is registered with TREC before it is used in advertisements [see §535.154(d)].

4. What is proof of legal authority to use an assumed business name in Texas?

Generally, in Texas, filing an assumed business name is required to put the public on notice that you are doing business under a name other than your legal name. For most business entities, the assumed business name is filed with the Secretary of State and with the county clerk in the county or counties where you do business. For a general partnership or individual broker, the assumed business name is filed with the county clerk in the county or counties where you do business. See www.sos.state.tx.us/corp/namefilingsfaqs.shtml. Evidence of registration of the assumed business name with the Secretary of State or in the county or counties where the broker does business is adequate proof of authority to do business under that name [TREC Rules §535.154(d)].

5. Can an individual sales agent use an assumed business name in advertising?

No. Any name used by an individual sales agent, other than the name on the license or a registered alternate name, is considered a team name under TREC rules and must meet the team name requirements [TREC rules §535.154(a)(5)].

6. If a sales agent’s last name is contained in the broker’s licensed or assumed business name, how can the sales agent let the consumer know the agent is not the broker?

To avoid an advertisement that implies the sales agent is responsible for the operation of the brokerage in this situation, the sales agent should make sure that the ad clearly indicates that the sales agent is not the broker. One simple way to accomplish this is to put “sales agent” next to the agent’s name. Using “REALTOR” or “agent” is insufficient to distinguish the license status of sales agent [see TRELA 1101.652(b)(23) and TREC Rules §535.155(d)(7)].

7. Does TREC consider a license holder’s URL or domain name or email address to be advertising?

TREC does not consider URLs or email addresses to be advertisements in and of themselves. However, an advertisement that contains a URL or email address of a sales agent that includes a title that implies responsibility for a brokerage violates TREC Rules §535.155(d)(4). Further, TREC will consider all advertisements in their entirety and if an email address or URL makes the advertisement misleading or deceptive, it violates the law [TREC Rules §535.155(b)(4) and TRELA 1101.652(b)(23)].

8. Does TREC consider promotional items and sponsorships to be advertising?

Yes. If a sales agent’s name or team name is on them, the broker’s name must also be present (in at least half the size). A broker’s name alone is sufficient [TREC Rules §535.155(b)(1)].

9. Does TREC consider a sign on a building to be an advertisement?

Yes. If a sales agent’s name or team name is on a building sign, the broker’s name must also be present (in at least half the size). A broker’s name alone is okay [TREC Rules §535.155(b)(1)].

10. Does TREC consider a logo that contains the broker’s full name sufficient for the broker name requirement?

Yes, as long as the size of the broker’s name itself (not the whole logo) is at least ½ the size of the largest contact information [TREC Rules §535.155(b)(3)].

Appendix H

Complaint Investigation and Disposition (Texas Occupations Code)

Sec. 1101.204. COMPLAINT INVESTIGATION AND DISPOSITION.

- (a) The commission or commission staff may file a complaint and conduct an investigation as necessary to enforce this chapter, Chapter 1102, or a rule adopted under those chapters.
- (b) The commission shall investigate the actions and records of a license holder if:
 - (1) a person submits a signed, written complaint; and
 - (2) the complaint and any evidence presented with the complaint provide reasonable cause for an investigation.
- (c) The commission may not conduct an investigation of a person licensed under this chapter or Chapter 1102 in connection with a complaint submitted later than the fourth anniversary of the date of the incident that is the subject of the complaint.
- (d) The commission shall promptly provide a written notice to a person licensed under this chapter or Chapter 1102 who is the subject of an investigation unless after deliberation the commission decides against notification.
- (e) Notwithstanding any other provision of this chapter, an undercover or covert investigation may not be conducted unless the commission expressly authorizes the investigation after considering the circumstances and determining that the investigation is necessary to implement this chapter.
- (f) An investigation or other action against a person licensed under this chapter or Chapter 1102 may not be initiated on the basis of an anonymous complaint.
- (g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(1), eff. September 1, 2007.
- (h) The commission shall ensure that the commission gives priority to the investigation of a complaint filed by a consumer and an enforcement case resulting from the consumer complaint. The commission shall assign priorities and investigate complaints using a risk-based approach based on the:
 - (1) degree of potential harm to a consumer;
 - (2) potential for immediate harm to a consumer;
 - (3) overall severity of the allegations in the complaint;
 - (4) number of license holders potentially involved in the complaint;

(5) previous complaint history of the license holder; and

(6) number of potential violations in the complaint.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.154(b), 14A.157(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 13, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(1), eff. September 1, 2007.



REAL ESTATE CENTER
TEXAS A & M UNIVERSITY